

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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In re: : Chapter 11
: VALERITAS HOLDINGS, INC., *et al.*,¹ : Case No. 20-10290 (LSS)
: Debtors. : (Jointly Administered)
: :
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**FIRST AMENDED COMBINED DISCLOSURE STATEMENT
AND JOINT CHAPTER 11 PLAN OF LIQUIDATION PROPOSED BY
VALERITAS HOLDINGS, INC. AND ITS AFFILIATED DEBTORS, THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS, AND THE PREPETITION LENDERS**

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April 15, 2020

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Valeritas Holdings, Inc. (8907); Valeritas, Inc. (1056); Valeritas Security Corporation (9654); Valeritas US, LLC (0007). The corporate headquarters and the mailing address for the debtors is c/o DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, New York 10020.

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DISCLAIMER

THIS COMBINED DISCLOSURE STATEMENT AND PLAN WAS COMPILED FROM INFORMATION OBTAINED FROM NUMEROUS SOURCES BELIEVED TO BE ACCURATE TO THE BEST OF THE PROPONENTS' KNOWLEDGE, INFORMATION, AND BELIEF. NO GOVERNMENTAL AUTHORITY HAS PASSED ON, CONFIRMED OR DETERMINED THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED HEREIN.

NOTHING STATED HEREIN SHALL BE (I) DEEMED OR CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, (II) ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTORS OR ANY OTHER PROPONENT, OR (III) DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE COMBINED DISCLOSURE STATEMENT AND PLAN ON THE PROPONENTS OR HOLDERS OF CLAIMS OR INTERESTS. CERTAIN STATEMENTS CONTAINED HEREIN, BY NATURE, ARE FORWARD-LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL REFLECT ACTUAL OUTCOMES.

THE STATEMENTS CONTAINED HEREIN ARE MADE AS OF THE DATE HEREOF, UNLESS ANOTHER TIME IS SPECIFIED. THE DELIVERY OF THIS COMBINED DISCLOSURE STATEMENT AND PLAN SHALL NOT BE DEEMED OR CONSTRUED TO CREATE ANY IMPLICATION THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AT ANY TIME AFTER THE DATE HEREOF. HOLDERS OF CLAIMS OR INTERESTS SHOULD NOT CONSTRUE THE CONTENTS OF THIS COMBINED DISCLOSURE STATEMENT AND PLAN AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL, OR TAX ADVICE. EACH SUCH HOLDER SHOULD CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL, AND TAX ADVISORS AS TO ANY SUCH MATTERS CONCERNING THE COMBINED DISCLOSURE STATEMENT AND PLAN AND THE TRANSACTIONS CONTEMPLATED HEREBY.

THE COMBINED DISCLOSURE STATEMENT AND PLAN IS THE RESULT OF, AND EFFECTUATES, THE GLOBAL SETTLEMENT MEMORIALIZED IN THE AMENDED SETTLEMENT (DEFINED BELOW). THE COMBINED DISCLOSURE STATEMENT AND PLAN CONTEMPLATES THE LIQUIDATION OF THE DEBTORS, PAYMENTS TO CERTAIN CREDITORS AND THE ESTABLISHMENT OF A CREDITORS' TRUST, WHICH CREDITORS' TRUST WILL BE GOVERNED BY THIS PLAN AND THE CREDITORS' TRUST AGREEMENT. THE CREDITORS' TRUST AGREEMENT WILL SET FORTH THE RIGHTS, POWERS, DUTIES, AND RESPONSIBILITIES OF THE LIQUIDATING TRUSTEE, AS SUPPLEMENTED BY THE PROVISIONS OF THIS PLAN.

NO PARTY IS AUTHORIZED TO GIVE ANY INFORMATION WITH RESPECT TO THE COMBINED DISCLOSURE STATEMENT AND PLAN OTHER THAN WHAT IS CONTAINED IN THIS COMBINED DISCLOSURE STATEMENT AND PLAN. NO REPRESENTATIONS CONCERNING THE DEBTORS, OR THE VALUE OF THEIR PROPERTY HAVE BEEN AUTHORIZED BY THE DEBTORS OTHER THAN AS SET FORTH IN THIS COMBINED DISCLOSURE STATEMENT AND PLAN AND THE

DEBTORS' SCHEDULES. ANY INFORMATION, REPRESENTATIONS, OR INDUCEMENTS MADE TO OBTAIN AN ACCEPTANCE OF THE COMBINED DISCLOSURE STATEMENT AND PLAN OTHER THAN, OR INCONSISTENT WITH, THE INFORMATION CONTAINED HEREIN AND THEREIN SHOULD NOT BE RELIED UPON BY ANY HOLDER OF A CLAIM OR INTEREST. THIS COMBINED DISCLOSURE STATEMENT AND PLAN HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE, BANKRUPTCY RULE 3016(b), AND LOCAL RULE 3017-2, AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-APPLICABLE BANKRUPTCY LAWS. THIS COMBINED DISCLOSURE STATEMENT AND PLAN HAS NOT BEEN APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION (THE "SEC"), NOR HAS THE SEC PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN.

SEE ARTICLE V OF THIS COMBINED DISCLOSURE STATEMENT AND PLAN, ENTITLED "CERTAIN RISK FACTORS TO BE CONSIDERED PRIOR TO VOTING," FOR A DISCUSSION OF CERTAIN CONSIDERATIONS IN CONNECTION WITH A DECISION BY A HOLDER OF AN IMPAIRED CLAIM TO ACCEPT THE COMBINED DISCLOSURE STATEMENT AND PLAN.

INTRODUCTION

Valeritas Holdings, Inc., Valeritas, Inc., Valeritas Security Corporation, and Valeritas US, LLC, as debtors and debtors in possession in these Chapter 11 Cases, hereby jointly with the Prepetition Lenders and the Creditors' Committee propose this First Amended Combined Disclosure Statement and Plan for the liquidation of the Debtors' remaining assets and Distribution of the proceeds of the Estates' assets to the Holders of Allowed Claims against the Debtors as set forth herein. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code.

This Combined Disclosure Statement and Plan contains, among other things, a discussion of the Debtors' history, businesses, properties, operations, the Chapter 11 Cases, risk factors, summary and analysis of this Plan, and certain other related matters.

ALL HOLDERS OF CLAIMS AGAINST THE DEBTORS ENTITLED TO VOTE ARE ENCOURAGED TO READ THE COMBINED DISCLOSURE STATEMENT AND PLAN IN ITS ENTIRETY, AND TO CONSULT WITH AN ATTORNEY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. SUBJECT TO CERTAIN RESTRICTIONS AND REQUIREMENTS SET FORTH IN SECTION 1127 OF THE BANKRUPTCY CODE, BANKRUPTCY RULE 3019, AND IN THE PLAN, THE DEBTORS RESERVE THE RIGHT TO ALTER, AMEND, MODIFY, REVOKE, OR WITHDRAW THE PLAN, OR ANY PART THEREOF, PRIOR TO ITS SUBSTANTIAL CONSUMMATION.

ARTICLE I
DEFINED TERMS AND RULES OF INTERPRETATION

Defined Terms

1.1 “Administrative Claim” shall mean an unsecured Claim for payment of costs or expenses of administration specified in Bankruptcy Code sections 503(b) and 507(a)(1), including the actual, necessary costs and expenses incurred after the Petition Date of preserving the Debtors’ estates and operating the business of the Debtors.

1.2 “Administrative Claims Estimate” shall mean a good faith estimate by the Debtors of the Total Amount of Administrative, Tax, and Other Priority Claims that may be Allowed against the Debtors, unless by the applicable Bar Date, any of such claims are fixed, in which case, the estimate shall include such fixed amount, subject to the Bankruptcy Court ordering otherwise.

1.3 “Administrative and Priority Claims Reserve” shall mean the “Revised Administrative Escrow” set forth in the Cash Collateral Amendment, established by this Plan and maintained by the Liquidating Trustee pursuant to Article IX hereof for purposes of satisfying Allowed Administrative Claims, Allowed Priority Tax Claims, and Allowed Priority Non-Tax Claims to the extent not previously satisfied.

1.4 “Affiliate” shall mean “affiliate” as defined in section 101(2) of the Bankruptcy Code.

1.5 “Allowed Claim” shall mean a Claim to the extent such Claim is (a) either (i) scheduled by the Debtors in their Schedules in a liquidated amount and not listed as contingent, unliquidated, zero, undetermined or disputed; or (ii) asserted in these Chapter 11 Cases by a proof of claim which has been timely filed, or deemed timely filed, with the Claims Agent in accordance with the procedures set forth in the Bar Date Order or late filed with leave of the Bankruptcy Court; and (b) either (i) not objected to within the period fixed by the Bankruptcy Code, the Bankruptcy Rules and/or applicable orders of the Bankruptcy Court; or (ii) that has otherwise been allowed by a final order or pursuant to the Plan. An Allowed Claim: (y) includes a previously Disputed Claim to the extent such Disputed Claim becomes allowed when the context so requires, and (z) shall be net of any valid setoff amount, which amount shall be deemed to have been set off in accordance with the provisions of the Plan. For the avoidance of doubt, any Claim that is withdrawn shall not be an Allowed Claim.

1.6 “Amended Settlement” shall mean the amended settlement agreement, dated as of March 6, 2020, between and among the Debtors, the Prepetition Lenders, and the Creditors’ Committee, which was approved by the Amended Settlement Order.

1.7 “Amended Settlement Order” shall mean the *Order Granting Motion of the Debtors to Approve Amended Settlement Agreement Among the Debtors, CRG Servicing LLC as Agent for the Prepetition Lenders, the Prepetition Lenders, and the Official Committee of Unsecured Creditors* [D.I. 230].

1.8 “Ballot” shall mean the form approved by the Bankruptcy Court and distributed to Holders of Claims entitled to vote on this Plan on which is to be indicated an acceptance or rejection of this Plan and the election described in Section 5.9 hereof.

1.9 “Bankruptcy Code” shall mean title 11 of the United States Code, as now in effect or hereafter amended.

1.10 “Bankruptcy Court” shall mean the United States Bankruptcy Court for the District of Delaware.

1.11 “Bankruptcy Rules” shall mean the Federal Rules of Bankruptcy Procedure and the Local Rules.

1.12 “Bar Date” shall mean, with respect to any particular Claim, the specific date set forth in the Bar Date Order as the last day for filing a proof of claim or a request for allowance of an Administrative Claim or a proof of interest against the Debtors in these Chapter 11 Cases for that specific Claim.

1.13 “Bar Date Order” shall mean *Order (I) Establishing Deadlines for Filing Proofs of Claim, Including Section 503(b)(9) Claims, (II) Establishing Deadlines for Filing Administrative Claim Requests for Administrative Claims Accrued Through April 3, 2020, (III) Approving the Form and Manner of Notice Thereof, and (IV) Granting Related Relief* [D.I. 180].

1.14 “Bid Procedures Order” shall mean the Order *(I)(A) Establishing Bidding Procedures; (B) Approving Bid Protections; (C) Establishing Procedures Relating to Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, Including Notice of Proposed Cure Amounts; (D) Approving Form and Manner of Notice; (E) Scheduling a Hearing to Consider any Proposed Sale; and (F) Granting Certain Related Relief; and (II)(A) Approving a Sale; (B) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale; and (C) Granting Related Relief* [D.I. 129], entered by the Bankruptcy Court on March 6, 2020.

1.15 “Business Day” shall mean any day, other than a Saturday, Sunday, or a legal holiday (as used in Bankruptcy Rule 9006(a)).

1.16 “Cash” shall mean legal tender of the United States of America or its equivalents, including but not limited to bank deposits, checks, and other similar items.

1.17 “Cash Collateral Amendment” shall mean *Amendment to Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, and (VI) Granting Related Relief* [D.I. 274], dated April 3, 2020.

1.18 “Causes of Action” shall mean any and all actions, suits, claims for relief, causes of action, Chapter 5 Causes of Action, accounts, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment, and claims, whether known or unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed,

contingent, matured, unmatured, disputed, undisputed, secured, unsecured and whether asserted or assertable directly or derivatively, in law, equity or otherwise, whether arising prior to or after the Petition Date. Causes of Action include, but are not limited to, those Causes of Action listed on **Exhibit A**, which Exhibit may be modified up through and including the Confirmation Hearing.

1.19 “Chapter 5 Causes of Action” shall mean any and all actual or potential claims and causes of action arising under Chapter 5 of the Bankruptcy Code, including claims, rights, and causes of action arising under sections 510, 544, 545, 547, 548, 549, 550, 551, and 553(b) of the Bankruptcy Code, including but not limited to, the recovery of preferences and fraudulent transfers from any Entity that received cash or any other interest in property from any Debtor.

1.20 “Chapter 11 Cases” shall mean these Chapter 11 Cases commenced by the Debtors and jointly administered under case number 20-10290 (LSS) in the Bankruptcy Court.

1.21 “Claim” shall mean a claim, as such term is defined in Bankruptcy Code section 101(5), against any of the Debtors.

1.22 “Claims Agent” shall mean the Debtors’ claims, noticing and solicitation agent, Kurtzman Carson Consultants LLC.

1.23 “Claims Objection Deadline” shall mean one hundred twenty (120) days after the Effective Date, or such later date as may be ordered by the Bankruptcy Court; *provided however*, that the Liquidating Trustee may seek extensions of this date from the Bankruptcy Court. The filing of a motion to extend the Claims Objection Deadline shall automatically extend the Claims Objection Deadline until a Final Order is entered on such motion, consistent with Local Rule 9006-2. In the event that such motion to extend the Claims Objection Deadline is denied, the Claims Objection Deadline shall be the later of the current Claims Objection Deadline (as previously extended, if applicable) or thirty (30) days after the Bankruptcy Court’s entry of an order denying the motion to extend the Claims Objection Deadline.

1.24 “Class” shall mean a group of Claims or Interests described in Article III of this Plan.

1.25 “Combined Disclosure Statement and Plan” means this combined disclosure statement and chapter 11 plan of liquidation, including, without limitation, all exhibits, supplements, appendices, and schedules hereto, either in their present form or as the same may be altered, amended, or modified from time to time.

1.26 “Company” shall mean, collectively, Valeritas Holdings, Inc., Valeritas, Inc., Valeritas Security Corporation, and Valeritas US, LLC prior to the Petition Date.

1.27 “Confirmation Date” shall mean the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases.

1.28 “Confirmation Hearing” shall mean the first hearing held by the Bankruptcy Court to consider confirmation of the Plan.

1.29 “Confirmation Order” shall mean an order of the Bankruptcy Court confirming this Plan pursuant to, among others, section 1129 of the Bankruptcy Code.

1.30 “Common Stock” shall mean (a) the delisted common stock that traded on the Nasdaq Capital Market under the symbol “VLRX” and (b) the Warrants.

1.31 “Creditors’ Committee” shall mean the Official Committee of Unsecured Creditors in the Case, as appointed by the U.S. Trustee and as may be reconstituted from time to time.

1.32 “Creditors’ Trust” shall mean the grantor trust to be created on the Effective Date for the benefit of the Creditors’ Trust Beneficiaries.

1.33 “Creditors’ Trust Agreement” shall mean the trust agreement, in form and substance acceptable to the Debtors, the Prepetition Lenders, and the Creditors’ Committee, to be filed as part of the Plan Supplement, which will, among other things: (a) establish and govern the Creditors’ Trust; (b) set forth the respective powers, duties, and responsibilities of the Liquidating Trustee; and (c) provide for Distribution of the Net Proceeds of the Creditors’ Trust Assets to the Creditors’ Trust Beneficiaries in accordance with Article VII hereof.

1.34 “Creditors’ Trust Assets” shall mean, subject to the terms of the Cash Collateral Amendment and the Amended Settlement, on and after the Effective Date, (i) the Retained Actions, (ii) the funds remaining, if any, in (a) the Plan Escrow, (b) the Professional Reserves (which reserves are not property of the Estates), and (c) the Revised Administrative Escrow, and (iii) the Residual Assets, including, but not limited to, the Debtors’ privileges, books and records, and insurance policies, including D&O insurance. The vesting of the Creditors’ Trust Assets shall be free and clear of all liens, claims, and interests, including the Prepetition Lenders’ liens.

1.35 “Creditors’ Trust Beneficiaries” shall mean the Holders of Allowed Class 3 Claims and Allowed Class 4 Claims, each of which shall receive Creditors’ Trust Interests in accordance with this Plan.

1.36 “Creditors’ Trust Distributions” shall mean Distributions of Cash or other property pursuant to the Plan and Creditors’ Trust Agreement as may be authorized from time to time by the Liquidating Trustee.

1.37 “Creditors’ Trust Interests” shall mean the beneficial interests in the Creditors’ Trust that shall entitle the holder thereof to receive Distributions of Cash pursuant to the Creditors’ Trust Agreement.

1.38 “Creditors’ Trust Professionals” shall mean the agents, financial advisors, attorneys, consultants, independent contractors, representatives, and other professionals retained by the Liquidating Trustee (in their capacities as such).

1.39 “CRG Secured Claim” shall mean the Prepetition Lenders’ allowed secured claim in an aggregate principal amount equal to \$20,000,000 plus accruing post-petition PIK interest and accrued and unpaid expenses as of the Petition Date.

1.40 “CRG Settlement” shall mean the settlement agreement, dated as of February 9, 2020, between certain of the Debtors and the Prepetition Lenders, which was amended and superseded by the Amended Settlement.

1.41 “D&O” shall mean any current or former officer, director, or manager of any of the Debtors, solely in his or her capacity as such.

1.42 “Debtors” shall mean each of Valeritas Holdings, Inc., Valeritas, Inc., Valeritas Security Corporation, and Valeritas US, LLC.

1.43 “DIP Facility” shall mean that certain *Senior Secured Superpriority Priming Debtor-In-Possession Credit Facility Term Sheet*, dated as of February 9, 2020 (attached as Exhibit 2 to the motion seeking entry of the DIP Order) as approved by the DIP Order, which DIP Facility was terminated on April 2, 2020, following the indefeasible payment and satisfaction of the DIP Obligations.

1.44 “DIP Lender” shall mean HB Fund LLC.

1.45 “DIP Obligations” shall mean all liabilities and obligations of the Debtors to the DIP Lender in connection with the DIP Facility. The DIP Obligations were indefeasibly paid and satisfied in full on April 2, 2020.

1.46 “DIP Order” shall mean the *Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, and (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, and (VI) Granting Related Relief* [D.I. No. 181], which the Bankruptcy Court entered on March 13, 2020 and subsequently amended by the Cash Collateral Amendment and as may be amended by any subsequent order of the Bankruptcy Court.

1.47 “Disallowed” shall mean, when used in reference to a Claim, all or that portion, as applicable, of any Claim that has been disallowed under the Combined Disclosure Statement and Plan, the Bankruptcy Code, applicable law or by a Final Order.

1.48 “Disclosure Statement” shall mean the disclosure statement, as amended, supplemented or modified from time to time, that is embodied within this Combined Disclosure Statement and Plan and distributed in accordance with sections 1125, 1126(b), and 1145 of the Bankruptcy Code, Bankruptcy Rule 3018, Local Rule 3017-1, and other applicable law.

1.49 “Disputed Claim” shall mean that portion (including, when appropriate, the whole) of a Claim, if any, that is not an Allowed Claim.

1.50 “Distribution” shall mean the distribution of Cash or other property, as the case may be, in accordance with the Plan.

1.51 “Distribution Address” shall mean the address set forth in (a) the Proof of Claim filed by the Holder, (b) any written notice of address change delivered to the Liquidating Trustee after the date of filing of any related Proof of Claim, (c) the Schedules, if no Proof of

Claim has been filed and the Liquidating Trustee has not received a written notice of a change of address, (d) the other records of the Debtors or the Liquidating Trustee at the time of the Distribution if no Proof of Claim has been filed, the Liquidating Trustee has not received a written notice of a change of address, and the Schedules do not include an address, or (e) any change of address as reflected on the Bankruptcy Court docket.

1.52 “Distribution Date” shall mean the date determined by the Liquidating Trustee when Distributions shall be made under the Plan.

1.53 “Distribution Record Date” shall mean the record date for purposes of making Distributions under this Plan on account of Allowed Claims, which date shall be the Effective Date.

1.54 “Effective Date” shall mean the first date on which all of the conditions of Section 11.2 of the Plan have been satisfied or have been waived in writing.

1.55 “Entity” shall have the meaning ascribed to such term in section 101(15) of the Bankruptcy Code.

1.56 “Estate” shall mean the estate of each Debtor created by section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Cases on the Petition Date.

1.57 “Estimation Order” shall mean an order or orders of the Bankruptcy Court estimating for voting and/or Distribution purposes (under section 502(c) of the Bankruptcy Code) the amount of any Claim, or the aggregate (and if applicable, individual) Face Amount of Disputed Claims in each relevant Class. The defined term Estimation Order includes the Confirmation Order if the Confirmation Order grants the same relief that would have been granted in a separate Estimation Order.

1.58 “Exculpated Parties” shall mean, collectively, (a) the Debtors, their current D&Os and Persons who were D&Os from the Petition Date through the closing of the Sale; (b) the members of the Creditors’ Committee, solely in their capacity as such; (c) the Prepetition Lenders and their Affiliates; and (d) the following Professionals: (1) DLA Piper LLP (US), (2) Lincoln, (3) PricewaterhouseCoopers LLP, (4) the Claims Agent, (5) Porzio, Bromberg & Newman, P.C., (6) Morris James LLP, (7) Emerald Capital Advisors, and (8) Venable LLP.

1.59 “Executory Contract” shall mean a contract or lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

1.60 “Face Amount” shall mean (a) with respect to any Claim for which a proof of claim is filed, an amount equal to: (i) the liquidated amount, if any, set forth therein, or (ii) any other amount set forth in an Estimation Order; or (b) with respect to any Claim scheduled in the relevant Debtor’s Schedules, but for which no proof of claim is timely filed, the amount of the Claim scheduled as undisputed, noncontingent, and liquidated.

1.61 “Fee Claim” shall mean a Claim for compensation or reimbursement of expenses of a Professional pursuant to sections 327, 328, 330, 331, 503(b), or 1103 of the Bankruptcy Code in connection with these Chapter 11 Cases. The term “Fee Claim” does not

include any Claim for compensation or reimbursement of expenses related to services rendered after the Effective Date by the Creditors' Trust Professionals.

1.62 "Fee Claims Bar Date" shall mean the date that is thirty (30) days after the Effective Date.

1.63 "Fee Claims Estimate" shall mean (i) with respect to each Professional, the Professional's good faith estimate of the amount of such Professional's accrued unpaid Fee Claims through the Effective Date, to be provided by each Professional in writing to the Debtors, not less than five days prior to the commencement of the Confirmation Hearing and (ii) with respect to all of the Professionals, collectively, the sum of all individual Fee Claims Estimates.

1.64 "File," "Filed," or "Filing" shall mean, respectively, file, filed, or filing with the Bankruptcy Court or its authorized designee in these Chapter 11 Cases.

1.65 "Final Order" shall mean an order or judgment of the Bankruptcy Court, as entered on the docket of the Bankruptcy Court, that has not been reversed, stayed, modified, or amended, and as to which (a) the time to appeal, seek review, rehearing, or to file a petition for certiorari has expired and no timely filed appeal or petition for review, rehearing, remand, or certiorari is pending, or (b) any appeal taken or petition for certiorari filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought; *provided, however*, that the possibility that a motion under section 502(j) of the Bankruptcy Code, Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or other rules governing procedure in cases before the Bankruptcy Court, may be filed with respect to such order shall not cause such order not to be a Final Order.

1.66 "Final Administrative Claim Bar Date" means the date that is 30 days after entry of the Confirmation Order, which shall be the deadline for filing requests for payment of Administrative Claims (other than Fee Claims and U.S. Trustee Fees) that arose after April 3, 2020 through the Effective Date.

1.67 "First Day Declaration" shall mean the *Declaration of John E. Timberlake in Support of Chapter 11 Petitions and First Day Pleadings* [D.I. 4].

1.68 "General Unsecured Claim" shall mean a Claim that is not (a) an Administrative Claim, (b) a Priority Tax Claim, (c) an Other Priority Claim, (d) a CRG Secured Claim, (e) a Prepetition Lenders' Unsecured Claim, or (f) an Interest.

1.69 "General Bar Date" shall have the meaning ascribed to it in Section 4.3(f)(1) herein.

1.70 "Governmental Unit" shall have the meaning ascribed to such term in section 101(27) of the Bankruptcy Code.

1.71 "Governmental Bar Date" shall have the meaning ascribed to it in Section 4.3(f)(2) herein.

1.72 “Holder” or “Holders” shall mean a Person or an Entity holding a Claim or Interest.

1.73 “Impaired” shall mean, when used in reference to a Claim or Interest, a Claim or Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

1.74 “Impaired Class” shall mean a Class of Claims or Interests that is Impaired.

1.75 “Insider” shall have the meaning ascribed to such term in section 101(31) of the Bankruptcy Code.

1.76 “Intercompany Claims” shall mean any Claim held by a Debtor against another Debtor or any Interest held by a Debtor in another Debtor, including, without limitation: (a) any account reflecting intercompany book entries by a Debtor with respect to another Debtor, (b) any Claim not reflected in such book entries that is held by a Debtor against another Debtor, and (c) any derivative Claim asserted by or on behalf of one Debtor against another Debtor.

1.77 “Interest” shall mean an equity security, within the meaning of Bankruptcy Code section 101(16), in the Debtors.

1.78 “Interim Administrative Claim Bar Date” shall have the meaning ascribed to it in Section 4.3(f)(4) herein.

1.79 “Interim Approval and Procedures Order” shall mean that certain *Order Approving the Disclosure Statement; Approving the Solicitation and Voting Procedures; Scheduling the Plan Confirmation Process and Granting Related Relief* [D.I. ●].

1.80 “Interim Compensation Order” shall mean *Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [D.I. 158].

1.81 “Interim DIP Order” shall mean *Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, and (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [D.I. No. 66].

1.82 “Lien” shall mean: (a) a judicial lien as defined in section 101(36) of the Bankruptcy Code; (b) a lien as defined in section 101(37) of the Bankruptcy Code; (c) a security interest as defined in section 101(51) of the Bankruptcy Code; (d) a statutory lien as defined in section 101(53) of the Bankruptcy Code; and (e) any other lien, interest, charge, or encumbrance.

1.83 “Lincoln” shall mean Lincoln International or Lincoln Partners Advisors LLC, as applicable.

1.84 “Liquidating Trustee” shall mean an individual, to be identified by the Committee as part of the Plan Supplement, who will be appointed as of the Effective Date, as the

employee or fiduciary responsible for managing the day-to-day affairs of the Creditors' Trust in accordance with the Creditors' Trust Agreement.

1.85 "Local Rules" shall mean the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware as now in effect or hereafter amended.

1.86 "Net Proceeds" shall mean the Cash consideration received from the sale, transfer, or other disposition of the Creditors' Trust Assets, including, without limitation, the liquidation or the conversion of such property to Cash, whether occurring prior to or from and after the Effective Date, less the reasonable, necessary, and customary expenses attributable to such sale, transfer, or other disposition, including the costs of paying personal property or other taxes accruing in connection with such sale, transfer, or conversion, or such property, brokerage fees and commissions, collection costs, reasonable attorneys' fees and expenses, and any applicable taxes or other claims of any governmental authority in connection with such property, and any escrows or accounts established to hold funds for purchase price adjustments, indemnification claims, or other purposes in connection with such sale, transfer or collection, as applicable as permitted by the Creditors' Trust Agreement; provided that for the avoidance of doubt, the Professional Reserves are not Creditors' Trust Assets unless and until any amounts remaining in the Professional Reserves after indefeasibly paying the Professional fees are turned over to the Creditors' Trust and to the Prepetition Lenders pursuant to the Amended Settlement.

1.87 "Net Sale Proceeds" shall mean the remaining proceeds of the Sale after the indefeasible payment in full of the DIP Facility, any transaction fee allowed by order of the Bankruptcy Court owed to the Debtors' investment banker, Lincoln, allowed cure costs in excess of \$1,500,000, accrued payroll, and the funding of the Revised Administrative Escrow (as defined in the Cash Collateral Amendment).

1.88 "Objection(s)" shall mean any objection, application, motion, complaint, or any other legal action seeking, in whole or in part, to disallow, determine, liquidate, classify, reclassify, establish the priority of, expunge, subordinate, or estimate any Claim (including any objection or opposition to any request for allowance or payment of any Administrative Claim).

1.89 "Other Priority Claim" shall mean any Claim entitled to priority under sections 503(b) or 507(a)(2) of the Bankruptcy Code that is not a Priority Tax Claim.

1.90 "Person" shall mean any individual, corporation, partnership, association, indenture trustee, organization, joint stock company, joint venture, estate, trust, governmental unit, or any political subdivision thereof, the Creditors' Committee, Holders of Interests, Holders of Claims, current or former employees of the Debtors, or any other Entity.

1.91 "Petition Date" shall mean February 9, 2020, the date on which the Debtors commenced their Chapter 11 Cases in the Bankruptcy Court.

1.92 "Plan" shall mean this joint plan of liquidation under chapter 11 of the Bankruptcy Code, together with any amendments or modifications hereto as the Debtors may file hereafter in accordance with the terms of this Plan.

1.93 “Plan Documents” shall mean the documents, including this Combined Disclosure Statement and Plan, to be executed, delivered, assumed, and/or performed in connection with the consummation of this Plan, including, without limitation, the documents to be included in the Plan Supplement, and any and all exhibits to the Plan and the Disclosure Statement.

1.94 “Plan Escrow” shall mean (a) the Net Sale Proceeds that are placed in escrow for the benefit of Holders of Allowed General Unsecured Claims, subject to the Prepetition Lenders’ continuing liens and security interests, and (b) 50% of the savings, if any, from the Professional Fee Reserves or the Revised Administrative Escrow for the benefit of holders of allowed unsecured claims, in accordance with the Amended Settlement.

1.95 “Plan Supplement” shall mean the supplemental appendix to this Plan, filed with the Bankruptcy Court not less than seven (7) calendar days prior to the Voting Deadline, which contains, among other things, draft forms or signed copies, as the case may be, of the Creditors’ Trust Agreement, and any schedules, lists, or documents that supplement or clarify aspects of this Plan and are identified as part of the Plan Supplement.

1.96 “Preferred Stock” shall mean Series A and Series B preferred stock issued by Valeritas Holdings, Inc.

1.97 “Prepetition Lenders” shall mean CRG Servicing LLC, Capital Royalty Partners II L.P., Capital Royalty II Partners – Parallel Fund “A” L.P., Capital Royalty Partners II (Cayman) L.P., Capital Royalty Partners II – Parallel Fund “B” (Cayman) L.P., and Parallel Investment Opportunities Partners II L.P.

1.98 “Priority Tax Claim” shall mean any Claim of a governmental unit (as defined in section 101(27) of the Bankruptcy Code) of the kind entitled to priority in payment under sections 502(i) and 507(a)(8) of the Bankruptcy Code.

1.99 “Professional” shall mean any professional Person or Entity employed in these Chapter 11 Cases by Court order pursuant to Bankruptcy Code sections 327, 328, 363, or 1103 or otherwise.

1.100 “Professional Reserves” shall mean cash held by the Debtors in escrow pursuant to the Final DIP Order and Cash Collateral Amendment for the purpose of paying court-approved professional fees, all of which Professional Reserves remain subject to the Prepetition Lenders’ continuing liens and security interests and the carve-out provisions contained in the Final DIP Order until the Effective Date. The Professional Reserves are not property of the Debtors’ estates, but any funds remaining in the Professional Reserves after indefeasibly paying Professional fees will be turned over to the Creditors’ Trust and to the Prepetition Lenders pursuant to the Amended Settlement.

1.101 “Proponents” shall mean, collectively, the Debtors, the Creditors’ Committee, and the Prepetition Lenders.

1.102 “Purchaser” shall mean Zealand Pharma A/S, as purchaser of substantially all of the Debtors’ assets under that certain Asset Purchase Agreement (as amended), dated February 9, 2020.

1.103 “Ratable Share” shall mean a number (expressed as a percentage) equal to the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims plus Disputed Claims (in their aggregate Face Amount) in such Class as of the date of determination.

1.104 “Rejection Damages Bar Date” shall have the meaning ascribed to it in Section 4.3(f)(3) herein.

1.105 “Released Claims” shall mean any and all claims or causes of action, against the Released Parties, relating to any pre- or post-Petition Date acts or omissions, whether known or unknown, pertaining to the business activities and operations of the Debtors, the debts, liabilities, obligations and assets of the Debtors, the ownership, management, direction, or control of the Debtors, the Sale, the Plan, or any transactions or communications among the Released Parties with respect to any of the foregoing.

1.106 “Released Parties” shall mean collectively, (a) the Prepetition Lenders and their Affiliates; (b) DIP Lender; (c) the members of the Creditors’ Committee, solely in their capacity as such; (d) DLA Piper LLP (US); (e) Lincoln; (f) PricewaterhouseCoopers LLP; (g) Porzio, Bromberg & Newman, P.C., in its capacity as co-counsel to the Creditors’ Committee; (h) Morris James LLP, in its capacity as co-counsel to the Creditors’ Committee; (i) Emerald Capital Advisors, in its capacity as financial advisor to the Creditors’ Committee, and (j) Venable LLP, in its capacity as counsel to the Prepetition Lenders.

1.107 “Releasing Parties” shall mean collectively, each of the following in their respective capacities as such: (a) the Released Parties; (b) all Holders of Claims entitled to vote to accept or reject the Plan who elect on their Ballot to opt in to the Third-Party Release, regardless of whether such Holder votes to accept, reject, or abstains from voting on the Plan; and (c) with respect to each of the foregoing entities in clauses (a) and (b), such Entity and its current and former Affiliates, and such Entities’ and their current and former Affiliates’ current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, participants, successors, assigns, Affiliates, managed accounts or funds, and each of their respective current and former equity holders, officers, directors, managers, principals, shareholders, members, managing members, management companies, fund advisors, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, in each case in their capacity as such and on behalf of whom the Releasing Parties identified in clauses (a) and (b) have the authority, including pursuant to any agreement or applicable non-bankruptcy law, to grant the Third-Party Release set forth in Section 8.7. For the avoidance of doubt, that Entities identified in this subsection (c) shall not be considered “Releasing Parties” where their respective Holder has not checked the box on the Ballot and returned the Ballot in accordance with the Disclosure Statement Order to opt in to the Third-Party Release contained in Section 8.7.

1.108 “Reserves” shall mean, collectively, (a) as of the Effective Date, the funds in the Administrative and Priority Claims Reserve, (b) the Disputed General Unsecured Claims Reserve, (c) the Trust Expense Reserve, and (d) such other reserves as may be deemed reasonable or necessary by the Liquidating Trustee pursuant to the Creditors’ Trust Agreement; *provided* that the Professional Reserves do not constitute Reserves unless and until any amounts remaining after

indefeasibly paying the Professional fees are turned over to the Creditors' Trust and the Prepetition Lenders pursuant to the Amended Settlement.

1.109 "Residual Assets" shall mean all property of the Estates that has not been sold, transferred, assigned, or disposed of as of the Effective Date, including without limitation inventory, equipment, prepaid expenses (including utility deposits, unearned insurance premiums, and tax and other refunds), intellectual property, accounts and accounts receivable; *provided, however,* that Residual Assets shall not include (a) the Cash necessary to establish Reserves and make Distributions to Holders of Allowed Claims, in accordance with the terms of this Plan, or (b) the Retained Actions.

1.110 "Retained Actions" shall mean the Causes of Action that the Purchaser excluded from the assets purchased in the Sale including (i) any Causes of Action that are not Purchased Avoidance Claims as defined in the Asset Purchase Agreement (as amended), and (ii) Purchased Avoidance Claims to the extent of available insurance coverage.

1.111 "Revised Administrative Escrow" shall mean designated funds, in the currently estimated aggregate amount of \$4,619,950, to be allocated for the payment of (a) up to \$2,200,000 for incurred but unpaid post-petition administrative expenses, (b) \$950,000 for the Debtors' wind down costs (\$150,000 of which shall be used to fund the Creditors' Trust and \$800,000 of which shall be used pursuant to the Cash Collateral Amendment for costs incurred by the Debtors post-closing of the Sale, including in furtherance of confirming and effectuating such plan), (c) allowed administrative claims (including section 503(b)(9) claims) in the amount of \$500,000, and (d) \$500,000 to be allocated as the Creditors' Committee and the Prepetition Lenders agree (of which \$200,000 has been allocated to costs incurred by the Creditors' Committee pursuant to the Cash Collateral Amendment), which Revised Administrative Escrow remains subject to the Prepetition Lenders' continuing liens and security interests until the Effective Date.²

1.112 "Sale" shall mean the sale of substantially all of the Debtors' assets to the Purchaser pursuant to the Sale Order, which Sale closed on April 2, 2020.

1.113 "Sale Order" shall mean the *Order (I) Authorizing the Sale of Substantially All of the Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, (II), Approving the Agreement, (III), Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief*, entered by the Bankruptcy Court on March 20, 2020.

1.114 "Schedules" shall mean the schedules of assets and liabilities, schedules of Executory Contracts, and statements of financial affairs Filed by each of the Debtors pursuant to section 521 of the Bankruptcy Code and in substantial accordance with the Official Bankruptcy Forms, as the same may have been amended, modified, or supplemented from time to time.

1.115 "Secured Claim" shall mean a Claim (a) secured by a lien on collateral to the extent of the value of such collateral, as determined in accordance with section 506(a) of the

² Certain of these amounts will be paid prior to the Effective Date in accordance with the Cash Collateral Amendment.

Bankruptcy Code, (b) Allowed as such under this Plan (subject to the Confirmation Order becoming a Final Order), or (c) Allowed as such under the Amended Settlement Order or other Final Order of the Bankruptcy Court.

1.116 “Third-Party Release” shall mean the release given by each of the Releasing Parties to the Released Parties as set forth in Section 8.7.

1.117 “Trust Expense Reserve” shall mean the reserve established under the Creditors’ Trust and maintained by the Liquidating Trustee pursuant to Article VII hereof for the purpose of satisfying the ongoing expenses of administering the Creditors’ Trust.

1.118 “Unclaimed Distributions” shall mean any Cash or other distributable property unclaimed on or after the Effective Date or the date on which an additional Distribution would have been made in respect of an Allowed Claim. Unclaimed Distributions shall include (a) checks (and the funds represented thereby) mailed to a Distribution Address and returned as undeliverable without a proper forwarding address, (b) funds for checks that have not been cashed within ninety (90) days of the mailing of the Distribution upon which time the Liquidating Trustee may issue a stop payment, (c) checks (and the funds represented thereby) not mailed or delivered because no Distribution Address to mail or deliver such property was available, and (d) any Distribution deemed to be an Unclaimed Distribution pursuant to Section 10.5 hereof.

1.119 “Unimpaired” shall mean, when used in reference to a Claim or Interest, any Claim or Interest that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

1.120 “U.S. Trustee” shall mean the Office of the United States Trustee for Region 3.

1.121 “U.S. Trustee Fees” shall mean fees payable pursuant to 28 U.S.C. § 1930, to the extent applicable to these Chapter 11 Cases.

1.122 “Voting Deadline” shall mean May 28, 2020, at 4:00 p.m. (prevailing Eastern Time), the date specified in the Disclosure Statement, the Ballots, the Interim Approval and Procedures Order, and/or any related solicitation documents approved by the Bankruptcy Court through the Interim Approval and Procedures Order as the last date for Holders of Claims entitled to vote on this Plan to submit their Ballots with respect to this Plan, as such date may be extended by the Debtors.

1.123 “Warrants” shall mean (i) the private placement warrants to purchase shares of Common Stock issued as part of the May 2016 reverse merger and (ii) the Series A warrants to purchase shares of Common Stock issued in connection with the November 2018 public offering.

Rules of Interpretation

1.124 Unless otherwise specified, all section or exhibit references in this Plan are to the respective section in, or exhibit to, this Plan. The words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to this Plan as a whole and not to any particular section, subsection, or clause contained therein, unless the context requires otherwise.

The words “include” and “including” shall mean “include, without limitation,” or “including,” as the case may be. Whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural. Any term that is not otherwise defined herein, but that is used in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

1.125 Any reference in this Plan to a contract, instrument, release, indenture, or other agreement or documents being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions, and any reference in this Plan to an existing document or exhibit filed or to be filed means such document or exhibit as it may have been or may be amended, modified, or supplemented. Subject to the provisions of any contract, certificates or articles of incorporation, by-laws, instruments, release, or other agreements or documents entered into in connection with this Plan, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and Bankruptcy Rules.

1.126 The captions and headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. Any reference to any Entity as a holder of a Claim or Interest includes that Entity’s successors and assigns.

1.127 **Rules of Construction.**

(a) **Undefined Terms.** Any term used herein that is not defined herein shall have the meaning ascribed to any such term used in the Bankruptcy Code and/or the Bankruptcy Rules, if used therein.

(b) **Miscellaneous Rules.** This Combined Disclosure Statement and Plan is subject to the following miscellaneous rules: (i) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply, unless superseded herein or in the Confirmation Order; (ii) any reference in this Plan to an existing document or Exhibit means such document or Exhibit as it may have been amended, restated, modified or supplemented as of the Effective Date; (iii) in computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply; and (iv) whenever this Plan provides that a payment or Distribution shall occur “on” any date, it shall mean “on, or as soon as reasonably practicable after,” such date.

Appendices and Plan Documents

1.128 All Plan Documents and appendices to the Plan are incorporated into the Plan by reference and are a part of the Plan as if set forth in full herein. The documents contained in the exhibits and Plan Supplement shall be approved by the Bankruptcy Court pursuant to the Confirmation Order. Holders of Claims and Interests may inspect a copy of the Plan Documents, once filed, in the Office of the Clerk of the Bankruptcy Court during normal business hours, or free of charge at <http://www.kccllc.net/valeritas>.

ARTICLE II
TREATMENT OF UNCLASSIFIED CLAIMS

Pursuant to Bankruptcy Code section 1126(f), Holders of Unimpaired Claims are conclusively presumed to have accepted the Plan. The Holders of Administrative Claims, Priority Tax Claims, Other Priority Claims, and Fee Claims are not Impaired under the Plan.

2.1 **Administrative Claims and Priority Tax Claims.** To the extent not already paid as of the Effective Date and unless otherwise agreed to by the Holder of an Allowed Administrative Claim or Allowed Priority Tax Claim, each Holder of an Allowed Administrative Claim or Allowed Priority Tax Claim will receive (as applicable) payment in full, as soon as practicable after (i) the Effective Date but in no event later than 30 days after the Final Administrative Claim Bar Date, or (ii) the date such Administrative Claim or Priority Tax Claim becomes an Allowed Claim by Final Order of the Bankruptcy Court, to be paid in cash or pursuant to such other treatment as may be agreed upon by (a) the Holder of such Claim, the Debtors, the Prepetition Lenders, and the Creditors' Committee prior to the Effective Date, or (b) the Holder of such Claim and the Liquidating Trustee after the Effective Date.

Holders of Administrative Claims accruing after April 3, 2020³ through the Effective Date, other than Holders of Fee Claims and Claims for U.S. Trustee Fees, must file with the Claims Agent and serve on the Liquidating Trustee requests for payment, in writing, together with supporting documents, substantially complying with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, so as to be actually received on or before the Final Administrative Claim Bar Date. Any Person or Entity who is required to timely file such Claim but fails to do so shall not be treated as a creditor with respect to such Claim for the purpose of voting and Distribution purposes in these Chapter 11 Cases on account of such Claim. The notice of the Effective Date of the Plan that will be delivered pursuant to Bankruptcy Rules 2002(c)(3) and 2002(f) shall set forth the Final Administrative Claim Bar Date and shall constitute notice of such Final Administrative Claim Bar Date.

With respect to U.S. Trustee Fees, all U.S. Trustee Fees that come due and owing on or before the Effective Date shall be paid by the Debtors on or before the Effective Date. From and after the Effective Date, the Liquidating Trustee shall pay the fees assessed against the Debtors' Estates until such time as a particular Debtor's Chapter 11 Case is closed, dismissed, or converted. Notwithstanding anything to the contrary in this Plan, the U.S. Trustee shall not be required to file a proof of claim for administrative expenses.

2.2 **Fee Claims.** All requests for payment of Fee Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date must be filed and served in accordance with the Interim Compensation Order by the Fee Claims Bar Date. The Bankruptcy Court shall determine the Allowed amounts of such Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code.

³ Pursuant to the Bar Date Order, Holders of Administrative Claims accruing from the Petition Date through April 3, 2020 must file requests for such claims by the Interim Administrative Claims Bar Date.

Allowed Fee Claims shall be paid from the Professional Reserves or Cash in the Reserves, as applicable. Notwithstanding the foregoing, the Holder of an Allowed Fee Claim may receive such other, less favorable treatment as may be agreed upon by such Holder and the Debtors.

From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Liquidating Trustee, may employ and pay any Professional, in accordance with the Creditors' Trust Agreement, in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court; *provided, however*, that the Creditors' Trust shall comply with the reporting requirements set forth in the Creditors' Trust Agreement.

ARTICLE III
CLASSIFICATION OF CLAIMS AND INTERESTS AND ESTIMATED RECOVERIES

THE PROJECTED RECOVERIES SET FORTH IN THE TABLE BELOW ARE ESTIMATES ONLY AND ARE THEREFORE SUBJECT TO CHANGE.

3.1 **General Rules of Classification.** The Plan groups the Debtors together solely for the purposes of describing treatment under the Plan, confirmation of the Plan, and making Distributions in accordance with the Plan in respect of Claims against and Interests in the Debtors under the Plan. Notwithstanding such groupings, the Plan constitutes a separate chapter 11 plan of liquidation for each Debtor. The Plan contemplates a substantive consolidation of the Debtors' estates (into the Valeritas Holdings, Inc. estate) solely for voting, confirmation, and Distribution purposes. A Holder of a Claim against more than one Debtor on a theory of joint and several liability shall only be entitled to a single recovery in Distribution. For brevity and convenience, the classification and treatment of Claims and Interests have been arranged into one chart. Such classification shall not affect any Debtor's status as a separate legal Entity, change the organizational structure of the Debtors' business enterprise, constitute a change of control of any Debtor for any purpose, cause a merger or consolidation of any legal entities, or cause the transfer of any assets. Except as otherwise provided by or permitted under the Plan, all Debtors shall continue to exist as separate legal entities. Debtor Valeritas Holdings, Inc. will continue its corporate existence beyond the Effective Date for Distribution purposes, and the remaining Debtors will be dissolved.

The information in the table below is provided in summary form for illustrative purposes only and is subject to material change based on certain contingencies, including those related to the claims reconciliation process. Actual recoveries may vary widely within these ranges, and without any changes to any of the assumptions underlying these amounts could result in material adjustments to recovery estimates provided herein and/or the actual Distribution received by Creditors. The projected recoveries are based on information available to the Debtors as of the date hereof and reflect the Debtors' estimates as of the date hereof only. In addition to the cautionary notes contained elsewhere in the Combined Disclosure Statement and Plan, the Debtors emphasize that they make no representation as to the accuracy of these recovery estimates. The Debtors expressly disclaim any obligation to update any estimates or assumptions after the date hereof on any basis (including new or different information received and/or errors discovered).

A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim or Interest is also placed in a particular Class for the purpose of receiving Distributions pursuant to this Plan only to the extent that such Claim or Interest is an Allowed Claim in that Class and such Claim or Interest has not been paid, released or otherwise settled prior to the Effective Date.

All Claims and Interests except Administrative Claims and Priority Tax Claims are placed in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims, as described herein, have not been classified, and the respective treatment of such unclassified Claims is set forth in Article II of the Plan. The categories of Claims and Interests listed below classify Claims and Interests for all purposes, including voting, confirmation and Distribution under the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code.

Except as otherwise explicitly provided in the Plan, nothing shall affect the Debtors' rights and defenses, both legal and equitable, with respect to any Claims or Interests, including, but not limited to, all rights with respect to legal and equitable defenses to alleged rights of setoff or recoupment.

<u>Class</u>	<u>Plan Treatment</u>	<u>Status</u>	<u>Projected Recovery</u>	<u>Estimated Amount</u>
Class 1: Other Priority Claims	Holders of Allowed Claims in Class 1 shall receive payment in full (except to the extent already paid), as soon as practicable after (i) the Effective Date but in no event later than 30 days after the Effective Date, or (ii) the date such Other Priority Claim becomes an Allowed Claim, to be paid in cash or pursuant to such other treatment as may be agreed upon by (a) the holder of such Claim, the Debtors, the Prepetition Lenders and the Creditors' Committee prior to the Effective Date, or (b) the holder of such Claim and the Trustee of the Creditors' Trust after the Effective Date.	Unimpaired Not entitled to vote Deemed to accept Plan	100%	[\$●] ⁴
Class 2: CRG Secured Claim	The Holder of the Allowed Class 2 Claim shall have received (a) 90% of Net Sale Proceeds from the Sale	Impaired Entitled to vote	15%	\$2,994,516

⁴ The Debtors believe there is a *de minimis* amount of Other Priority Claims, if any.

<u>Class</u>	<u>Plan Treatment</u>	<u>Status</u>	<u>Projected Recovery</u>	<u>Estimated Amount</u>
	proceeds; (b) fifty percent (50%) of the savings, if any, from the Professional Fee Reserves and the Revised Administrative Escrow pursuant to the Amended Settlement; (c) in the event that Holders of Class 4 General Unsecured Claims have received (or are deemed to receive) Distributions from the Plan Escrow and Creditors' Trust equal to 75% of their Allowed General Unsecured Claims, the next \$2,000,000 of Distributions from the Creditors' Trust on account of the unpaid portion of the CRG Secured Claim.			
Class 3: Prepetition Lenders' Unsecured Claims	In the event that Holders of Class 4 Claims have received (or are deemed to receive) Distributions from the Plan Escrow and Creditors' Trust equal to 75% of such Claims and the Holder of the Class 2 Claim has received the next Distributions of \$2,000,000 on account of the unpaid portion of the CRG Secured Claim, Holders of Class 3 Claims shall be entitled to receive pro rata Distributions (along with Holders of Class 4 Claims) from the Creditors' Trust with respect to any further Distributions.	Impaired Entitled to vote	0%	\$0
Class 4: General Unsecured Claims	Holders of Class 4 Claims shall be entitled to receive pro rata Distributions from the Creditors' Trust and Plan Escrow up to 75% of the face value of such Allowed General Unsecured Claims. After receiving (or being deemed to receive) 75% of the face value of such Allowed General	Impaired Entitled to vote	9.7%	\$332,724

<u>Class</u>	<u>Plan Treatment</u>	<u>Status</u>	<u>Projected Recovery</u>	<u>Estimated Amount</u>
	Unsecured Claims, Holders of Class 4 Claims shall not receive further Distributions from the Creditors' Trust until \$2,000,000 is paid to the Holder of the Class 2 Claim on account of the unpaid portion of the CRG Secured Claim, whereupon Holders of Class 4 Claims shall share any further Distributions from the Creditors' Trust on a pro rata basis with Holders of Class 3 Claims.			
Class 5: Intercompany Claims	Intercompany Claims shall be released and expunged without any Distribution on account of such Claims.	Impaired Not entitled to vote Deemed to reject Plan	0%	\$0
Class 6: Interests (Preferred Stock and Common Stock)	On the Effective Date, Interests in the Debtors shall be canceled, released, and expunged without any Distribution on account of such Interests.	Impaired Not entitled to vote Deemed to reject Plan	0%	\$0

3.2 Unimpaired Class of Claims.

Class 1: Other Priority Claims. Class 1 shall consist of Other Priority Claims against the Debtors. Class 1 Claims are Unimpaired by the Plan and are therefore deemed to accept the Plan and not entitled to vote on the Plan.

3.3 Impaired Classes of Claims.

Class 2: CRG Secured Claim. Class 2 shall consist of the CRG Secured Claim. The Class 2 Claim is Impaired by the Plan and entitled to vote to accept or reject the Plan.

The Holder of the Allowed Class 2 Claim shall have received (a) 90% of Net Sale Proceeds from the Sale proceeds; (b) fifty percent (50%) of the savings, if any, from the Professional Fee Reserves and the Revised Administrative Escrow pursuant to the Amended Settlement; (c) in the event that Holders of Class 4 General Unsecured Claims have received (or are deemed to receive) Distributions from the Plan Escrow and Creditors' Trust equal to 75% of their Allowed General Unsecured Claims, the next \$2,000,000 of Distributions from the Creditors' Trust on account of the unpaid portion of the CRG Secured Claim.

Class 3: Prepetition Lenders' Unsecured Claims. Class 3 shall consist of the Prepetition Lenders' Unsecured Claims. The Class 3 Claims are Impaired by the Plan and entitled to vote to accept or reject the Plan.

In the event that Holders of Class 4 Claims have received (or are deemed to receive) Distributions from the Plan Escrow and Creditors' Trust equal to 75% of such Claims and the Holder of the Class 2 Claim has received the next Distributions of \$2,000,000 on account of the unpaid portion of the CRG Secured Claim, Holders of Class 3 Claims shall be entitled to receive pro rata Distributions (along with Holders of Class 4 Claims) from the Creditors' Trust with respect to any further Distributions.

Class 4: General Unsecured Claims. Class 4 shall consist of all General Unsecured Claims against the Debtors other than the Prepetition Lenders' Unsecured Claims (Class 3). Class 4 Claims are Impaired by the Plan and entitled to vote to accept or reject the Plan.

Holders of Class 4 Claims shall be entitled to receive pro rata Distributions from the Creditors' Trust and Plan Escrow up to 75% of the face value of such Allowed General Unsecured Claims. After receiving (or being deemed to received) 75% of the face value of such Allowed General Unsecured Claims, Holders of Class 4 Claims shall not receive further Distributions from the Creditors' Trust until \$2,000,000 is paid to the Holder of the Class 2 Claim on account of the unpaid portion of the CRG Secured Claim, whereupon Holders of Class 4 Claims shall share any further Distributions from the Creditors' Trust on a pro rata basis with Holders of Class 3 Claims.

Class 5: Intercompany Claims. Class 5 shall consist of all Intercompany Claims. Because Holders of Class 5 Intercompany Claims will not receive any Distribution under the Plan, Holders of Class 5 Intercompany Claims are deemed to reject the Plan and, therefore, are not entitled to vote on the Plan.

Intercompany Claims shall be released and expunged without any Distribution on account of such Claims.

3.4 Impaired Class of Interests.

Class 6: Interests (Preferred Stock and Common Stock). Class 6 shall consist of all Interests (Preferred and Common Stock). Because Holders of Class 6 Interests will not receive any Distribution under the Plan, Holders of Class 6 Interests are deemed to reject the Plan and, therefore, not entitled to vote on the Plan.

On the Effective Date, Interests in the Debtors shall be canceled, released, and expunged without any Distribution on account of such Interests.

ARTICLE IV
BACKGROUND AND DISCLOSURES

4.1 **General Background.**⁵

(a) *The Debtors' Business.*

Prior to the closing of the Sale, the Debtors were a commercial-stage medical technology company, focused on improving health and simplifying life for people with diabetes by developing and commercializing innovative technologies. The Debtors' flagship product was the V-Go[®] Wearable Insulin Delivery device ("V-Go[®]"),⁶ which is a simple, affordable, all-in-one basal-bolus⁷ delivery option for patients with type 2 diabetes⁸ that is available in three convenient doses and is worn like a patch, and can eliminate the need for multiple daily injections. Using proprietary h-Patch[™] technology,⁹ V-Go[®] is the only basal-bolus insulin delivery device on the market today that was specifically designed keeping in mind the needs of patients with type 2 diabetes.

V-Go[®] is manufactured in Southern China by the Debtors' primary contract manufacturing organization (the "CMO") in accordance with current good manufacturing practices, or cGMP. The CMO uses Valeritas-owned, custom-designed, semi-automated manufacturing equipment and production lines to meet the Debtors' quality requirements. Separate contract manufacturing organization companies in China perform release testing, sterilization, inspection, and packaging functions. The processes utilized in the manufacturing and

⁵ Further information regarding the Debtors' business, assets, capital structure, and the circumstances leading to the filing of the Chapter 11 Cases is set forth in detail in the First Day Declaration, which is incorporated by reference herein.

⁶ The Debtors received approval of V-Go[®] from the Food and Drug Administration (the "FDA") in 2010 and commenced commercial sales in 2012. As of the Petition Date, the Debtors had produced over 22 million V-Go[®] devices.

⁷ A person's insulin is divided into two components—a basal dose and a bolus dose. The basal dose is referred to as the "background" dose of insulin in that it maintains a person's blood glucose levels steady during non-food-intake periods. The bolus dose of insulin is released by the body in response to food intake in order to control post-intake hyperglycemia. A basal-bolus dose maintains a type 2 diabetic's insulin throughout the day.

⁸ "Diabetes is a chronic (long-lasting) health condition that affects how your body turns food into energy." Ctr. For Disease Control & Prevention, About Diabetes, <https://www.cdc.gov/diabetes/basics/diabetes.html>, (Aug. 6, 2019). Approximately 30.3 million adults in the United States, or 9.4% of the population, has diabetes. *Id.* There are three main types of diabetes: type 1, type 2, and gestational diabetes occurring in pregnant women. *Id.* Type 2 diabetes is the most prevalent type, with approximately 90% of diabetics having type 2 diabetes. *Id.* People with type 2 diabetes do not make sufficient amounts of insulin or cannot adequately use the insulin their bodies produce. *Id.* If left unchecked, type 2 diabetes can lead to serious health issues. *Id.* Indeed, "[d]iabetes is the seventh leading cause of death in the United States." *Id.* "In the last 20 years, the number of adults diagnosed with diabetes has more than doubled." *Id.* Indeed, globally, diabetes is projected to increase by 35% by 2040 and it is estimated that diabetes will account for 12% of global health expenditures. *See* INT'L DIABETES FED'N, IDF DIABETES ATLAS (7th ed. 2015).

⁹ The Debtors' h-Patch[™] technology enabled patients to closely mimic the body's normal physiological patterns of insulin delivery by delivering a single type of insulin at a predictable and continuous preset basal rate over a 24-hour period and providing convenient and discreet on-demand bolus dosing at mealtimes.

testing of V-Go[®] are verified and validated to the extent required by the FDA and other regulatory bodies.¹⁰

Prior to the Closing of the Sale, the Debtors offered direct and indirect patient services and programs to help educate healthcare providers and patients on the benefits and technical aspects of V-Go[®]. In addition, the Debtors' highly-trained salesforce educated and trained healthcare providers, including Certified Diabetes Educators, on how to use V-Go[®] so that they could better serve their patients. The Debtors' salesforce also had the ability to train patients directly and offer supplemental training assistance, including through contracted patient trainers and online resources. Although V-Go[®] is a device, the product is reimbursed at the pharmacy under Medicare Part D and by a majority of commercial insurance companies. The Debtors also made starter kits available to new V-Go[®] patients free of charge and offered a co-pay reduction program for patients who had insurance through commercial insurance companies to help defray medication costs and make V-Go[®] even more affordable.¹¹

The Debtors did not engage in direct sales to patients, but instead partnered with distributors to make V-Go[®] available to patients for prescription fulfillment or purchase primarily through retail pharmacies. Prior to the closing of the Sale, the Debtors had distribution agreements with all of the national (and many regional) wholesalers, as well as with important medical supply companies.

In addition to the Debtors' use of their h-Patch[™] technology in V-Go[®], the h-Patch[™] technology has the potential for additional applications outside of insulin delivery. Indeed, the Purchaser recognized this potential in choosing to acquire the Debtors' business.

On April 2, 2020, the Debtors closed a going-concern sale of substantially all of their assets to the Purchaser. The Sale provided for payment of \$23 million in cash, plus the assumption of certain liabilities, and included offers of employment for a majority of the Debtors' then-current employees. The Sale ensures that the V-Go[®] Wearable Insulin Delivery device remains available to type 2 diabetes patients who depend on it to improve their health and simplify their lives.

(b) *The Debtors' Prepetition Capital Structure.*

Among other things, the Debtors relied on the arrangements described below to finance their business prior to the Petition Date.

i. Term Loan Agreement

On May 24, 2013, Debtor Valeritas, Inc. as borrower, and certain subsidiaries as guarantors, entered into a prepetition term loan agreement (as amended and restated on August 5,

¹⁰ As a medical device manufacturer, the Debtors' contract manufacturing facilities and the facilities of our sterilization and other critical suppliers are subject to periodic inspection by the FDA and corresponding state and foreign agencies.

¹¹ V-Go[®] is covered by Medicare Part D as well as commercial insurance plans covering the majority of patients. Further, insulin delivery with V-Go[®] is significantly less expensive, especially in the first year of use, than treatment with programmable insulin pumps.

2014, and later further amended and restated on May 3, 2016, the “Prepetition Term Loan”) with the Prepetition Lenders. The Prepetition Term Loan is a senior secured loan that had an initial six-year term (later extended, as described below) and is secured by substantially all of the Debtors’ assets.

Pursuant to an amendment dated as of February 9, 2017 (the “First Amendment”), the Prepetition Term Loan was amended to provide an interest rate of 11% per annum and extend the interest-only period to March 31, 2022. The First Amendment further required quarterly cash interest payments beginning on June 30, 2019 and extended the deadline for full payment under the loan to March 31, 2022. The First Amendment also reduced the minimum covenant cash and cash equivalent requirements to \$2.0 million from \$5.0 million. In March 2017, in connection with the First Amendment, the Prepetition Lenders exchanged \$25 million in principal amount of the Prepetition Term Loan for 2.5 million shares of Series A Preferred Stock at a price of \$10.00 per share.

Pursuant to a second amendment dated as of September 30, 2019 (the “Second Amendment”), the Debtors and the Prepetition Lenders further amended the Prepetition Term Loan. The Second Amendment increased the interest rate to 13% per annum, removed the quarterly cash interest payments, and allowed for accrual of PIK interest instead. The \$2.0 million financial covenant remained in place. The Second Amendment further provided for a \$3.0 million back-end facility fee (the “Back-End Facility Fee”) on the outstanding principal balance immediately following the debt exchange (described below) in addition to any new PIK interest, payable upon completion of the Prepetition Term Loan. In connection with the second amendment, the Prepetition Lenders exchanged \$22.7 million in principal amount of the Prepetition Term Loan for 15,575,586 shares of Series B Preferred Stock at a price of \$1.46 per share (the “Conversion Transaction”).

As of December 31, 2019, the outstanding principal amount due under the Prepetition Term Loan Agreement was \$16,124,777.00 plus the Back-End Facility Fee equal to \$3,224.955.00 plus accrued interest, fees and expenses (including attorneys’ fees).

On February 7, 2020, prior to the Petition Date, the Prepetition Lenders delivered a notice of default to the Debtors alleging, among other things, that a “Material Adverse Change” had occurred constituting an “Event of Default” under the Prepetition Term Loan (as those terms are defined therein).

ii. Prepetition Subordinated Note

In 2011, Valeritas issued a \$5.0 million senior subordinated note (the “WCAS Note”) and, together with the Prepetition Term Loan, the “Prepetition Financing”) to WCAS Capital Partners IV L.P (“WCAS”). Valeritas entered into a series of forbearance agreements to modify the WCAS Note. The most recently executed amendment to the WCAS Note, dated May 23, 2013 (as amended on March 28, 2017), bears interest at 10% per annum. All interest accrues as compounded PIK interest and is added to the aggregate principal amount of the note semiannually. The outstanding principal and accrued PIK interest is due in full in September 2021, and no interest payments are required during the term of the loan.

In March 2017, \$2.5 million of the WCAS Note was exchanged for 250,000 shares of Series A Preferred Stock, at a price of \$10.00 per share. On September 30, 2019, \$2.3 million of the WCAS Note was exchanged for 1,547,698 shares of Series B Preferred Stock at a price of \$1.46 per share.

As of the Petition Date, \$1,608,497 remained due and owing under the WCAS Note.

iii. Letters of Credit

Prior to the Petition Date, the Debtors issued three letters of credit: (a) in favor of Winthrop Resources Corporation in the amount of \$350,352 in connection with the finance of laptops, tablets, and other similar equipment utilized by the Debtors' salesforce; (b) in favor of Silicon Valley Bank in the amount of \$42,500 in connection with three corporate credit cards; and (c) in favor of Kaiser Permanente in the amount of \$75,000 in connection with an insurance rider relating to V-Go[®].

iv. Equity

Valeritas Holdings, Inc. became a publicly traded company through its reverse merger with Cleaner Yoga Mat, Inc. on May 3, 2016, and began trading on the Nasdaq Capital Market under the symbol "VLRX" on March 28, 2017. As of the Petition Date, the Debtors' market capitalization was approximately \$6,622,000, based on approximately 8.3 million shares of Common Stock outstanding on the Petition Date. In addition, the Debtors have outstanding 2.5 million issued shares of Series A Preferred Stock, par value \$0.001 per share, and 17,123,284 issued shares of Series B Preferred Stock, par value \$0.001 per share. The Debtors also have outstanding (a) 519 Warrants to acquire 519 shares of Common Stock at a weighted average exercise price of \$8.80 per share, which were issued to certain affiliates of the placement agents in the private placement offering that was conducted as part of the May 2016 reverse merger, and (b) 3,750,000 Series A Warrants to acquire 187,500 shares of Common Stock at an exercise price of \$12.00 per share, which were issued in connection with the November 2018 public offering. Both Warrants have a term of five years and are of *de minimis* value.

4.2 Events Leading to Chapter 11.

Prior to the Sale, the Debtors relied on sales of V-Go[®] to generate all of their revenue. Although the Company experienced commercial success with V-Go[®], as of the Petition Date, the Company was still in the commercial growth stage of its operations and, therefore, had not generated profits or free cash flows. For approximately eleven months prior to the Petition Date, the Company was engaged in an out of court sale and marketing process (the "Out of Court Process") led by a boutique investment bank. In December 2019, the Company was facing diminishing liquidity, a lack of access to additional capital, and potential near-term defaults under the Prepetition Term Loan when it experienced a temporary supply disruption due to a

manufacturing yield issue, which was discovered by one of the final two bidders in the Out of Court Process and led them to withdraw their bids.¹²

Management immediately took steps to identify and correct the manufacturing yield issue.¹³ The Company halted all deliveries of V-Go[®], retested all of its existing inventory as well as product it controlled in the United States, opened a corrective-action preventative action (or CAPA) investigation, identified the root cause of the yield issue, modified production specifications to meet yield requirements going forward, and conducted a health hazard evaluation. Importantly, the Company's manufacturing yield issues did not impact patients, no large-scale V-Go[®] outages were reported, and the Company returned to normal yield and product-shipment levels in March 2020. While management quickly identified the root cause of the issue and implemented corrective actions, the Company's liquidity constraints were further exacerbated by the supply disruption and the Company's one-time write-off of approximately \$3.5 million of inventory. Further, under these conditions, the Company's existing lenders would not extend further credit, nor could the Company secure financing from another source.

Notwithstanding the Company's quick response to address the manufacturing yield issue, it could not resurrect the Out of Court Process. Moreover, the yield issue unfortunately coincided with certain external factors impacting production. The CMO and the Company's other manufacturers and suppliers in China were closed for the Lunar New Year (Chinese New Year) celebrations, which took place this year between January 27, 2020 and February 3, 2020, which was extended through February 9, 2020 by the Chinese government due to the coronavirus epidemic in China.

The occurrence of the Chinese New Year holiday had not posed a problem in the past, because the Company historically maintained at least 3 months' worth of finished product inventory to cover periods when its Chinese suppliers were closed. This year, however, inventory levels were substantially reduced as a result of the production disruption in December 2019. Thus, the work stoppage during the Chinese New Year holiday posed a problem for the Company for the first time. This problem was exacerbated due to the rapid onset of the coronavirus epidemic and the Chinese government's measures to combat the spread of the disease, which included extending the holiday for an additional week.

¹² The Company disclosed the manufacturing yield issue on December 20, 2019 through a Form 8-K filing with the Securities and Exchange Commission as well as in a press release. Valeritas Holdings, Inc., Current Report (Form 8-K) (Dec. 20, 2019); *Valeritas Experiences a Temporary Supply Disruption Resulting in Revised Preliminary Financial Results for 2019 Fourth Quarter and Full Year*, Valeritas (Dec. 20, 2019), <https://www.valeritas.com/investors/press-releases/press-release-details/2019/Valeritas-Experiences-a-Temporary-Supply-Disruption-Resulting-in-Revised-Preliminary-Financial-Results-for-2019-Fourth-Quarter-and-Full-Year/default.aspx>. The price of the Common Stock dropped following this announcement, and on February 5, 2020, Nasdaq Regulation issued a letter to the Company notifying it that it was no longer in compliance with The Nasdaq Capital Markets' "Listing Rules." The Common Stock was subsequently delisted from The Nasdaq Capital Market.

¹³ Yield in reference to V-Go[®] refers to the basal rate release criteria. While V-Go[®] previously tested within acceptable basal release yields, the Debtors determined that a higher threshold should be employed and worked diligently to meet this self-imposed increased yield level.

Additionally, many Chinese businesses, including the Debtors' CMO, employ rural workers and, as a result, experienced production capability issues due to these rural employees' delayed return to work. All of the foregoing unanticipated delays further strained the Company's balance sheet and truncated its financial runway, although, due to careful planning, did not generally impact the Company's ability to make V-Go[®] available to the majority of patients leading up to the Sale. The delays primarily impacted new production, retesting of existing V-Go[®] kits, and the packaging and shipping of finished goods to the United States.

In addition, the filing of the Chapter 11 Cases was also motivated by concerns over employee retention. The Debtors' workforce was highly trained and well-versed in V-Go[®], as well as in diabetes and diabetes treatments generally. As such, the Debtors' workforce was extremely attractive to the Debtors' competitors, to companies seeking to enter the medical device and type 2 diabetes treatment markets, and to potential purchasers.

Prior to the Petition Date, two of the Company's senior officers resigned. In addition, following the Company's issuance of the December 20, 2019 Form 8-K, which indicated that the Company was considering all strategic alternatives, including filing for chapter 11, the Company's employees were aggressively pursued by competitors and many expressed concerns about their future employment with the Company. These factors, coupled with the facts that, under the Company's existing financial circumstances, non-salesforce employees would likely not receive their earned variable compensation (a significant proportion of the employees' total compensation), and the salesforce's variable incentive compensation typically paid by March was also at risk, led the Company to fear that a significant number of its employees would depart immediately after the filing.

Ultimately, the Company's chief concern was that its liquidity, capitalization, and potential workforce issues might eventually impact the availability of V-Go[®] to patients. In light of the foregoing, the Company determined that initiating the Chapter 11 Cases was the best option to preserve its going concern business, maximize value for all creditors and stakeholders, and ensure that the benefits of V-Go[®] would continue to be available to patients with type 2 diabetes, as well as to foster the Company's long-term vision for V-Go[®] through a well-capitalized purchaser.

4.3 **The Chapter 11 Cases.**

(a) *Generally.*

As set forth above, on the Petition Date, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. The commencement of a chapter 11 case creates an estate that is composed of all of the legal and equitable interests of the debtor as of that date. The Bankruptcy Code provides that a debtor is authorized to continue to operate its business and remain in possession of its property as a "debtor in possession." From the Petition Date, the Debtors have continued to operate their business and manage their properties as debtors and debtors in possession. By order entered February 12, 2020 [D.I. 49], the Chapter 11 Cases are being jointly administered for procedural purposes only. No trustee or examiner has been appointed in the Chapter 11 Cases. On February 21, 2020, the U.S. Trustee appointed the Creditors' Committee in the Chapter 11 Cases.

The filing of the Debtors' bankruptcy petitions on the Petition Date triggered the immediate imposition of the automatic stay under section 362 of the Bankruptcy Code, which, with limited exceptions, enjoins all collection efforts and actions by creditors, the enforcement of Liens against property of the Debtors and both the commencement and the continuation of prepetition litigation against the Debtors. With certain limited exceptions and/or modifications as permitted by order of the Bankruptcy Court, the automatic stay remains in effect from the Petition Date until the Effective Date of the Plan.

(b) *“First Day” Motions and Related Applications.*

On the Petition Date, the Debtors filed a number of “first day” motions and applications designed to ease the Debtors' transition into chapter 11, maximize the value of the Debtors' assets, and minimize the effects of the commencement of the Chapter 11 Cases. On February 12, 2020, the Bankruptcy Court entered orders providing various forms of first-day relief, including interim or final orders approving:

- *Motion of the Debtors for Entry of an Order Directing the Joint Administration of the Debtors' Chapter 11 Cases;*
- *Motion of the Debtors for the Entry of an Order Authorizing the Debtors to File (I) a Consolidated List of Creditors in Lieu of Submitting a Separate Mailing Matrix for Each Debtor, and (II) a Consolidated List of the Debtors' Thirty Largest Unsecured Creditors;*
- *Application of the Debtors for Entry of an Order Authorizing Retention and Appointment of Kurtzman Carson Consultants LLC as Claims and Noticing Agent, Pursuant to 28 U.S.C. § 156(c), Effective Nunc Pro Tunc to the Petition Date;*
- *Motion of the Debtors for the Entry of an Order (I) Authorizing Certain Procedures to Maintain the Confidentiality of Patient Information as Required by Applicable Privacy Rules; (II) Authorizing the Debtors to File Under Seal Portions of the Debtors' Consolidated Creditor Matrix Containing Certain Individual Creditor Information; and (III) Granting Related Relief;*
- *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors' Proposed Form of Adequate Assurance of Payment, (II) Establishing Procedures for Resolving Objections by Utility Companies, and (III) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Service;*
- *Motion of the Debtors for Entry of Interim and Final Orders Authorizing the Debtors to (I) Continue Their Insurance Program, and (II) Pay Prepetition and Postpetition Obligations in Respect Thereof;*

- *Motion of the Debtors for Entry of an Order Authorizing the Debtors to Pay Certain Prepetition Taxes;*
- *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Prepetition Claims of Shippers, Warehousemen, and Non-Merchandise Lien Claimants to Satisfy Customs Obligations; (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (III) Granting Related Relief;*
- *Motion of the Debtors for Entry of an Order (I) Granting Administrative Expense Priority to All Undisputed Obligations for Goods Ordered Prepetition and Delivered Postpetition; (II) Authorizing the Debtors to Satisfy Such Obligations in the Ordinary Course of Business; and (III) Granting Related Relief;*
- *Motion of the Debtors for Entry of Interim and Final Orders (I) Approving Continued Use of Current Cash Management System; (II) Authorizing the Debtors to Open and Close Bank Accounts; (III) Authorizing Banks to Honor Certain Transfers; (IV) Permitting the Continued Intercompany Transfers and Granting Administrative Expense Priority Status; (V) Suspending the Requirements of 11 U.S.C. § 345(b); and (VI) Granting Related Relief; and*
- *Motion of the Debtors for Interim and Final Orders (I) Authorizing the Debtors to Pay Prepetition Wages and Compensation, (II) Authorizing the Continuation of Employee Benefit Programs, (III) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Employee Obligations, and (IV) Granting Related Relief.*

In addition, on March 12, 2020, the Debtors filed the *Motion of the Debtors for Entry of Order (I) Authorizing the Debtors to Continue Certain Customer Programs and to Honor Certain Obligations in Connection With Same, and (II) Granting Related Relief* [D.I. 79]. The Court granted this motion on March 12, 2020 [D.I. 167].

(c) *Retention of Professional Advisors.*

Pursuant to orders entered on March 11, 2020 and March 12, 2020, the Bankruptcy Court authorized the Debtors to retain and employ (a) DLA Piper LLP (US) as their bankruptcy counsel [D.I. 169], (b) PricewaterhouseCoopers LLP as their restructuring advisor [D.I. 170], (c) Kurtzman Carson Consultants LLC as their administrative advisor [D.I. 163], and (d) Lincoln [D.I. 176] as their investment banker.

The Creditors' Committee filed applications to retain and employ (a) Porzio, Bromberg & Newman, P.C. as its co-counsel [D.I. 200], (b) Morris James LLP as its co-counsel [D.I. 201], and (c) Emerald Capital Advisors as its financial advisor [D.I. 202].

(d) *Key Employee Incentive Plan and Key Employee Retention Plan*

On February 11, 2020, the Debtors filed the *Motion of the Debtors for the Entry of an Order (I) Authorizing the Debtors to Implement Key Employee Incentive Plan and Key Employee Retention Plan and (II) Granting Related Relief* [D.I. 37]. As stated, the Debtors' highly trained employees were one of their most valuable assets. Recognizing the importance of their employees to the sale process, the Debtors sought authorization to implement a performance-based key employee incentive plan (the "KEIP") for 11 executives and a key employee retention plan (the "KERP") for 15 non-executive employees. On March 12, 2020, the Court entered an order authorizing the Debtors to implement the KEIP and the KERP [D.I. 168].

(e) *The Sale of Substantially All of the Debtors' Assets*

For approximately eleven months prior to the Petition Date, the Debtors were engaged in the Out of Court Process. In December 2019, in the final stage of the diligence process, a manufacturing yield issue was discovered by one of the final bidders, which caused the two potential buyers to withdraw their bids. For the reasons set forth above, including inventory issues and liquidity constraints attributable to the temporary supply disruption that resulted from the manufacturing yield issue, the Debtors eventually determined in their business judgment that pursuing a chapter 11 sale of substantially all of their assets under section 363 of the Bankruptcy Code was the best path forward under the circumstances.

The Debtors filed the Chapter 11 Cases in order to pursue a sale of all or substantially all of their assets with the goal of maximizing recovery for their estates and creditors. Prior to the Petition Date, the Debtors and Lincoln started marketing the business in an effort to secure a stalking horse for a chapter 11 sale process. These substantial efforts were successful and, on February 9, 2020, the Debtors and Zealand Pharma A/S or its designee (the "Stalking Horse Bidder") entered into an asset purchase agreement for the sale of substantially all of the Debtors' assets.

On March 6, 2020, the Bankruptcy Court entered the Bid Procedures Order which, among other things, approved bidding procedures governing the solicitation of higher or better bids. The Debtors did not receive any bids other than the bid submitted by the Stalking Horse Bidder. Therefore, in accordance with the Bid Procedures Order, the Debtors designated the Stalking Horse Bidder as the Successful Bidder (as defined in the Bid Procedures Order). On March 20, 2020, the Bankruptcy Court entered the Sale Order.

On April 2, 2020, the Sale of substantially all of the Debtors' assets to the Purchaser closed.

(f) *Bar Dates Pursuant to the Bar Date Order*

On March 13, 2020, the Bankruptcy Court entered the Bar Date Order and established the following Bar Dates:

- (1) General Bar Date: May 11, 2020 at 4:00 p.m. (prevailing Eastern Time) as the deadline for each person or Entity other than a Governmental Unit to file a Claim in respect of a prepetition Claim against any Debtor;

(2) Governmental Bar Date: October 6, 2020 at 4:00 p.m. (prevailing Eastern Time) as the deadline for Governmental Units to file a Claim in respect of a prepetition Claim against any Debtor;

(3) Rejection Damages Bar Date: the later of (i) the General Bar Date, or (ii) 30 days after the Claimant is served with notice of the applicable Bankruptcy Court order authorizing the rejection of the Executory Contract at issue; and

(4) Interim Administrative Claims Bar Date: April 20, 2020 at 4:00 p.m. (prevailing Eastern Time) as the deadline by which all persons and entities must file Administrative Claim requests based on claims against any Debtor that accrued on or after the Petition Date through and including April 3, 2020 that remain unpaid.

(g) *The CRG Settlement and Amended Settlement*

Prior to the Petition Date, the Debtors and the Prepetition Lenders entered into the CRG Settlement, which was the subject of a motion pursuant to Bankruptcy Rule 9019 (the “Settlement Motion”) filed with the Bankruptcy Court on February 11, 2020. In the CRG Settlement, the Debtors and the Prepetition Lenders agreed to settle a number of issues, including the Debtors’ ability to use cash collateral and enter into the priming DIP Facility, as well as certain claims and causes of action the Prepetition Lenders alleged to have against the Debtors related to the Conversion Transaction. Among other things, the CRG Settlement fixed (a) the total CRG Secured Claim at \$20 million (representing the outstanding principal amount of obligations under the Prepetition Term Loan as of December 31, 2019, exclusive of the Back-End Fee (which was to be waived upon Court approval of the CRG Settlement)), plus a portion on account of the settlement of certain claims and causes of action) and (b) the total Prepetition Lenders’ Unsecured Claim at \$18.825 million (representing the settlement of the aforementioned claims and causes of action).

The Amended Settlement, which was entered into between and among the Debtors, the Creditors’ Committee, and the Prepetition Lenders, and was the subject of a supplement to the Settlement Motion filed on March 16, 2020, provides for certain sharing mechanisms between the Prepetition Lenders and General Unsecured Creditors with respect to the Net Sale Proceeds. Additionally, the Amended Settlement provides for the creation of the Creditors’ Trust for the benefit of Holders of Allowed General Unsecured Claims and the Prepetition Lenders. As provided in this Plan, the Creditors’ Trust will be funded with \$150,000 of the wind down funds allocated to the Revised Administrative Escrow.

The Amended Settlement Order approving the Amended Settlement was entered on March 20, 2020.

ARTICLE V
CONFIRMATION AND VOTING PROCEDURES

5.1 **Confirmation Procedure.** On [●], 2020, the Bankruptcy Court entered the Interim Approval and Procedures Order conditionally approving the Combined Disclosure

Statement and Plan for solicitation purposes only and authorizing the Debtors to solicit votes to accept or reject the Plan. The Confirmation Hearing has been scheduled for [●], 2020 at [●] (prevailing Eastern Time) to consider (a) final approval of the Combined Disclosure Statement and Plan as providing adequate information pursuant to section 1125 of the Bankruptcy Code and (b) confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code. The Confirmation Hearing may be adjourned from time to time by the Debtors without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing or by filing a notice with the Bankruptcy Court.

5.2 Procedure for Objections. Any Objection to final approval of the Combined Disclosure Statement and Plan as providing adequate information pursuant to section 1125 of the Bankruptcy Code and/or confirmation of the Plan must be made in writing and filed with the Bankruptcy Court and served via email¹⁴ on (a) counsel for the Debtors, R. Craig Martin, DLA Piper LLP (US), craig.martin@us.dlapiper.com, and Rachel Ehrlich Albanese, DLA Piper LLP (US), rachel.albanese@us.dlapiper.com; (b) co-counsel to the Creditors' Committee, (i) Morris James LLP, Attn: Eric J. Monzo, Esq., emonzo@morrisjames.com and Brya M. Keilson, Esq., bkeilson@morrisjames.com; and (ii) Porzio, Bromberg & Newman, P.C., Attn: Brett S. Moore, Esq., bsmoore@pbnlaw.com, Robert M. Schechter, Esq., rmschechter@pbnlaw.com, and Kelly D. Curtin, Esq., kdcurtin@pbnlaw.com; (c) counsel to the Prepetition Lenders, Venable LLP, Attn: Jeffrey S. Sabin, Esq., jssabin@venable.com and Carol Weiner Levy, Esq., cweinerlevy@venable.com, and Daniel A. O'Brien, dao'brien@venable.com; and (d) the United States Trustee, Attn: Richard L. Schepacarter, Esq., Richard.Schepacarter@usdoj.gov, by no later than May 28, 2020, at 4:00 p.m. (prevailing Eastern Time). Unless an Objection is timely filed and served, it may not be considered by the Bankruptcy Court at the Confirmation Hearing.

5.3 Requirements for Confirmation. The Bankruptcy Court will confirm the Plan only if it meets all the applicable requirements of section 1129 of the Bankruptcy Code. Among other requirements, the Plan (a) must be accepted by all Impaired Classes of Claims or Interests or, if rejected by an Impaired Class, the Plan must not "discriminate unfairly" against, and be "fair and equitable" with respect to, such Class; and (b) must be feasible. The Bankruptcy Court must also find that: (i) the Plan has classified Claims and Interests in a permissible manner; (ii) the Plan complies with the technical requirements of chapter 11 of the Bankruptcy Code; and (iii) the Plan has been proposed in good faith.

5.4 Classification of Claims and Interests.

Section 1123 of the Bankruptcy Code provides that a plan must classify the claims and interests of a debtor's creditors and equity interest holders. In accordance with section 1123 of the Bankruptcy Code, the Plan divides Claims and Interests into Classes and sets forth the treatment for each Class (other than those claims which pursuant to section 1123(a)(1) of the Bankruptcy Code need not be and have not been classified). The Debtors also are required, under section 1122 of the Bankruptcy Code, to classify Claims and Interests into Classes that contain Claims or Interests that are substantially similar to the other Claims or Interests in such Class.

¹⁴ Under the current circumstances, where the COVID-19 pandemic has resulted in the indefinite shutdown of the offices of the Debtors, the Creditors' Committee, the Prepetition Lender, and the U.S. Trustee, email service will ensure timely receipt of any Objections.

The Bankruptcy Code also requires that a plan provide the same treatment for each claim or interest of a particular class unless the claim holder or interest holder agrees to a less favorable treatment of its claim or interest. The Proponents believe that the Plan complies with such standard. If the Bankruptcy Court finds otherwise, however, it could deny confirmation of the Plan if the holders of Claims or Interests affected do not consent to the treatment afforded them under the Plan.

A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim also is placed in a particular Class for the purpose of receiving Distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released or otherwise settled prior to the Effective Date.

The Proponents believe that the Plan has classified all Claims and Interests in compliance with the provisions of section 1122 of the Bankruptcy Code and applicable case law. It is possible that a holder of a Claim or Interest may challenge the classification of Claims or Interests and that the Bankruptcy Court may find that a different classification is required for the Plan to be confirmed. If this occurs, the Proponents intend, in accordance with the terms of the Plan, to make such modifications to the Plan as may be necessary to permit its confirmation. Any such reclassification could adversely affect holders of Claims by changing the composition of one or more Classes and the vote required of such Class or Classes for approval of the Plan.

EXCEPT AS SET FORTH IN THE PLAN, UNLESS SUCH MODIFICATION OF CLASSIFICATION MATERIALLY ADVERSELY AFFECTS THE TREATMENT OF A HOLDER OF A CLAIM AND REQUIRES RESOLICITATION, ACCEPTANCE OF THE PLAN BY ANY HOLDER OF A CLAIM PURSUANT TO THIS SOLICITATION WILL BE DEEMED TO BE A CONSENT TO THE PLAN'S TREATMENT OF SUCH HOLDER OF A CLAIM REGARDLESS OF THE CLASS AS TO WHICH SUCH HOLDER ULTIMATELY IS DEEMED TO BE A MEMBER.

The amount of any Impaired Claim that ultimately is Allowed by the Bankruptcy Court may vary from any estimated Allowed amount of such Claim and, accordingly, the total Claims that are ultimately Allowed by the Bankruptcy Court with respect to each Impaired Class of Claims may also vary from any estimates contained herein with respect to the aggregate Claims in any Impaired Class. Thus, the actual recovery ultimately received by a particular holder of an Allowed Claim may be adversely or favorably affected by the aggregate amount of Claims Allowed in the applicable Class. Additionally, any changes to any of the assumptions underlying the estimated Allowed amounts could result in material adjustments to recovery estimates provided herein and/or the actual Distribution received by creditors. The projected recoveries are based on information available to the Debtors as of the date hereof and reflect the Debtors' views as of the date hereof only.

The classification of Claims and Interests and the nature of Distributions to members of each Class are summarized herein. The Proponents believe that the consideration, if any, provided under the Plan to holders of Claims reflects an appropriate resolution of their Claims taking into account the differing nature and priority (including contractual subordination, if any)

of such Claims and Interests. The Bankruptcy Court must find, however, that a number of statutory tests are met before it may confirm the Plan. Many of these tests are designed to protect the interests of holders of Claims or Interests who are not entitled to vote on the Plan, or do not vote to accept the Plan, but who will be bound by the provisions of the Plan if it is confirmed by the Bankruptcy Court.

5.5 Impaired Claims or Interests.

Pursuant to section 1126 of the Bankruptcy Code, only classes of claims or interests that are Impaired under a plan may vote to accept or reject such plan. Under section 1124 of the Bankruptcy Code, a claim or interest is Impaired under a plan if the holder's legal, equitable, or contractual rights are changed under such plan. In addition, if the holders of claims or interests in an Impaired Class do not receive or retain any property under a plan on account of such claims or interests, such Impaired Class is deemed to have rejected such plan under section 1126(g) of the Bankruptcy Code and, therefore, such holders are not entitled to vote on such plan.

Under the Plan, holders of Claims in Classes 2, 3, and 4 are Impaired and are entitled to vote on the Plan. Holders of Claims or Interests in Classes 5 and 6 are Impaired and will not receive or retain any property under the Plan on account of such Claims or Interests and, therefore, are not entitled to vote on the Plan and deemed to reject the Plan under section 1126(g) of the Bankruptcy Code. Under the Plan, holders of Claims in Class 1 are Unimpaired and, therefore, not entitled to vote on the Plan and are deemed to accept the Plan under section 1126(f) of the Bankruptcy Code.

5.6 Confirmation Without Necessary Acceptances; Cramdown

In the event that any Impaired Class of claims or interests does not accept a plan, a debtor nevertheless may move for confirmation of the plan. A plan may be confirmed, even if it is not accepted by all Impaired Classes, if the plan has been accepted by at least one Impaired Class of claims, and the plan meets the "cramdown" requirements set forth in section 1129(b) of the Bankruptcy Code. Section 1129(b) of the Bankruptcy Code requires that a court find that a plan "does not discriminate unfairly" and (b) is "fair and equitable," with respect to each non-accepting Impaired Class of claims or interests. Here, because holders of Claims and Interests in Classes 5 and 6 are deemed to reject the Plan, the Proponents will seek confirmation of the Plan from the Bankruptcy Court by satisfying the "cramdown" requirements set forth in section 1129(b) of the Bankruptcy Code. The Proponents believe that such requirements are satisfied, as no holder of a Claim or Interest junior to those in Classes will receive any property under the Plan.

A plan does not "discriminate unfairly" if (a) the legal rights of a nonaccepting class are treated in a manner that is consistent with the treatment of other classes whose legal rights are similar to those of the nonaccepting class and (b) no class receives payments in excess of that which it is legally entitled to receive for its claims or interests. The Proponents believe that, under the Plan, all Impaired Classes of Claims or Interests are treated in a manner that is consistent with the treatment of other Classes of Claims or Interests that are similarly situated, if any, and no Class of Claims or Interests will receive payments or property with an aggregate value greater than the aggregate value of the Allowed Claims or Allowed Interests in such Class. Accordingly, the

Proponents believe that the Plan does not discriminate unfairly as to any Impaired Class of Claims or Interests.

The Bankruptcy Code provides a nonexclusive definition of the phrase “fair and equitable.” In order to determine whether a plan is “fair and equitable,” the Bankruptcy Code establishes “cram down” tests for secured creditors, unsecured creditors and equity holders, as follows:

(a) *Secured Creditors.* Either (i) each Impaired secured creditor retains its liens securing its secured claim and receives on account of its secured claim deferred Cash payments having a present value equal to the amount of its allowed secured claim, (ii) each Impaired secured creditor realizes the “indubitable equivalent” of its allowed secured claim or (iii) the property securing the claim is sold free and clear of liens with such liens to attach to the proceeds of the sale and the treatment of such liens on proceeds to be as provided in clause (i) or (ii) above.

(b) *Unsecured Creditors.* Either (i) each Impaired unsecured creditor receives or retains under the plan property of a value equal to the amount of its allowed claim or (ii) the holders of claims and interests that are junior to the claims of the dissenting class will not receive any property under the plan.

(c) *Equity Interests.* Either (i) each holder of an equity interest will receive or retain under the plan property of a value equal to the greatest of the fixed liquidation preference to which such holder is entitled, the fixed redemption price to which such holder is entitled or the value of the interest or (ii) the holder of an interest that is junior to the nonaccepting class will not receive or retain any property under the plan.

As discussed above, the Proponents believe that the Distributions provided under the Plan satisfy the absolute priority rule, where required.

5.7 Feasibility

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of a plan not be likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors or any successor to the Debtors (unless such liquidation or reorganization is proposed in the Plan). Inasmuch as substantially all of the Debtors’ assets have been liquidated and the Plan provides for the Distribution of all of the Cash proceeds of the Debtors’ assets to holders of Claims that are Allowed as of the Effective Date in accordance with the Plan, for purposes of this test, the Debtors have analyzed the ability of the Liquidating Trustee to meet its obligations under the Plan. Furthermore, the Amended Settlement provides that certain Net Sale Proceeds will be set aside to fund ongoing administrative expenses of the Chapter 11 Cases. Based on the Debtors’ analysis, the Liquidating Trustee will have sufficient assets to accomplish its tasks under the Plan. Therefore, the Proponents believe that the liquidation pursuant to the Plan will meet the feasibility requirements of the Bankruptcy Code.

5.8 Best Interests Test and Liquidation Analysis

Even if a plan is accepted by the holders of each class of claims and interests, the Bankruptcy Code requires a court to determine that such plan is in the best interests of all holders

of claims or interests that are Impaired by that plan and that have not accepted the plan. The “best interests” test, as set forth in section 1129(a)(7) of the Bankruptcy Code, requires a court to find either that all members of an Impaired Class of claims or interests have accepted the plan or that the plan will provide a member who has not accepted the plan with a recovery of property of a value, as of the effective date of the plan, that is not less than the amount that such holder would recover if the debtor were liquidated under chapter 7 of the Bankruptcy Code.

To calculate the probable Distribution to holders of each Impaired Class of claims and interests if a debtor were liquidated under chapter 7, a court must first determine the aggregate dollar amount that would be generated from a debtor’s assets if its chapter 11 cases were converted to chapter 7 cases under the Bankruptcy Code. To determine if a plan is in the best interests of each Impaired class, the present value of the Distributions from the proceeds of a liquidation of the debtor’s unencumbered assets and properties, after subtracting the amounts attributable to the costs, expenses and administrative claims associated with a chapter 7 liquidation, must be compared with the value offered to such Impaired classes under the plan. If the hypothetical liquidation distribution to holders of claims or interests in any Impaired class is greater than the distributions to be received by such parties under the plan, then such plan is not in the best interests of the holders of claims or interests in such Impaired class.

Because the Plan is a liquidating plan, the “liquidation value” in the hypothetical chapter 7 liquidation analysis for purposes of the “best interests” test is substantially similar to the estimates of the results of the chapter 11 liquidation contemplated by the Plan. However, the Proponents believe that in a chapter 7 liquidation, there would be additional costs and expenses that the Estates would incur as a result of liquidating the Estates in a chapter 7 case.

The costs of liquidation under chapter 7 of the Bankruptcy Code would include the compensation of a trustee, as well as the costs of counsel and other professionals retained by the trustee. The Proponents believe such amount would exceed the amount of expenses that would be incurred in implementing the Plan and winding up the affairs of the Debtors. Conversion also would likely delay the liquidation process and ultimately Distribution of the Residual Assets. The Estates would also be obligated to pay all unpaid expenses incurred by the Debtors during the Chapter 11 Cases (such as compensation for Professionals) that are allowed in the chapter 7 cases. Ultimately, the Prepetition Lenders would need to consent to the use of their cash collateral to fund such a chapter 7 process, and there is no guarantee that they would do so. Without such consent, conversion to chapter 7 would serve only to increase the amount of claims against the Debtors that would not be paid—both in terms of currently incurred and unpaid administrative and priority claims, as well as any costs incurred in administering the chapter 7 case.

Accordingly, the Proponents believe that holders of Allowed Claims would receive less than anticipated under the Plan if the Chapter 11 Cases were converted to chapter 7 cases, and therefore, the classification and treatment of Claims and Interests in the Plan complies with section 1129(a)(7) of the Bankruptcy Code. Attached hereto as **Exhibit B** is a hypothetical chapter 7 liquidation analysis.

5.9 Acceptance of the Plan

The rules and procedures governing eligibility to vote on the Plan, solicitation of votes, and submission of Ballots are set forth in the Interim Approval and Procedures Order.

In order for the Plan to be accepted by an Impaired Class of Claims, a majority in number and two-thirds in dollar amount of the Claims voting in such Class must vote to accept the Plan. At least one Voting Class, excluding the votes of Insiders, must actually vote to accept the Plan.

IF YOU ARE ENTITLED TO VOTE ON THE PLAN, THE DEBTORS, THE CREDITORS' COMMITTEE, AND THE PREPETITION LENDERS URGE YOU TO COMPLETE, DATE, SIGN, AND PROMPTLY MAIL THE BALLOT YOU RECEIVE. Please be sure to complete the Ballot properly and legibly and to identify the exact amount of your Claim and the name of the Holder. If you are a Holder of a Claim entitled to vote on the Plan and you did not receive a Ballot, you received a damaged Ballot, or you lost your Ballot, or if you have any questions concerning the Plan or procedures for voting on the Plan, please contact the Claims Agent via email at valeritasinfo@kcellc.com with a reference to "Valeritas Holdings" in the subject line; or by phone at (877) 709-4747 (domestic) or (424) 236-7228 (international) and request to speak with a member of the solicitation team. The Claims Agent is not permitted to provide legal advice, however.

ARTICLE VI **CERTAIN RISK FACTORS TO BE CONSIDERED PRIOR TO VOTING**

THE PLAN AND ITS IMPLEMENTATION ARE SUBJECT TO CERTAIN RISKS, INCLUDING, BUT NOT LIMITED TO, THE RISK FACTORS SET FORTH BELOW. HOLDERS OF CLAIMS WHO ARE ENTITLED TO VOTE ON THE PLAN SHOULD READ AND CAREFULLY CONSIDER THE RISK FACTORS, AS WELL AS THE OTHER INFORMATION SET FORTH IN THE PLAN AND ASSOCIATED DOCUMENTS BEFORE DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. THESE FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION.

6.1 The Plan May Not Be Accepted.

The Debtors can make no assurances that the requisite acceptances to the Plan will be received, and the Debtors may need to obtain acceptances to an alternative plan of liquidation for the Debtors, or otherwise, that may not have the support of the creditors and/or may be required to liquidate the Estates under chapter 7 of the Bankruptcy Code. There can be no assurance that the terms of any such alternative restructuring arrangement or plan would be similar to or as favorable to creditors as those proposed in the Plan.

6.2 The Plan May Not Be Confirmed.

Even if the Debtors receive the requisite acceptances, there is no assurance that the Bankruptcy Court will confirm the Plan. Even if the Bankruptcy Court determined that the Combined Disclosure Statement and Plan and the balloting procedures and results were

appropriate, the Bankruptcy Court could still decline to confirm the Plan if it finds that any of the statutory requirements for confirmation had not been met. Moreover, there can be no assurance that modifications to the Combined Disclosure Statement and Plan will not be required for Confirmation or that such modifications would not necessitate the resolicitation of votes. If the Plan is not confirmed, it is unclear what Distributions holders of Claims or Interests ultimately would receive with respect to their Claims or Interests in a subsequent plan of liquidation.

6.3 Distributions to Holders of Allowed Claims Under the Plan May Be Inconsistent with Projections.

Projected Distributions are based upon good faith estimates of the total amount of Claims ultimately Allowed and the funds available for Distribution. There can be no assurance that the estimated Claim amounts set forth in the Plan are correct. These estimated amounts are based on certain assumptions with respect to a variety of factors. Both the actual amount of Allowed Claims in a particular Class and the funds available for Distribution to such Class may differ from the Debtors' estimates. If the total amount of Allowed Claims in a Class is higher than the Debtors' estimates, or the funds available for Distribution to such Class are lower than the Debtors' estimates, the percentage recovery to holders of Allowed Claims in such Class will be less than projected.

6.4 Objections to Classification of Claims.

Section 1122 of the Bankruptcy Code requires that the Plan classify Claims and Interests. The Bankruptcy Code also provides that the Plan may place a Claim or Interest in a particular Class only if such Claim or Interest is substantially similar to the other Claims or Interests of such Class. The Debtors believe that all Claims and Interests have been appropriately classified in the Plan. To the extent that the Bankruptcy Court finds that a different classification is required for the Plan to be confirmed, the Debtors would seek to (i) modify the Plan to provide for whatever classification might be required for Confirmation and (ii) use the acceptances received from any holder of Claims pursuant to this solicitation for the purpose of obtaining the approval of the Class or Classes of which such holder ultimately is deemed to be a member. Any such reclassification of Claims, although subject to the notice and hearing requirements of the Bankruptcy Code, could adversely affect the Class in which such holder was initially a member, or any other Class under the Plan, by changing the composition of such Class and the vote required for approval of the Plan. There can be no assurance that the Bankruptcy Court, after finding that a classification was inappropriate and requiring a reclassification, would approve the Plan based upon such reclassification. Except to the extent that modification of classification in the Plan requires resolicitation, the Debtors will, in accordance with the Bankruptcy Code and the Bankruptcy Rules, seek a determination by the Bankruptcy Court that acceptance of the Plan by any holder of Claims pursuant to this solicitation will constitute a consent to the Plan's treatment of such holder, regardless of the Class as to which such holder is ultimately deemed to be a member. The Proponents believe that they would be required to resolicit votes for or against the Plan only when a modification adversely affects the treatment of the Claim or Interest of any holder.

The Bankruptcy Code also requires that the Plan provide the same treatment for each Claim or Interest of a particular Class unless the holder of a particular Claim or Interest agrees

to a less favorable treatment of its Claim or Interest. The Proponents believe that the Plan complies with the requirement of equal treatment. To the extent that the Bankruptcy Court finds that the Plan does not satisfy such requirement, the Bankruptcy Court could deny confirmation of the Plan. Issues or disputes relating to classification and/or treatment could result in a delay in the confirmation and consummation of the Plan and could increase the risk that the Plan will not be consummated.

6.5 Failure to Consummate the Plan.

The Plan provides for certain conditions that must be satisfied (or waived) prior to Confirmation and for certain other conditions that must be satisfied (or waived) prior to the Effective Date. As of the date of the Plan, there can be no assurance that any or all of the conditions in the Plan will be satisfied (or waived). Accordingly, there can be no assurance that the Plan will be confirmed by the Bankruptcy Court. Further, if the Plan is confirmed, there can be no assurance that the Plan will be consummated.

6.6 Allowance of Claims May Substantially Dilute the Recovery to Holders of Claims under the Plan.

There can be no assurance that the estimated Claim amounts set forth in the Plan are correct, and the actual allowed amounts of Claims may differ from the estimates. The estimated amounts are based on certain assumptions with respect to a variety of factors. Should these underlying assumptions prove incorrect, the actual Allowed amounts of Claims may vary from those estimated herein, thereby materially reducing the recovery to the Holders of Class 3 Prepetition Lenders' Unsecured Claims and Class 4 General Unsecured Claims under the Plan.

6.7 Plan Releases May Not Be Approved.

There can be no assurance that the releases, as provided in Article VIII of the Plan, will be granted. Failure of the Bankruptcy Court to grant such relief may result in a plan of liquidation that differs from the Plan or the Plan not being confirmed.

6.8 Certain Tax Considerations.

There are a number of material income tax considerations, risks and uncertainties associated with the plan of liquidation of the Debtors described in this Combined Disclosure Statement and Plan.

THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. NOTHING HEREIN SHALL CONSTITUTE TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, HOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS ABOUT THE UNITED STATES FEDERAL, STATE AND LOCAL, AND APPLICABLE FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

ARTICLE VII
MEANS OF IMPLEMENTING THE PLAN

In addition to the provisions set forth elsewhere in this Plan, the following shall constitute the means of execution and implementation of this Plan.

7.1 Substantive Consolidation.

The Plan contemplates and is predicated upon the deemed substantive consolidation of the Estates for voting, confirmation, and Distribution purposes. Accordingly, on the Effective Date, each Claim filed or to be filed against any Debtor shall be deemed filed only against Valeritas, Inc. and shall be deemed a single Claim against and a single obligation of Valeritas, Inc. for Distribution purposes. This deemed substantive consolidation of the Estates for Distribution purposes means that the specific Debtor against which a creditor Holds or asserts a Claim will have no effect on the distribution (if any) provided to such creditor under the Plan.

The Plan also provides for the deemed substantive consolidation of the Estates for voting purposes, including tabulating votes to accept or reject the Plan. Accordingly, the Debtors will tabulate each Ballot as a vote to accept or reject the Plan as to each Debtor.

Absent the consent of affected creditors, the Debtors will bear the burden at the Confirmation Hearing of establishing a *prima facie* case for the deemed substantive consolidation of their respective Estates. Accordingly, the Debtors will, to the extent necessary, adduce evidence at the Confirmation Hearing to justify the deemed substantive consolidation in accordance with the standards established by applicable case law. Such evidence may include, without limitation, evidence indicating that creditors have dealt with the Debtors as a single, consolidated enterprise, both before and after the Petition Date (as evidenced by, among other things, the fact that the vast majority of the Debtors' ordinary course liabilities are paid through Valeritas, Inc. without the generation of corresponding intercompany claims).

The Proponents believe that there are sufficient factual and legal bases for the proposed substantive consolidation. At the Confirmation Hearing, the Debtors will, if necessary, introduce argument and evidence concerning the following factors, among others, in support of the Plan's substantive consolidation provision:

- The Debtors operate on a consolidated basis;
- Debtor Valeritas, Inc. is the only Debtor entity that maintained bank accounts, processed all of the Debtors' disbursements (other than employee payroll obligations through Valeritas US, LLC), disbursements on account of customer program obligations and trade vendor obligations;
- As set forth in the Schedules, the Debtors do not record intercompany payables and receivables in the ordinary course of business (other than employee payroll obligations);
- The Debtors do not have any intercompany agreements; and

- Efforts to deconsolidate the Debtors' respective assets and liabilities would be burdensome and divert professional resources that are more profitably directed elsewhere, all without meaningfully affecting the distributions received by any class.

7.2 Corporate Action.

(a) **Vesting of Creditors' Trust Assets.** Upon the occurrence of the Effective Date, (i) the sole remaining member of each Debtor's board of directors or managers, as the case may be, shall be deemed to have resigned, and (ii) the Creditors' Trust Assets shall be transferred to the Creditors' Trust in accordance with this Plan. The Creditors' Trust Assets shall vest in the Creditors' Trust free and clear of all Liens, claims, and interests. Subject to the limitations set forth in the Creditors' Trust Agreement, on and after the Effective Date, the Liquidating Trustee shall have sole authority and responsibility for investigating, analyzing, compromising, collecting, liquidating and otherwise administering all Creditors' Trust Assets.

Upon transfer of the Creditors' Trust Assets, the Debtors shall have no further duties or responsibilities in connection with the implementation of this Plan.

(b) **Corporate Existence of the Debtors.** After the Effective Date, Debtor Valeritas, Inc. shall continue to exist for Plan Distribution purposes. As of the Effective Date, all other Debtors shall be deemed dissolved under applicable state law. At any time after the Effective Date, the Liquidating Trustee shall be authorized, subject to approval by the Creditors' Trust Oversight Board, to dissolve the remaining Debtors upon filing a notice of such dissolution with the Bankruptcy Court, notwithstanding any requirements of applicable state law, without the necessity for any other or further actions to be taken by or on behalf of the remaining Debtors or payments to be made in connection therewith.

As soon as practicable after the transfer of the Creditors' Trust Assets to the Creditors' Trust, the Liquidating Trustee shall provide for the retention and storage of the books, records, and files that shall have been delivered to the Creditor Trust until such time as all such books, records, and files are no longer required to be retained under applicable law, and file a certificate informing the Bankruptcy Court of the location at which such books, records, and files are being stored.

(c) **Legal Representation After the Effective Date.** Upon the Effective Date, the attorney-client relationship between the Creditors' Committee and its current counsel, Porzio, Bromberg & Newman, P.C. and Morris James LLP, and the Debtors and their current counsel, DLA Piper LLP (US), shall be transferred to the Liquidating Trustee, who shall succeed to the rights and claims of, and hold the attorney-client privilege for the Debtors and the Creditors' Committee, including, without limitation, any common interest privilege. For the avoidance of doubt, nothing in the Plan shall affect the rights of any non-Debtor third parties to assert their own attorney-client and other applicable privileges.

(d) **Cancellation of Existing Securities and Agreements.** Except as otherwise provided in this Plan, and in any contract, instrument or other agreement or document

created in connection with this Plan, on the Effective Date, the Interests and any other promissory notes, share certificates, whether for preferred or common stock (including treasury stock), other instruments evidencing any Claims or Interests, and all options, warrants, calls, rights, puts, awards, and commitments, including, without limitation, any agreements purporting to relate to deferred compensation that relate to Interests or options, shall be deemed cancelled and of no further force and effect, without any further act or action under any applicable agreement, law, regulation, order, or rule, and the obligations of the Debtors under the notes, share certificates, and other agreements and instruments governing such Claims and Interests shall be released; *provided, however,* that the cancellation, release, and discharge of the foregoing shall not affect whether a timely Claim made on account of such obligation may become an Allowed Claim; *provided, further, however,* that certain instruments, documents, and credit agreement related to Claims shall continue in effect solely for the purpose of allowing the Liquidating Trustee to make Distributions in accordance with this Plan. The Holders of or parties to such cancelled notes, share certificates, and other agreements and instruments shall have no rights against the Debtors, the Estates, and the Creditors' Trust, or the Liquidating Trustee arising from or relating to such notes, share certificates, and other agreements and instruments or the cancellation thereof, except the rights provided pursuant to this Plan.

7.3 Release of Prepetition Lenders' Lien.

(a) Upon the Effective Date, the Prepetition Lenders' lien on, and security interests in, the Plan Escrow, Professional Reserves, and the Revised Administrative Escrow shall be and shall be deemed to be released.

7.4 Creditors' Trust

(a) **Establishment of the Creditors' Trust.** On the Effective Date, a Creditors' Trust will be created and governed in accordance with section 8 of the Amended Settlement, the Cash Collateral Amendment, and the terms set forth below. Of the \$950,000 wind down reserve contained in the Revised Administrative Escrow, \$150,000 shall be set aside to fund the Creditors' Trust.

(b) **Purpose of Creditors' Trust.** Among other functions, the Creditors' Trust shall (i) serve as the vehicle to investigate, prosecute, and/or settle (in its discretion) the Retained Actions, and (ii) object to (in its discretion) and administer Claims and make Distributions on account of Allowed Claims according to the terms of the Amended Settlement and the Plan.

(c) **Creditors' Trust Assets.** On the Effective Date, the Creditors Trust shall be vested with, subject to the terms of the Cash Collateral Amendment and the Amended Settlement, (i) the Retained Actions, as set forth in section 8(d)(ii) of the Amended Settlement, and (ii) the funds remaining in (a) the Plan Escrow, (b) the Professional Reserves (which reserves are not property of the Debtors' Estates), and (c) the Revised Administrative Escrow, to be distributed in accordance with the terms of the Amended Settlement and the Plan, and (iii) the Residual Assets, including, but not limited to, Debtors' privileges, books and records, and insurance policies, including D&O insurance. The vesting of the Creditors' Trust Assets shall be free and clear of all liens, claims and interests, including the Prepetition Lenders' liens.

(d) **Trust Distributions.** Following the funding of the Reserves in accordance with this Plan, the Liquidating Trustee shall liquidate the Creditors' Trust Assets and distribute the Net Proceeds of such liquidation in accordance with the Plan and the Creditors' Trust Agreement; *provided, however*, that the Liquidating Trustee shall make Distributions of Net Proceeds (if any) at least quarterly in accordance with the Plan.

(e) **Duration of the Trust.** The Creditors' Trust shall have an initial term of one (1) year; *provided, however* that, if warranted by the facts and circumstances an extension of the term of the Creditors' Trust is necessary to accomplish the purposes of the Creditors' Trust, then the Creditor Trustee shall be authorized to extend the Creditors' Trust for up to two (2) additional terms of one year each (for a total of two (2) additional years). The Creditors' Trust may be terminated earlier than its scheduled termination if the Creditor Trustee has administered all of the Creditors' Trust Assets and performed all other duties required by this Plan and the Creditors' Trust Agreement. As soon as practicable after the final Distribution Date, the Creditor Trustee shall seek entry of a Final Order closing the Case pursuant to section 350(a) of the Bankruptcy Code.

(f) **Retained Actions; Initial Investigation.** Subject to the limitations set forth in the Creditors' Trust Agreement, on and after the Effective Date, the Liquidating Trustee shall have sole authority and responsibility for investigating, analyzing, commencing, prosecuting, litigating, compromising, collecting, and otherwise administering all Retained Actions.

On the Effective Date, or as soon as practicable thereafter, the Liquidating Trustee shall engage professionals as may be necessary or appropriate for the purpose of investigating the nature, scope and merit of all Retained Actions. At the conclusion of its investigation, such professionals shall meet with and present their findings and recommendations to the Liquidating Trustee. Professionals formerly employed by the Creditors' Committee may be engaged by the Liquidating Trustee to perform such additional services.

7.5 Reserves.

(a) **Funding of Reserves.** Payments required under this Plan shall be funded from proceeds of the Sale transaction and recoveries from litigation by the Creditors' Trust of the Retained Actions, all as set forth in the Amended Settlement.

(b) **Trust Expense Reserve.** On the Effective Date, a cash reserve account shall be established for the payment of ongoing administrative expenses of the Creditors' Trust in the minimum amount of \$250,000.

Thereafter, in accordance with the Plan and Creditors' Trust Agreement, ongoing administrative expenses of the Trust shall be funded from (i) proceeds of the Creditors' Trust litigation, and (ii) the Plan Escrow, as may be decided by the Liquidating Trustee (in its discretion); *provided, however*, that any cash used by the Liquidating Trustee from the Plan Escrow for administration of the Creditors' Trust shall be deemed to be Distributions to the holders of Allowed Claims in Class 4 under the Plan, on a dollar-for-dollar basis, for the purposes of determining whether such holders have received seventy-five percent (75%) in value of their Allowed Claims (at which point the sharing mechanism set forth in Article III is triggered).

The Creditors' Trust shall be required to file quarterly reports upon notice to the U.S. Trustee and other parties in interest.

(c) **Administrative and Priority Claims Reserve.** On the Effective Date, the Revised Administrative Escrow shall be released, and the Liquidating Trustee shall fund the Administrative and Priority Claims Reserve in the amount of the aggregate Administrative Claims Estimate or such other Amount as the Bankruptcy Court may direct as a condition of confirmation. The Liquidating Trustee shall, subject to the terms and conditions of the Creditor Trust Agreement and this Plan, pay each Allowed Administrative Claim, each Allowed Priority Tax Claim and Allowed Priority Claim as provided for in Article II of this Plan. In the event that excess Cash remains in the Administrative and Priority Claims Reserve after payment of all Allowed Claims to be paid therefrom, or at such time as the Cash in the Administrative and Priority Claims Reserve exceeds the Face Amount of the unpaid Administrative Claims as periodically determined by the Liquidating Trustee, such Cash shall be paid pursuant to the Amended Settlement.

(d) **Disputed General Unsecured Claims Reserve.** Prior to the first Distribution Date, the Liquidating Trustee shall withhold from property that would otherwise be distributed on account of Class 4 General Unsecured Claims entitled to Distributions under this Plan, in the Disputed Unsecured Claims Reserve, such property as may be necessary to equal one hundred percent (100%) of Distributions to which Holders of Disputed General Unsecured Claims would be entitled under this Plan if such Disputed Unsecured Claims were Allowed in their Disputed Claim Amount or as otherwise ordered by the Court. The Liquidating Trustee may request from the Bankruptcy Court, if necessary, estimation for any Disputed Claim that is contingent or unliquidated, or for which the Liquidating Trustee determines to reserve less than the Face Amount. The Liquidating Trustee shall withhold the applicable portion of the Disputed General Unsecured Claims Reserve with respect to such Claims based upon the estimated amount of each such Claim is either estimated or by the Bankruptcy Court.

The Liquidating Trustee shall, subject to the terms and conditions of the Creditor Trust Agreement and this Plan, make Distributions from the Disputed General Unsecured Claims Reserve on account of any Disputed General Unsecured Claim that has become an Allowed General Unsecured Claim since the preceding Distribution Date pursuant to the provisions of this Plan governing Distributions to Class 4 General Unsecured Claims.

After a Final Order has been entered, or other final resolution has been reached with respect to all Disputed General Unsecured Claims, any remaining property held in the Disputed General Unsecured Claims Reserve, shall be distributed pro rata to the Holders Allowed Class 4 Claims.

(e) **Reserve Satisfies Security or Bond Requirements.** In the event of an appeal of an order of the Bankruptcy Court with respect to a Claim, the Creditors' Trust shall be deemed to have satisfied any bond or other security requirement in connection with such appeal by reserving for the Face Amount of the Claim in the appropriate Reserve.

7.6 Remaining Funds.

(a) Any portion of the Revised Administrative Escrow or the Professional Reserves not required for the specific payments for which they have been designated shall be shared equally between the Prepetition Lenders, on account of the remaining balance of the CRG Secured Claim, and the Plan Escrow for the benefit of holders of Allowed Class 4 Claims, consistent with the Amended Settlement.

7.7 Liquidating Trustee.

(a) **Appointment.** The Liquidating Trustee shall be appointed by the Creditors' Committee. The appointment of the Liquidating Trustee shall be effective as of the Effective Date. Successor Liquidating Trustee(s) shall be appointed as set forth in the Creditors' Trust Agreement.

(b) **Term.** The Liquidating Trustee's term, including without limitation the term of any Successor Liquidating Trustee(s), shall expire upon termination of the Creditors' Trust pursuant to this Plan and/or the Creditors' Trust Agreement.

(c) **Powers and Duties.** The Liquidating Trustee shall be the exclusive representative of the Debtors' Estates and shall have the rights and powers set forth in the Creditors' Trust Agreement including, but not limited to, the rights and powers of a trustee under the Bankruptcy Code. The Liquidating Trustee shall be governed in all things by the terms of the Creditors' Trust Agreement and this Plan. The Liquidating Trustee shall administer the Creditors' Trust and the Creditors' Trust Assets and make Distributions from the Net Proceeds of the Creditors' Trust in accordance with this Plan and the Creditors' Trust Agreement. In addition, the Liquidating Trustee shall, in accordance with the terms of this Plan, take all actions necessary to wind down the affairs of the Debtors consistent with this Plan and applicable non-bankruptcy law. Subject to the terms of the Creditors' Trust Agreement, the Liquidating Trustee shall be authorized, empowered and directed to take all actions necessary to comply with this Plan and exercise and fulfill the duties and obligations arising hereunder, including, without limitation, to:

(i) To exercise all power and authority that may be or could have been exercised, commence all proceedings that may be or could have been commenced and take all actions that may be or could have been taken by the Debtors with like effect as, if authorized, exercised and taken by unanimous action of the Debtors partners, members, officers, directors and shareholders; including, without limitation, amendment of the certificates of incorporation and by-laws of the Debtors, merger of any Debtor into another Debtor, the dissolution of any Debtor and the assertion or waiver of any Debtors' attorney/client privilege;

(ii) To open and maintain bank and other deposit accounts, escrows and other accounts, calculate and implement Distributions to Holders of Allowed Claims as provided for or contemplated by the Plan and take other actions consistent with the Plan and the implementation thereof, including the establishment, reevaluation, adjustment and maintenance of appropriate Reserves in accordance with this Plan and

the Creditors' Trust Agreement, in the name of the Debtors or the Liquidating Trustee, even in the event of the dissolution of the Debtors;

(iii) To make a good faith valuation of the Creditors' Trust Assets, as soon as possible after the Effective Date;

(iv) Subject to the applicable provisions of the Plan, to collect and liquidate all Residual Assets pursuant to the Plan, to make Distributions of Net Proceeds generated by the sale or disposition of Residual Assets and to administer the winding-up of the affairs of the Debtors;

(v) To borrow funds and replenish the Reserves and to take all actions necessary to preserve and maximize the value of the Creditors' Trust Assets;

(vi) To object to any Claims (Disputed or otherwise), and to defend, compromise and/or settle any Claims prior to or following objection without the necessity of approval of the Bankruptcy Court;

(vii) To make decisions without further Bankruptcy Court approval, regarding the retention or engagement of professionals, employees and consultants by the Creditors' Trust and to pay, from the Trust Expense Reserve, (i) the charges incurred by the Creditors' Trust on or after the Effective Date for services of professionals, without application to the Bankruptcy Court, and (ii) disbursements, expenses or related support services relating to the winding down of the Debtors and implementation of the Plan, without application to the Bankruptcy Court;

(viii) To cause, on behalf of the Creditors' Trust, the Debtors, and their Estates all necessary tax returns and all other appropriate or necessary documents related to municipal, State, Federal or other tax law to be prepared or filed timely, in accordance with the Plan;

(ix) To invest Cash in accordance with section 345 of the Bankruptcy Code or as otherwise permitted by a Final Order of the Bankruptcy Court and as deemed appropriate by the Liquidating Trustee in accordance with the investment and deposit guidelines set forth in the Creditors' Trust Agreement;

(x) To enter into any agreement or execute any document required by or consistent with the Plan and perform all of the obligations of the Debtors or the Liquidating Trustee hereunder;

(xi) To abandon in any commercially reasonable manner, including abandonment or donation to a charitable organization, any assets that the Liquidating Trustee determines, at the conclusion of the Case, are of no benefit to creditors of the Debtors or too impractical to distribute, *provided, however*, that Court approval, upon notice and a hearing, shall be required for any abandonment or donation of assets with a value of five thousand dollars (\$5,000) or more;

(xii) To investigate (including pursuant to Bankruptcy Rule 2004), prosecute and/or settle any Retained Action, participate in or initiate any proceeding before the Bankruptcy Court or any other court of appropriate jurisdiction, participate as a party or otherwise in any administrative, arbitrative or other non-judicial proceeding, litigate or settle such Retained Actions on behalf of the Creditors' Trust and pursue to settlement or judgment such actions;

(xiii) To approve, without Bankruptcy Court approval, the settlement of one or more Retained Actions for which the amount claimed by the Creditors' Trust against a defendant is equal to or less than \$500,000 and to seek Bankruptcy Court approval, upon notice and a hearing, of the settlement of any Retained Actions for which the amount claimed by the Creditors' Trust is unliquidated or exceeds \$500,000 unless, upon notice and a hearing, the Bankruptcy Court enters a subsequent order that becomes a Final Order increasing such amount;

(xiv) To use Creditors' Trust Assets to purchase or create and carry all appropriate insurance policies, bonds or other means of assurance and protection of the Creditors' Trust Assets and pay all insurance premiums and other costs he or she deems necessary or advisable to insure the acts and omissions of the Liquidating Trustee;

(xv) To implement and/or enforce all provisions of this Plan;

(xvi) To maintain appropriate books and records (including financial books and records) to govern the liquidation and Distribution of the Creditors' Trust Assets, *provided, however*, that any abandonment or destruction of books and records shall require Bankruptcy Court approval, upon notice and a hearing;

(xvii) To pay fees incurred pursuant to 28 U.S.C. § 1930(a)(6) and to file with the Bankruptcy Court and serve on the United States Trustee quarterly post-confirmation financial reports for each of the Debtors until such time as such reports are no longer required, or the Bankruptcy Court orders otherwise, a final decree is entered closing these Chapter 11 Cases or these Chapter 11 Cases are converted or dismissed;

(xviii) To dissolve the Creditors' Trust if the Liquidating Trustee determines, in reliance on such professionals as it may retain, that the expense of administering the Creditors' Trust so as to make a final Distribution to Trust Beneficiaries is likely to exceed the value of the remaining Creditors' Trust Assets;

(xix) To seek one or more final decrees closing the Debtors' Cases;

(xx) To do all other acts or things consistent with the provisions of this Plan that the Liquidating Trustee deems reasonably necessary or desirable with respect to implementing this Plan;

(xxi) To be the Estate representative and successor of the Debtors and the Creditors' Committee for all purposes; and

(d) **Limitation of Liability; Exculpation of Liquidating Trustee.** To the greatest extent permitted by law, the Creditors' Trust will provide for the exculpation and indemnity of the Liquidating Trustee.

7.8 **Fees and Expenses.** Except as otherwise provided in this Plan, compensation of the Liquidating Trustee and the actual costs and expenses of the Liquidating Trustee and the Creditors' Trust (including, without limitation, the actual fees and expenses of the Liquidating Trustee Professionals) shall be paid from the Trust Expense Reserve. The Liquidating Trustee shall pay the actual reasonable fees and expenses of the Liquidating Trustee Professionals, as necessary to discharge the Liquidating Trustee's duties under this Plan and the Creditors' Trust Agreement. Payments to the Liquidating Trustee shall not require notice to any party, or an order of the Bankruptcy Court approving such payments.

7.9 **Investment Powers.** The powers of the Liquidating Trustee to invest any Cash that is held by the Creditors' Trust in any of the Reserves created by this Plan, other than those powers reasonably necessary to maintain the value of the Creditors' Trust Assets and to further the Creditors' Trust's liquidating purposes, shall be limited to powers to invest in demand and time deposits, such as short-term certificates of deposit, in federally insured banks, or other government-backed liquid investments, such as treasury bills. The Liquidating Trustee is prohibited from continuing or engaging in the conduct of a trade or business, except to the extent necessary to liquidate or otherwise dispose of the Creditors' Trust Assets include existing membership interests and as reasonably necessary to and consistent with the liquidating purpose of the Creditors' Trust.

7.10 **Tax Treatment of Holders of Creditors' Trust Interests.** The Debtors and the Liquidating Trustee shall treat the Creditors' Trust Beneficiaries as grantors of the Creditors' Trust and the Liquidating Trustee will file tax returns for the Creditors' Trust as a "grantor trust" pursuant to section 1.671-4(a) of the U.S. Treasury Regulations. Items of income, gain, loss, expense, and other tax items will be allocated to those Creditors' Trust Beneficiaries that would be entitled to receive such items if they constituted cash Distributions or reductions therefrom, and such Creditors' Trust Beneficiaries shall be responsible for the payment of taxes on a current basis that result from such allocations.

For all U.S. federal income tax purposes, all parties generally will be required to treat the transfer of Creditors' Trust Assets to the Creditors' Trust as (i) a transfer of the Creditors' Trust Assets to the beneficiaries of the Creditors' Trust followed by (ii) a deemed transfer of the Creditors' Trust Assets, by such beneficiaries to the Creditors' Trust, with the beneficiaries being treated as the grantors and owners of the Creditors' Trust. Each Holder that is a beneficiary of the Creditors' Trust will generally recognize gain (or loss) in its taxable year that includes the Effective Date in an amount equal to the difference between the amount realized in respect of its Claim and its adjusted tax basis in such Claim. The amount realized for this purpose should generally equal the fair market value of the Creditors' Trust Assets deemed received for U.S. federal income tax purposes under the Plan in respect of such Holder's Claim. A Holder that is deemed to receive for U.S. federal income tax purposes the Creditors' Trust Assets under the Plan in respect of its Claim should generally have a tax basis in such Assets in an amount equal to the fair market value of such Creditors' Trust Assets on the date of receipt. For the avoidance of doubt Holders of Claims in Classes 3, 4, and 5 will only be deemed to have received Retained Actions, not Residual Assets.

7.11 **Nature of Creditors' Trust Interests.** The Creditors' Trust Interests issued pursuant to the Plan shall be in the nature of equity interests, and not in the nature of notes, bonds, debentures or evidence of indebtedness. As such, all of the Creditors' Trust Interests shall be junior in right of payment to all liabilities and obligations of the Creditors' Trust and payments with respect to Creditors' Trust Interests shall be contingent upon recoveries of Net Proceeds from the liquidation of the Creditors' Trust Assets.

The Creditors' Trust Beneficiaries shall have beneficial interests in the Creditors' Trust Assets as provided herein. The Creditors' Trust Beneficiaries' proportionate interests in the Creditors' Trust Assets as thus determined shall not be transferable, except upon the death of the Creditors' Trust Beneficiary or by operation of law. The ownership of Creditors' Trust Interest shall not entitle a holder of any Creditors' Trust Interest to any title in or to the Creditors' Trust Assets (title to which shall be vested solely in the Liquidating Trustee) or to any right to call for a partition or division of the Creditors' Trust Assets or to require an accounting.

7.12 **Treatment of Reserves.** The Liquidating Trustee may file a tax election to treat any of the Reserves established for Disputed Claims (such as the Disputed Unsecured Claims Reserve) as a Disputed Ownership Fund ("DOF") within the meaning of section 1.468B-9 of the U.S. Treasury Regulations rather than tax such Reserve as a part of the grantor Creditors' Trust. If the election is made, the Creditors' Trust shall comply with all U.S. federal and state tax reporting and tax compliance requirements of the DOF, including but not limited to the filing of a separate U.S. federal income tax return for the DOF and the payment of U.S. federal and/or state income tax due.

7.13 **No Revesting of Assets.** Creditors' Trust Assets shall not be vested in the Debtors on or following the Effective Date, but shall be vested in the Creditors' Trust, and continue to be subject to the jurisdiction of the Bankruptcy Court following confirmation of this Plan until such property is distributed to Holders of Allowed Claims or abandoned in accordance with the provisions of this Plan, the Creditors' Trust Agreement and the Confirmation Order.

7.14 **Creditors' Committee.** On the Effective Date, the Creditors' Committee will be deemed dissolved and cease to exist. The dissolution of the Creditors' Committee as provided herein shall not prevent any Professional from filing a Fee Claim for service provided to the Creditors' Committee prior to the Effective Date.

7.15 **Release of Liens.** Except as otherwise provided in this Plan, the Confirmation Order, or in any document, instrument, or other agreement created in connection with this Plan, on the Effective Date, all mortgages, deeds of trust, Liens, or other security interests against the property of the Estates shall be released. The Liquidating Trustee shall have the authority to file lien releases in connection with the foregoing.

7.16 **Exemption from Certain Transfer Taxes.** Pursuant to Bankruptcy Code section 1146(a), any transfers from any of the Debtors to the Creditors' Trust or by the Debtors to any other Entity pursuant to this Plan shall not be subject to any stamp tax or similar tax, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forgo the collection of any such tax or governmental assessment and to accept for filing and

recordation any applicable instruments or documents without the payment of any such tax or governmental assessment.

7.17 **Preservation of Retained Actions.** Unless a Retained Action against any Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including the Confirmation Order, the DIP Order and the Sale Order), the Debtors and their Estates, the Prepetition Lender, and the Creditors' Committee, expressly reserve such Retained Action to be vested in the Creditors' Trust for possible prosecution by the Liquidating Trustee, and, therefore, no preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Retained Actions upon or after the entry of the Confirmation Order or Effective Date based on the Plan or the Confirmation Order, except where such Retained Actions have been released in the Plan or any Final Order (including the Confirmation Order and the Sale Orders). In accordance with section 1123(b) of the Bankruptcy Code, the Creditors' Trust may enforce all rights to commence and pursue, as appropriate, any and all such Retained Actions, whether arising prior to or after the Petition Date, and the Creditors' Trust's rights to commence, prosecute, or settle any such Retained Actions shall be preserved notwithstanding entry of the Confirmation Order or the occurrence of the Effective Date.

The failure of the Debtors to list a claim, right, cause of action, suit or proceeding shall not constitute a waiver or release by the Debtors or their Estates of such claim, right of action, suit or proceeding. **No Entity may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Retained Actions against them as any indication that the Liquidating Trustee will not pursue any and all available Retained Actions against them.**

In accordance with section 1123(b)(3) of the Bankruptcy Code, any Retained Action that a Debtor may hold against any Entity shall vest in the Creditors' Trust and the Liquidating Trustee on behalf of the Creditors' Trust. In addition, the Creditors' Trust reserves the right to pursue or adopt any claims alleged in any lawsuit in which the Debtors are a defendant or an interested party, against any Entity, including the plaintiffs or co-defendants in such lawsuits.

7.18 **Setoffs.** Except for Claims expressly allowed hereunder, on or after the Effective Date, the Liquidating Trustee, may, pursuant to applicable law (including Bankruptcy Code section 553), offset against any Claim, including an Administrative Claim, before any Distribution is made on account of such Claim, any and all of the claims, rights and Causes of Action of any nature that the Debtors or the Liquidating Trustee may hold against the Holder of such Claim.

7.19 **Withdrawal of Plan.** The Debtors reserve the right to revoke and withdraw or modify this Plan at any time prior to the Confirmation Date in the exercise of their fiduciary duties or, if the Debtors are for any reason unable to consummate this Plan after the Confirmation Date, at any time up to the Effective Date. If the Debtors revoke or withdraw this Plan, (a) nothing contained in this Plan shall be deemed to constitute a waiver or release of any claims by or against the Debtors or to prejudice in any manner the rights of the Debtors or any Entity in any further proceeding involving the Debtors and (b) the result shall be the same as if the Confirmation Order were not entered, this Plan was not filed and the Effective Date did not occur.

7.20 **Insurance Preservation.** Nothing in this Plan shall diminish or impair the enforceability of any insurance policies and related agreements that may cover Claims and Causes of Action against the Debtors, the D&O's or any other Entity. Nothing in this Plan shall in any way operate to impair, diminish, or waive, or have the effect of impairing, diminishing or waiving, the legal or contractual rights, claims, defenses, liabilities or obligations of any Entity, including, without limitation, the Debtors, the Prepetition Lenders, the Creditors' Committee, the Creditors' Trust, the Liquidating Trustee, the D&Os and any insurers, pursuant to any insurance policies and related agreements, including, without limitation, the terms, conditions, limitations, exclusions, and endorsements thereof, that may cover Claims or Causes of Action against the Debtors, the Estates, the Creditors' Trust, the Liquidating Trustee, the D&Os, any insurers or any other Entity.

ARTICLE VIII

EFFECT OF PLAN ON CLAIMS AND INTERESTS

8.1 **Binding Effect.** This Plan shall be binding upon and inure to the benefit of the Debtors, all present and former Holders of Claims and Interests, and their respective successors and assigns, including, but not limited to, the Creditors' Trust and the Liquidating Trustee.

8.2 **Compromise and Settlement.** Notwithstanding anything contained in this Plan to the contrary, the allowance, classification, and treatment of all Allowed Claims and their respective Distributions and treatments under this Plan take into account and conform to the relative priority and rights of the Claims and the Interests in each Class. The Confirmation Order will constitute the Bankruptcy Court's finding and determination that the settlements reflected in the Amended Settlement Order and this Plan are (1) in the best interests of the Debtors, their Estates and all Holders of Claims, (2) fair, equitable and reasonable, (3) made in good faith, and (4) approved by the Bankruptcy Court pursuant to Bankruptcy Rule 9019. Notwithstanding anything contained in this Plan or the Confirmation Order, no Retained Action is being settled, compromised, released, or otherwise affected by this Plan.

8.3 **No Discharge of the Debtors.** Pursuant to section 1141(d)(3) of the Bankruptcy Code, confirmation of the Plan will not discharge Claims against the Debtors; *provided, however*, that no Holder of any Claim or Interest may, on account of such Claim or Interest, seek or receive any payment or other Distribution from, or seek recourse against, any of the Estates, the Creditors' Trust, the Liquidating Trustee, and/or their respective successors, assigns and/or property, except as expressly provided in this Plan.

8.4 **Injunction.**

(a) **The Confirmation Order shall provide, among other things, that all Entities who have held, hold or may hold Claims against or Interests in the Debtors are, with respect to any such Claims or Interests, permanently enjoined from and after the Effective Date from taking any of the following actions (other than actions to enforce any rights or obligations under this Plan): (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against the Debtors, the Creditors' Trust, or their respective properties, or the Liquidating Trustee; (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting or otherwise**

recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against the Debtors or the Creditors' Trust, or their respective property, or against the Liquidating Trustee; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtors, the Creditors' Trust, or any of their respective property, or against the Liquidating Trustee; (iv) asserting any right of setoff, directly or indirectly, against any obligation due the Debtors, the Creditors' Trust, or their respective property, or the Liquidating Trustee, except as contemplated or allowed by this Plan; (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of this Plan; and (vi) prosecuting or otherwise asserting any right, claim or cause of action released pursuant to this Plan, including, without limitation, any right, claim or cause of action against an Exculpated Party that has been exculpated pursuant to Section 8.5 of this Plan; *provided, however,* that the injunction provided in this Section shall neither bar any Entity from asserting any defense in an action commenced by or on behalf of any of the Debtors or the Creditors' Trust, nor prohibit any Entity from asserting any right expressly preserved or contemplated by this Plan. The injunction provided for in this Section shall be limited in all respects to the breadth of the releases and exculpations granted in this Plan.

(b) By accepting Distributions pursuant to this Plan, each Holder of an Allowed Claim will be deemed to have specifically consented to the Injunctions set forth in this Section.

8.5 **Exculpation.** Effective as of the Effective Date, the Exculpated Parties shall neither have nor incur any liability to any Entity for any claims or Causes of Action arising prior to or on the Effective Date for any act taken or omitted to be taken in connection with, or related to, preparing and filing the Chapter 11 Cases, or formulating, negotiating, preparing, disseminating, implementing, administering, confirming or effecting the confirmation or consummation of the Plan, the Disclosure Statement, or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other postpetition act taken or omitted to be taken in connection with the liquidation of the Debtors, the CRG Settlement, the Amended Settlement, the Disclosure Statement, or confirmation or consummation of the Plan; *provided, however,* that the foregoing provisions of this exculpation shall not operate to waive, release or otherwise impair: (i) the Retained Actions and any Causes of Action expressly set forth in and preserved by the Plan or the Plan Supplement; (ii) any Causes of Action arising from criminal acts, willful misconduct, actual fraud, or gross negligence of such applicable Exculpated Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction; (iii) any of the indebtedness or obligations incurred under the Plan and the contracts, instruments, releases, indentures, and other agreements and documents delivered under or in connection with the Plan or assumed under the Plan or assumed under Final Order of the Bankruptcy Court; (iv) the rights of any Entity to enforce the Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered under or in connection with the Plan or assumed under Final Order of the Bankruptcy Court; and/or (v) any Objections with respect to any Fee Claims in these Chapter 11 Cases; *provided, further,* that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning its respective duties under, or in connection with, the above-referenced documents, actions or inactions.

The foregoing exculpation shall be effective as of the Effective Date without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization, or approval of any Person.

8.6 Releases by the Debtors. Except as otherwise expressly provided herein or in the Confirmation Order, on the Effective Date, for good and valuable consideration, to the fullest extent permissible under applicable law, each of the Debtors, and the Liquidating Trustee, on their own behalf and as a representative of the Estates, shall, and shall be deemed to, completely and forever release, waive, void, extinguish and discharge unconditionally, each and all of the Released Parties of and from any and all Claims, Causes of Action, obligations, suits, judgments, damages, debts, rights, remedies and liabilities of any nature whatsoever, whether liquidated or unliquidated, fixed or Contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are or may be based in whole or part on any act, omission, transaction, event or other circumstance taking place or existing on or prior to the Effective Date (including prior to the Petition Date) in connection with or related to any of the Debtors, their respective assets, property and Estates or the Chapter 11 Cases, that may be asserted by or on behalf of any of the Debtors or their respective Estates, against any of the Released Parties. The foregoing releases shall not extend to acts constituting willful misconduct, bad faith, or gross negligence.

8.7 Third-Party Release. As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, including the obligations of the Debtors under the Plan and the contributions of the Released Parties to facilitate and implement the Plan, and the Releasing Parties having opted into granting the Third-Party Release, to the fullest extent permissible under applicable law, as such law may be extended after the Effective Date, each of the Releasing Parties shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released, waived, and discharged each Released Party from any and all Claims, Interests, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, including any derivative claims, asserted or assertable on behalf of any of the Debtors or their Estates, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or in any way relating to, or in any manner arising from, in whole or in part, the Debtors, the Sale process, the Chapter 11 Cases, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, preparation, dissemination and filing of the Combined Disclosure Statement and Plan and any related documents (including, for the avoidance of doubt, the Plan Supplement), the DIP Facility, the Sale process and related documents, or related agreements, instruments, or other documents, the pursuit of Confirmation of the Plan, the pursuit of consummation of the Plan, the administration and implementation of the Plan, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date (including prior to the Petition Date).

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Third-Party Release, which includes by reference each of the related provisions and definitions contained in this Plan, and further, shall constitute the Bankruptcy Court's finding that the Third-Party Release is: (1) by virtue of the opt-in procedure, fully consensual; (2) in exchange for the good and valuable consideration provided by the Released Parties, including pursuant to the Amended Settlement to facilitate the negotiation and filing of this Combined Disclosure Statement and Plan and the funding of the Creditors' Trust, among other things; (3) a good-faith settlement and compromise of claims released by the Third-Party Release; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Releasing Parties asserting any claim, Cause of Action, or liability related thereto, of any kind whatsoever, against any of the Released Parties or their property, released pursuant to the Third-Party Release.

8.8 **Consensual Non-Debtor Releases.** Nothing in the Plan is intended to, nor shall the Plan be interpreted to, effect a nonconsensual release by a Holder of a Claim in favor of a party that is not a Debtor, it being acknowledged that such Holder shall be deemed to release a party that is not a Debtor under the Plan solely to the extent that such holder consensually elects to provide such Plan release in accordance with the opt-in release procedures set forth in any applicable Ballot. The holder of a Claim shall receive the same amount of consideration under the Plan whether or not such Holder elects to release a party that is not a Debtor in accordance with the opt-in release procedures set forth in any applicable Ballot.

8.9 **Indemnification Obligations.** Except as otherwise provided in a previously entered Order of the Bankruptcy Court, this Plan, or any contract, instrument, release, or other agreement or document entered into in connection with this Plan, including Sections 7.20 and 9.1 of this Plan, any and all indemnification obligations that the Debtors have pursuant to a contract, instrument, agreement, certificate of incorporation, by-law, comparable organizational document or any other document, or applicable law, shall be rejected as of the Effective Date, to the extent executory; *provided, however*, that (i) all rights, if any, of the D&Os, the Debtors, the Estates, the Creditors' Committee, the Creditors' Trust, and the Liquidating Trustee in and to any of the Debtors' insurance policies hereby are expressly reserved and are not limited in any way by this Plan; and (ii) nothing in this Plan shall be deemed to modify any indemnification obligations of the Debtors pursuant to an Order of the Bankruptcy Court concerning the retention or employment of a Professional. Nothing in this Plan shall be deemed to release the Debtors' insurers from, or limit the obligations of any of the Debtors' insurers concerning any claims that might be asserted by insureds, additional insureds, or counter-parties to contracts or agreements providing for the indemnification by and of the Debtors, to the extent of available coverage. To the extent that this Section 8.9 alters, affects, impairs, limits or otherwise modifies any insurance coverage of any person, this Section 8.9 shall be of no force and effect as to the insurance coverage of such person.

8.10 **Terms of Injunctions or Stays.** Unless otherwise provided in this Plan, all injunctions or stays provided for in these Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until these Chapter 11 Cases are closed.

ARTICLE IX
EXECUTORY CONTRACTS AND UNEXPIRED LEASES

9.1 **Rejection of Executory Contracts and Unexpired Leases.** Except as otherwise provided in the Confirmation Order, this Plan, any other Plan Document, the Sale Order, including the *Notice of Proposed Assumption or Assumption and Assignment of Certain Executory Contracts* [D.I. 127] and *Supplemental Notice of Proposed Assumption and Assignment of Certain Executory Contracts* [D.I. 205], the Bar Date Order, or any other relevant order of the Bankruptcy Court, the Confirmation Order shall constitute an order under section 365 of the Bankruptcy Code rejecting all prepetition Executory Contracts to which any Debtor is a party, to the extent such contracts or leases are Executory Contracts, on and subject to the occurrence of the Effective Date, unless such contract or lease (a) is expressly assumed hereunder or previously shall have been assumed or assumed and assigned by the Debtors, or (b) is the subject of a pending motion to assume or reject on the Confirmation Date; *provided, however*, that as to all policies and agreements giving rise to insurance in favor of the Debtors or their Estates, the Debtors believe that the insurance agreements of the Debtors are not Executory Contracts and therefore are not subject to assumption or rejection. To the extent that an insurance policy or agreement is determined to be an Executory Contract subject to assumption by the Debtors, such executory insurance policy or agreement, as the case may be, is hereby assumed and assigned to, and shall vest with, the Creditors' Trust. For the avoidance of doubt, all insurance policies and agreements of the Debtors and the D&Os, and all obligations of any of the Debtors and the other counterparties thereto, shall be unaffected by the Plan and shall remain enforceable according to their terms and applicable law.

9.2 **Supplemental Bar Date for Rejection Damages.** If the rejection of any Executory Contract under this Plan gives rise to a Claim by the non-Debtor party or parties to such Executory Contract, such Claim, to the extent that it is timely filed and is an Allowed Claim, shall be classified in Class 4; *provided, however*, that any potential General Unsecured Claim arising from such rejection shall be forever barred and shall not be enforceable against the Debtors, the Creditors' Trust, their successors or properties, unless a proof of such Claim is filed and served on the Debtors or the Liquidating Trustee, as applicable, within thirty (30) days after the date of notice of the entry of the order of the Bankruptcy Court rejecting the Executory Contract (which may include the Confirmation Order).

ARTICLE X
DISTRIBUTIONS

10.1 **Distributions for Claims Allowed as of the Effective Date.** Except as otherwise provided herein, and only after the funding of the Reserves, or as ordered by the Bankruptcy Court, all Distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on a Distribution Date. Distributions on account of Claims that first become Allowed Claims after the Effective Date shall be made pursuant to the terms and conditions of this Plan. Notwithstanding any other provision of this Plan to the contrary, no Distribution shall be made on account of any Claim or portion thereof that (i) has been satisfied after the Petition Date pursuant to an order of the Bankruptcy Court; (ii) is listed in the Schedules as contingent, unliquidated, disputed or in a zero amount, and for which a proof of Claim has not

been timely filed; or (iii) is evidenced by a proof of Claim that has been amended by a subsequently filed proof of Claim that purports to amend the prior proof of Claim.

10.2 No Distributions on Disputed Claims. No Distribution shall be made by the Liquidating Trustee with respect to a Disputed Claim until the same, or some portion thereof, becomes an Allowed Claim.

10.3 Distributions on Claims Allowed After the Effective Date. Payments and Distributions from the Creditors' Trust to each respective Holder on account of a Disputed Claim, to the extent that such Disputed Claim ultimately becomes an Allowed Claim, shall be made in accordance with provisions of this Plan that govern Distributions to such Holders of Allowed Claims. Except as otherwise provided in this Plan, within ninety (90) days after such Disputed Claim becomes an Allowed Claim, the Liquidating Trustee shall distribute to such Holder any property from the applicable Reserve or the Creditors' Trust that would have been distributed on the dates Distributions were previously made to Holders of Allowed Claims if such Disputed Claim had been an Allowed Claim on such dates.

All Distributions made under this Article on account of an Allowed Claim will be as if such Disputed Claim had been an Allowed Claim on the dates Distributions were previously made to Holders of Allowed Claims included in the applicable Class.

10.4 Objections to and Estimation of Claims. Unless otherwise provided in this Plan, from the Effective Date through the Claims Objection Deadline, the Liquidating Trustee shall have sole and exclusive standing to object to Claims in order to have the Bankruptcy Court determine the amount and treatment of any Claim. Subject to the terms of the Creditors' Trust Agreement, from and after the Effective Date, the Liquidating Trustee may settle or compromise any Disputed Claim without approval of the Bankruptcy Court. Except as otherwise provided in this Plan, if a party files a Proof of Claim and (i) the Debtors, or the Liquidating Trustee, as applicable, file an objection to that Claim or otherwise formally challenge the Claim or (ii) the Claim otherwise is a Disputed Claim under this Plan, then such Claim shall be Disputed unless Allowed or Disallowed by a Final Order or as otherwise set forth in this Plan. Except as otherwise provided in this Plan, all Proofs of Claim filed after the Effective Date shall be Disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against the Debtors, the Estates or the Creditors' Trust, without the need for any objection by the Liquidating Trustee or any further notice to or action, order, or approval of the Bankruptcy Court.

Except as set forth in this Plan with respect to Administrative Claims, all objections to Claims must be filed and served on the Holders of such Claims by the applicable Claims Objection Deadline, as the same may be extended by the Bankruptcy Court. If an objection has not been filed to a Proof of Claim or the Schedules have not been amended with respect to a Claim that (i) was Scheduled by the Debtors but (ii) was not Scheduled as contingent, unliquidated, and/or disputed, by the applicable Claims Objection Deadline, as the same may be extended by order of the Bankruptcy Court, the Claim to which the Proof of Claim or Scheduled Claim relates will be treated as an Allowed Claim if such Claim has not been allowed earlier. Notice of any motion for an order extending the Claims Objection Deadline shall be required to be given only to those Entities that have requested notice in the Case, or to such Entities as the Bankruptcy Court shall order.

10.5 Delivery of Distributions and Undeliverable or Unclaimed Distributions.

(a) **Delivery of Distributions in General.** Distributions to Holders of Allowed Claims shall be made at such Holder's Distribution Address.

Distributions shall be made from the Creditors' Trust, as applicable, in accordance with the terms of this Plan and, if applicable, the Creditors' Trust Agreement.

In making Distributions under this Plan, the Liquidating Trustee may rely upon the accuracy of the claims register maintained by the Claims Agent in the Case, as modified by any Final Order of the Bankruptcy Court disallowing Claims in whole or in part.

(b) **Undeliverable and Unclaimed Distributions.** If the Distribution to any Holder of an Allowed Claim is returned to the Liquidating Trustee as undeliverable or is otherwise an Unclaimed Distribution, no further Distributions shall be made to such Holder unless and until the Liquidating Trustee is notified in writing of such Holder's then-current address, at which time all missed Distributions shall be made to such Holder without interest. If a Distribution is returned as undeliverable, the Liquidating Trustee shall use reasonable efforts to determine such Creditor's then-current address. Unclaimed Distributions shall be returned to the Creditors' Trust until such Distributions are claimed.

(c) **Treatment of Unclaimed Distributions.** Any Holder of an Allowed Claim that does not assert a Claim pursuant to this Plan for an Unclaimed Distribution within three (3) months after the final Distribution Date shall be deemed to have forfeited its Claim for such undeliverable or unclaimed Distribution and shall be forever barred and enjoined from asserting any such Claim for an Unclaimed Distribution against the Debtors and their Estates, the Liquidating Trustee, the Creditors' Trust, and their respective agents, attorneys, representatives, employees or independent contractors, and/or any of its and their property. In such cases, any Cash otherwise reserved for Unclaimed Distributions shall become the property of the Creditors' Trust free of any restrictions thereon and notwithstanding any federal or state escheat laws to the contrary and shall be distributed in accordance with the terms of this Plan and the Creditors' Trust Agreement. Nothing contained in this Plan or the Creditors' Trust Agreement shall require the Debtors or the Liquidating Trustee to attempt to locate any Holder of an Allowed Claim; *provided, however*, that in his sole discretion, the Liquidating Trustee may periodically publish notice of Unclaimed Distributions.

10.6 Interest on Claims. Except as specifically provided for in this Plan or the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claims, and no Holder shall be entitled to interest accruing on or after the Petition Date on any Claim. Except as specifically provided for in this Plan or the Confirmation Order, or required by applicable bankruptcy law, interest shall not accrue or be paid upon any Disputed Claim in respect of the period from the Petition Date to the date a final Distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim.

10.7 Withholding and Reporting Requirements. In connection with this Plan and all Distributions under this Plan, the Liquidating Trustee shall, to the extent applicable, comply

with all tax withholding, payment, and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all Distributions under this Plan shall be subject to any such withholding, payment, and reporting requirements. The Liquidating Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment, and reporting requirements. All amounts properly withheld from Distributions to a Holder as required by applicable law and paid over to the applicable taxing authority for the account of such Holder shall be treated as part of the Distributions to such Holder.

All Entities holding Claims shall be required to provide any information necessary to effect information reporting and withholding of such taxes. No Distribution shall be made to or on behalf of such Entity pursuant to this Plan unless and until such Entity has furnished such information. Any property to be distributed pursuant to this Plan shall be deemed: (i) pending the receipt of such information in the manner established by the Liquidating Trustee, an Undeliverable Distribution pursuant to Section 10.5 of this Plan; or (ii) if such information is not received by the deadline established by the Liquidating Trustee and approved by the Bankruptcy Court upon notice and a hearing, forfeited and treated in accordance with Section 10.5 of this Plan.

Notwithstanding any other provision of this Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to this Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such Distribution, and (b) no Distribution shall be made to or on behalf of such Holder pursuant to this Plan unless and until such Holder has made arrangements satisfactory to the Liquidating Trustee for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon the Liquidating Trustee in connection with such Distribution. Any property to be distributed pursuant to this Plan shall be deemed: (i) pending the implementation of such arrangements, an Undeliverable Distribution pursuant to Section 10.5 of this Plan; or (ii) if such arrangements are not implemented by the deadline established by the Liquidating Trustee and approved by the Bankruptcy Court upon notice and a hearing, forfeited and treated in accordance with Section 10.5 of this Plan.

10.8 **Miscellaneous Distribution Provisions.**

(a) **Method of Cash Distributions.** Any Cash payment to be made by the Liquidating Trustee pursuant to this Plan will be in U.S. dollars and may be made, at the sole discretion of the Liquidating Trustee, by draft, check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law. In the case of foreign creditors, Cash payments may be made, at the option of the Liquidating Trustee, in such funds and by such means as are necessary or customary in a particular jurisdiction.

(b) **Distributions on Non-Business Days.** Any payment or Distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day.

10.9 **De Minimis Distribution Provisions.** No Distribution shall be required to be made hereunder to any Holder of a Claim unless such Holder is to receive in such Distribution at least \$100. Any such Distribution not made in accordance with the provisions of this Article shall be retained by the Liquidating Trustee and invested as provided in this Plan. Any Distribution

not made in accordance with this Article to such Holder, shall be held in trust for the relevant Holder until the earlier of (x) the date the next Distribution is scheduled to be made to such Holder; *provided, however*, that such subsequent Distribution, taken together with amounts retained hereby, equals at least \$100.

10.10 Distribution Record Date. As of the close of business on the Distribution Record Date, the various lists of Holders of Claims and Interests in each of the Classes, as maintained by the Debtors, or their agents, shall be deemed closed and there shall be no further changes in the record Holders of any of the Claims or Interests. Neither the Liquidating Trustee nor the Debtors will have any obligation to recognize the transfer of or sale of any participation in any Allowed Claim that occurs after the close of business on a Distribution Record Date, and will be entitled for all purposes herein to recognize, deal with and distribute only to those Holders of Allowed Claims who are record Holders of such Claims, or participants therein, as of the close of business on the Distribution Record Date, as stated on the official claims register.

ARTICLE XI

CONFIRMATION AND CONSUMMATION OF THE PLAN

11.1 Conditions to Confirmation. The following are conditions precedent to the occurrence of the Confirmation Date.

(a) A Final Order finding that the Disclosure Statement contains adequate information pursuant to section 1125 of the Bankruptcy Code shall have been entered by the Bankruptcy Court;

(b) A proposed Confirmation Order that is reasonably acceptable to each of the Proponents;

(c) All documents contained in the exhibits and the Plan Supplement are in form and substance reasonably satisfactory to each of the Proponents;

(d) Approval of all provisions, terms, and conditions hereof shall be contained in the Confirmation Order; and

(e) The Professional Reserves shall have been funded in accordance with the Amended Settlement, the DIP Order, and the Cash Collateral Amendment.

11.2 Conditions to Effective Date. The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived in writing:

(a) The Confirmation Order shall have been entered and shall provide that the Debtors, the Creditors' Trust, and the Liquidating Trustee, as applicable, are authorized and directed to take all actions they deem necessary or appropriate to enter into, implement, and consummate the contracts, instruments, releases, leases, indentures, and other agreements or documents created in connection with this Plan and effectuate, advance, or further the purposes thereof;

(b) The Confirmation Order, the Plan, and all Plan Exhibits shall be, in form and substance, reasonably acceptable to the Debtors, the Prepetition Lenders, and the Creditors' Committee, and shall have been executed and delivered by all parties signatory thereto;

(c) All other actions, documents, and agreements necessary to implement this Plan shall have been effected or executed; and

(d) The Reserves shall have been funded in accordance with the Amended Settlement, the Cash Collateral Amendment, and the Plan.

11.3 Consequences of Non-Occurrence of Effective Date. If the Effective Date does not timely occur, the Debtors reserve all rights to seek an order from the Bankruptcy Court directing that the Confirmation Order be vacated and that this Plan be null and void in all respects. If the Bankruptcy Court shall have entered an order vacating the Confirmation Order, the time within which the Debtors may assume and assign or reject all Executory Contracts and unexpired leases not previously assumed, assumed and assigned, or rejected, shall be extended for a period of thirty (30) days after the date the Confirmation Order is vacated, without prejudice to further extensions.

ARTICLE XII

ADMINISTRATIVE PROVISIONS

12.1 Retention of Jurisdiction. Notwithstanding confirmation of this Plan or occurrence of the Effective Date, and except as otherwise provided by applicable law, the Bankruptcy Court shall retain such jurisdiction as is legally permissible, including for the following purposes:

(a) To determine the allowability, classification, or priority of Claims upon objection of the Debtors, the Liquidating Trustee, or any other party in interest entitled to file an objection, and the validity, extent, priority and nonavoidability of consensual and nonconsensual liens and other encumbrances;

(b) To issue injunctions or take such other actions or make such other orders as may be necessary or appropriate to restrain interference with this Plan or its execution or implementation by any Entity, to construe and to take any other action to enforce and execute this Plan, the Confirmation Order, or any other order of the Bankruptcy Court, to issue such orders as may be necessary for the implementation, execution, performance and consummation of this Plan and all matters referred to herein, and to determine all matters that may be pending before the Bankruptcy Court in the Case on or before the Effective Date with respect to any Entity;

(c) To protect the property of the Estates, including Creditors' Trust Assets, from claims against, or interference with, such property, including actions to quiet or otherwise clear title to such property or to resolve any dispute concerning Liens on property of the Estates or Creditors' Trust Assets;

(d) To determine any and all applications for allowance of Fee Claims;

(e) To determine any Administrative Claims, Priority Tax Claims, Other Priority Claims, or any other request for payment of claims or expenses entitled to priority under section 507(a) of the Bankruptcy Code;

(f) To resolve any disputes arising under or related to the implementation, execution, consummation or interpretation of this Plan and the making of Distributions hereunder;

(g) To determine any and all motions related to the rejection, assumption or assignment of Executory Contracts or unexpired leases, or to determine any motion to reject an Executory Contract or unexpired lease;

(h) To determine all applications, motions, adversary proceedings, contested matters, actions, and any other litigated matters instituted in and prior to the closing of the Chapter 11 Cases, including any remands;

(i) To enter one or more Final Orders closing the Debtors' Chapter 11 Cases;

(j) To modify this Plan under section 1127 of the Bankruptcy Code, to remedy any defect, cure any omission, or reconcile any inconsistency in this Plan or the Confirmation Order so as to carry out its intent and purposes;

(k) To issue such orders in aid of consummation of this Plan and the Confirmation Order notwithstanding any otherwise applicable non-bankruptcy law, with respect to any Entity, to the full extent authorized by the Bankruptcy Code;

(l) To enable the Liquidating Trustee to prosecute any and all proceedings to set aside Liens and to recover any transfers, assets, properties or damages to which the Estates may be entitled under applicable provisions of the Bankruptcy Code or any other federal, state or local laws except as may be expressly waived pursuant to this Plan;

(m) To determine any tax liability of the Debtors or the Creditors' Trust pursuant to section 505 of the Bankruptcy Code, and to address any request by the Liquidating Trustee or the Creditors' Trust for a prompt audit pursuant to section 505(b) of the Bankruptcy Code;

(n) To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated;

(o) To resolve any disputes concerning whether an Entity had sufficient notice of the Chapter 11 Cases, the Bar Date Order, or the otherwise applicable Claims bar date, the hearing to consider approval of the Combined Disclosure Statement and Plan or the Confirmation Hearing;

(p) To resolve any dispute or matter arising under or in connection with any order of the Bankruptcy Court entered in these Chapter 11 Cases;

(q) To authorize sales of assets as necessary or desirable and resolve objections, if any, to such sales;

- (r) To hear and resolve Claims and Retained Actions;
- (s) To resolve any disputes concerning any exculpation of a non-debtor hereunder or the injunction against acts, employment of process or actions against such non-debtor arising hereunder;
- (t) To approve any Distributions, or objections thereto, under this Plan;
- (u) To approve any Claims settlement entered into or offset exercised by the Liquidating Trustee; and
- (v) To determine such other matters, and for such other purposes, as may be provided in the Confirmation Order or as may be authorized under provisions of the Bankruptcy Code.

12.2 **Preservation of Exclusivity.** By jointly proposing this Combined Disclosure Statement and Plan, the Debtors are not waiving their exclusive rights to file and solicit acceptances of a chapter 11 plan under section 1121 of the Bankruptcy Code.

12.3 **Amendments.**

(a) **Preconfirmation Amendment.** The Debtors, in the exercise of their fiduciary duties, may modify this Plan at any time prior to the entry of the Confirmation Order, subject to the consent of the Prepetition Lenders and the Creditors' Committee, which consent shall not be unreasonably withheld, provided that this Plan, as modified, and the disclosure statement pertaining thereto meet applicable Bankruptcy Code requirements and in accordance with the terms and conditions of the Amended Settlement and the Cash Collateral Amendment.

(b) **Postconfirmation Amendment Not Requiring Resolicitation.** After the entry of the Confirmation Order, the Proponents may modify this Plan to remedy any defect or omission or to reconcile any inconsistencies in this Plan or in the Confirmation Order, as may be necessary to carry out the purposes and effects of this Plan, provided that: (i) the Proponents obtain approval of the Bankruptcy Court for such modification, after notice and a hearing; and (ii) such modification shall not materially and adversely affect the interests, rights, treatment or Distributions of any Class of Allowed Claims or Interests under this Plan.

(c) **Postconfirmation and Pre-consummation Amendment Requiring Resolicitation.** After the Confirmation Date and before substantial consummation of this Plan, the Proponents may modify this Plan in a way that materially and adversely affects the interests, rights, treatment, or Distributions of a Class of Claims or Interests, only if: (i) this Plan, as modified, meets applicable Bankruptcy Code requirements; (ii) the Proponents obtain Court approval for such modification, after notice and a hearing; (iii) such modification is accepted by at least two-thirds in amount, and more than one-half in number, of Allowed Claims voting in each Class materially and adversely affected by such modification; and (iv) the Debtors comply with section 1125 of the Bankruptcy Code with respect to this Plan as modified.

12.4 **Successors and Assigns.** The rights, benefits and obligations of any person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, the heirs, executors, administrators, successors and/or assigns of such person or Entity.

12.5 **Governing Law.** Except to the extent that the Bankruptcy Code, Bankruptcy Rules or other federal laws apply, the rights and obligations arising under this Plan shall be governed by and construed and enforced in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law.

12.6 **Corporate Action.** Any matters provided for under this Plan involving the corporate structure of the Debtors or corporate action, as the case may be, to be taken by or required of the Debtors shall be deemed to have occurred and be effective as of the Effective Date and shall be authorized and approved in all respects, without any requirement of further action by the Debtors or the Liquidating Trustee, as the case may be.

12.7 **Effectuating Documents and Further Transactions.** The Debtors and the Liquidating Trustee shall be authorized to execute, deliver, file, or record such documents, contracts, instruments, releases, and other agreements and take such other actions as they deem necessary to effectuate and further evidence the terms and conditions of this Plan.

12.8 **Confirmation Order and Plan Control.** To the extent this Plan is inconsistent with the Creditors' Trust Agreement, this Plan controls over the Creditors' Trust Agreement. To the extent the Confirmation Order is inconsistent with this Plan or the Creditors' Trust Agreement, the Confirmation Order (and any other orders of the Bankruptcy Court) controls over this Plan and the Creditors' Trust Agreement.

12.9 **Notices.** All notices or requests in connection with this Plan shall be in writing and will be deemed to have been given when received by mail and addressed to:

Debtors:

DLA PIPER LLP (US)
R. Craig Martin
1201 North Market Street, Suite 2100
P.O. Box 1347
Wilmington, Delaware 19801
Tel: (302) 468-5700
Fax: (302) 394-2341
craig.martin@us.dlapiper.com

Rachel Ehrlich Albanese
1251 Avenue of the Americas
New York, New York 10020
Tel: (212) 335-4500
Fax: (212) 335-4501
rachel.albanese@us.dlapiper.com

Prepetition Lenders:

VENABLE LLP
Jeffrey S. Sabin
Carol A. Weiner Levy
1270 Avenue of the Americas, 24th Floor
New York, New York 10020
Tel: (212) 307-5500
Fax: (212) 307-5598
jssabin@venable.com
cweinerlevy@venable.com

Daniel A. O'Brien
1201 North Market Street, Suite 1400
Wilmington, DE 19801
Tel: 302.298.3535
Fax: 302.298.3550
dao'brien@venable.com

Creditors' Committee:

PORZIO, BROMBERG & NEWMAN, P.C.
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MORRIS JAMES LLP
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Brya M. Keilson
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Wilmington, DE 19801
Tel: (302) 888-6800
Fax: (302) 571-1750
emonzo@morrisjames.com
bkeilson@morrisjames.com

Liquidating Trustee:

As provided in the Creditors' Trust Agreement.

12.10 **No Admissions or Waiver.** Notwithstanding anything herein to the contrary, nothing contained in this Plan shall be deemed an admission or waiver by the Debtors with respect to any matter set forth herein, including liability on any Claim or the propriety of a Claim's classification.

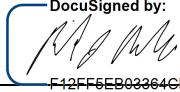
ARTICLE XIII
RECOMMENDATION AND CONCLUSION

The Proponents believe that this Combined Disclosure Statement and Plan is in the best interests of the Estates and creditors and urge the Holders of Impaired Claims who are entitled to vote to timely return their Ballots with a vote in favor of this Combined Disclosure Statement and Plan.

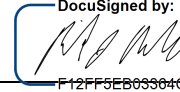
[Signature Pages Follow]

DEBTORS:


VALERITAS, INC.

By: 
Name: Peter J. Devlin
Title: President, Treasurer, and Secretary

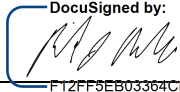
VALERITAS HOLDINGS, INC.

By: 
Name: Peter J. Devlin
Title: President, Treasurer, and Secretary

VALERITAS SECURITY CORPORATION

By: 
Name: Peter J. Devlin
Title: President, Treasurer, and Secretary

VALERITAS US, LLC


By: 
Name: Peter J. Devlin
Title: President, Treasurer, and Secretary

LENDERS:

CAPITAL ROYALTY PARTNERS II L.P.

By CAPITAL ROYALTY PARTNERS II GP L.P.,
its General Partner

By CAPITAL ROYALTY PARTNERS II GP LLC,
its General Partner

By: 


Name: Andrei Dorenbaum

Title: Authorized Signatory

**PARALLEL INVESTMENT OPPORTUNITIES
PARTNERS II L.P.**

By PARALLEL INVESTMENT
OPPORTUNITIES PARTNERS II GP L.P.,
its General Partner

By PARALLEL INVESTMENT
OPPORTUNITIES PARTNERS II GP LLC,
its General Partner

By: 

Name: Andrei Dorenbaum

Title: Authorized Signatory

**CAPITAL ROYALTY PARTNERS II –
PARALLEL FUND “A” L.P.**

By CAPITAL ROYALTY PARTNERS II -
PARALLEL FUND “A” GP L.P.,
its General Partner

By CAPITAL ROYALTY PARTNERS II GP LLC,
its General Partner

By: 

Name: Andrei Dorenbaum

Title: Authorized Signatory

**CAPITAL ROYALTY PARTNERS II
(CAYMAN) L.P.**

By CAPITAL ROYALTY PARTNERS II
(CAYMAN) GP L.P., its General Partner
By CAPITAL ROYALTY PARTNERS II
(CAYMAN) GP LLC, its General Partner

By: Andrei Dorenbaum
Name: Andrei Dorenbaum
Title: Authorized Signatory

WITNESS: Nicole Nesson
Name: Nicole Nesson

**CAPITAL ROYALTY PARTNERS II –
PARALLEL FUND “B” (CAYMAN) L.P.**

By CAPITAL ROYALTY PARTNERS II
(CAYMAN) GP L.P., its General Partner
By CAPITAL ROYALTY PARTNERS II
(CAYMAN) GP LLC, its General Partner

By: Andrei Dorenbaum
Name: Andrei Dorenbaum
Title: Authorized Signatory

WITNESS: Nicole Nesson
Name: Nicole Nesson

CRG SERVICING LLC

By: Andrei Dorenbaum
Name: Andrei Dorenbaum
Title: Authorized Signatory

**OFFICIAL COMMITTEE OF UNSECURED
CREDITORS**

By: 
Name: Jules B. Selden
Title: Committee Member

EXHIBIT A

Nonexclusive Schedule of Potential and Actual Causes of Action

The Debtors and Liquidating Trustee reserve the right to assert all Causes of Action notwithstanding the occurrence of the Effective Date, whether currently known or unknown and whether expressly listed in this Exhibit or not. By the Combined Disclosure Statement and Plan, it is the intent of the Debtors to preserve any and all Causes of Action in which the Debtors have any interest.

Pursuant to section 7.4(f) of the Combined Disclosure Statement and Plan, the Liquidating Trustee, subject to the limitations set forth in the Creditors' Trust Agreement, shall have sole authority and responsibility for investigating, analyzing, commencing, prosecuting, litigating, compromising, collecting, and otherwise administering all Retained Actions. Further, pursuant to section 7.2(a) of the Combined Disclosure Statement and Plan, the Liquidating Trustee, the Liquidating Trustee shall have sole authority and responsibility for investigating, analyzing, compromising, collecting, liquidating and otherwise administering all Creditors' Trust Assets.

The following are the actual or potential Causes of Action currently known to the Debtors.

1. Any litigations or proceedings listed in the Schedules.
2. Causes of Action arising out of or related to the Debtors or their business practices against the D&Os, whether such Cause of Action is against such D&O in his or her individual capacity, the Debtors' current and former equity holders, the Debtors' current and former employees, and any other Insiders, arising out of or related to, *inter alia*,
 - a. Intentional or constructive fraudulent conveyance under sections 548 and 544(b) of the Bankruptcy Code and applicable state or federal fraudulent transfer law, including but not limited to the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3301 *et seq.*, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act, and the Uniform Voidable Transactions Act;
 - b. Preferential transfers under section 547 of the Bankruptcy Code;
 - c. Unlawful distributions to shareholders;

- d. Breach of fiduciary duty, breach of duty of good faith and fair dealing, expropriation of corporate opportunity, and corporate waste;
- e. Statutory and common law conspiracy;
- f. Claims for securities fraud and/or claims relating to regulatory breaches;
- g. Claims for civil remedies against racketeer influenced and corrupt organizations under chapter 96 of title 18 of the United States Code;
- h. Claims for breach of contract, negligence, conversion, overpayments, unjust enrichment, fraud, negligent misrepresentation, tortious interference with contract, and civil conspiracy, whether under federal law or the laws of any state;
- i. Claims for recharacterization;
- j. Claims for subordination, including under sections 510(a), 510(b) and 510(c) of the Bankruptcy Code;
- k. Objections to fees, interest, or other charges paid by the Debtors; and
- l. Aiding and abetting any act or omission of any Person.

3. Causes of Action, whether for professional malpractice or otherwise, against any and all Persons who performed legal services for any of the Debtors, provided, however, that nothing shall affect the exculpation and releases provided to DLA Piper LLP (US) in the Combined Disclosure Statement and Plan;

4. Causes of Action, whether for professional malpractice or otherwise, against any and all Persons who performed auditing and/or accounting services for any of the Debtors; provided, however, that nothing shall affect the exculpation and releases provided to PricewaterhouseCoopers LLP in the Combined Disclosure Statement and Plan;

5. All Chapter 5 Causes of Action, including, without limitation, the recovery of preferential and fraudulent transfers from any entity that received cash or any other interest in property from any Debtor as identified in the Debtors' Schedules or as identified in the Debtors' accounts payable system; and

6. All Causes of Action related to any accounts receivable owned by any Debtor in which any Debtor has an interest.

EXHIBIT B

Liquidation Analysis

Disclaimer

The Debtors believe that the Plan satisfies section 1129(a)(7) of the Bankruptcy Code because it is anticipated that each Holder of an Impaired Claim or Interest will accept the plan or receive value under the Plan on the Effective Date that is not less than the value such holder would receive if the Debtors liquidated under chapter 7 of the Bankruptcy Code.

This liquidation analysis and the conclusions set forth herein represent the Debtors' best judgment regarding the results of such a liquidation. This liquidation analysis was prepared for the sole purpose of assisting the Bankruptcy Court and holders of impaired claims or Interests in making this determination and should not be used for any other purpose.

Nothing contained in this liquidation analysis is intended as or constitutes a concession or admission for any purpose other than the presentation of a hypothetical Chapter 7 liquidation analysis for purposes of meeting the requirements of section 1129(a)(7) of the Bankruptcy Code. Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Combined Plan and Disclosure Statement.

The liquidation analysis is shown on a consolidated basis and reflects the estimated cash proceeds, net of liquidation-related costs, that would be available for distribution to creditors if the Debtors liquidated under Chapter 7 of the Bankruptcy Code commencing on June 30, 2020.

Also reflected is an analysis of estimated cash proceeds available under the Debtors' chapter 11 Plan of Liquidation, for purposes of comparison. A number of estimates and assumptions underlie the analysis that, while considered reasonable, are inherently subject to significant uncertainties and contingencies beyond the control of the Debtors and their advisors. THERE CAN BE NO ASSURANCE THAT THE VALUES REFLECTED IN THE LIQUIDATION ANALYSIS WOULD BE REALIZED IF THE DEBTORS WERE, IN FACT, TO LIQUIDATE UNDER CHAPTER 7.

Conversion to Chapter 7 and Appointment of a Chapter 7 Trustee

The liquidation analysis assumes that the Debtors' liquidation would commence under the direction of a Chapter 7 trustee and would continue for a period of four months. During this time it is assumed that the Chapter 7 trustee would hire professionals to effectuate an estate liquidation. All of the Debtors' remaining assets would be liquidated and the cash proceeds, net of liquidation-related costs, would then be distributed to creditors in accordance with the priorities established under the Bankruptcy Code.

On March 20, 2020 the Court approved an Amended Settlement Agreement between the Debtors, Prepetition Lenders and the Committee (the "ASA") that settled various disputes and solidified a global resolution of these Chapter 11 Cases. The terms of the ASA provide for, a Revised Administrative Escrow, to be funded by gross sale proceeds after payment in full of the DIP Obligations (as defined in the Final DIP Order), the Transaction Fee, allowed cure costs in excess of \$1,500,000 and accrued payroll. This liquidation analysis assumes that any disbursements made under the terms of the ASA before the Effective Date are not impacted by the conversion of these cases to a Chapter 7 liquidation. This liquidation analysis further assumes that any funds of the Estates that have not been disbursed pursuant to the ASA before the Effective Date, would not be disbursed pursuant to the ASA and instead would be available to a Chapter 7 trustee to effectuate the wind down and liquidation of the estate¹.

¹The liquidation analysis assumes that all funds are disbursed prior to the Effective Date except \$500,000 allocated for payment of 503(b)(9) and other administrative claims, the Creditors' Trust allocation of \$150,000 and \$100,000 allocated to be used by the Prepetition Lenders and Committee. Consistent with the Final DIP Order and the Cash Collateral Amendment, the Professional Fee

The liquidation itself would likely trigger certain priority payments (e.g., Chapter 7 trustee and related professional fees) that otherwise would not be due in the ordinary course of business. Subject to the rights of the Prepetition Lenders, these priority payments would be made in full before any distribution of proceeds to pay holders of general unsecured claims or to make distributions in respect of equity interests.

Recoveries to creditors from retained causes of action have not been quantified for purposes of this analysis. As a result, there is no impact to creditor recoveries related to these assets stemming from a conversion to a Chapter 7 liquidation; however, the Debtors believe that the delay and disruption of a Chapter 7 conversion could negatively impact recoveries to creditors from these actions.

The liquidation analysis contains an estimate of the value of claims that ultimately would become allowed claims based on the Debtors' books and records. The Debtors have not evaluated, nor has the Bankruptcy Court determined, the amount of each such claim. Accordingly, the final amount of allowed claims may differ from the claim amounts presented in this liquidation analysis. The Debtors do not believe that any variance between the estimates contained herein and the final allowed claims would have a material effect on the liquidation analysis for purposes of section 1129(a)(7) of the Bankruptcy Code.

Escrow is not property of the estate, is separate from the Revised Administrative Escrow, and is assumed to be used in full to pay allowed professional fees by the Effective Date.

Hypothetical Liquidation Analysis

(\$ in actual)	Notes	Proposed Ch. 11 Plan		Hypothetical Liquidation	
Purchase Price Cash Consideration	1.	23,000,000	100%	23,000,000	100%
Purchaser's Cash Funding of Cure Cap	2.	1,500,000	7%	1,500,000	7%
Less: Transaction Fee	3.	(1,200,000)	(5%)	(1,200,000)	(5%)
Less: Cure Costs of Assumed Contracts	4.	(5,290,707)	(23%)	(5,290,707)	(23%)
Less: Accrued Payroll	5.	(332,108)	(1%)	(332,108)	(1%)
Net Sale Proceeds Available for Distribution		17,677,185	77%	17,677,185	77%
Super Priority Claims					
		Claim \$ Value	\$	%	\$
DIP Superpriority Claim	6.	9,736,177	9,736,177	100.0%	9,736,177
Subtotal		9,736,177	9,736,177	100.0%	9,736,177
Remaining Proceeds Available for Distribution		7,941,008			7,941,008
Administrative Claims					
Administrative expenses	7.	2,200,000	2,200,000	100.0%	2,200,000
503(b)(9) and other administrative claims	8.	500,000	500,000	100.0%	-
KEIP & KERP Payments	9.	463,767	463,767	100.0%	463,767
Incurred wind down expenses	10.	1,200,000	1,200,000	100.0%	1,200,000
Provision for post-effective date wind down expenses	11.	250,000	250,000	100.0%	-
Subtotal		4,613,767	4,613,767	100.0%	3,863,767
Remaining Proceeds Available for Distribution		3,327,240			4,077,240
Class 1					
Other Priority Claims	12.	-	-	-	-
Class 2					
CRG Secured Claim	13.	20,000,000	2,994,516	15.0%	2,994,516
Class 3					
Prepetition Lenders' Unsecured Claims	14.	18,825,000	-	-	-
Remaining Proceeds Available for Distribution		332,724			1,082,724
Liquidation Fees and Expenses					
Ch. 7 Trustee Fees	15.	54,750	-	-	54,750
Ch. 7 Trustee Incremental Professional Fees	16.	300,000	-	-	300,000
Ch. 7 Wind Down Expenses	17.	250,000	-	-	250,000
Subtotal		604,750	-	-	604,750
Chapter 11 Administrative Claims					
503(b)(9) and other Ch. 11 administrative claims	18.	500,000	-	-	477,974
Add: Proceeds from Other Estate Assets	19.	NQ	NQ	-	NQ
Remaining Proceeds Available for Distribution (+/- NQ)		332,724			-
Class 4					
Allowed Unsecured Claims	20.	3,436,306	332,724	9.7%	-
Other Classes					
Class 5: Intercompany Claims	21.	NQ	-	-	-
Class 6: Interests (Preferred Stock and Common Stock)	22.	NQ	-	-	-
Remaining Proceeds Available for Distribution (+/- NQ)		-	-	-	-

Notes to the Liquidation Analysis

Amounts included for proceeds and expenses reflect the APA (as defined below) and/or the ASA and/or the best available estimates at the time the analysis was prepared.

1. Represents cash consideration received from the sale of substantially all of the Debtors' assets pursuant to the February 9, 2020 Asset Purchase Agreement between the Debtors and Zealand Pharma A/S (the "Purchaser") (the "APA") which was approved by the Court on March 20, 2020 [D.I. 232] and closed on April 2, 2020 [D.I. 267].
2. Represents Purchaser's cash payment pursuant to the APA toward cure costs owed to counterparties of assumed contracts.
3. Represents the Debtors' investment banker Lincoln International's transaction fee pursuant to their engagement agreement approved by order of the Bankruptcy Court [D.I. 176].
4. Represents the total amount of cure costs owed for designated contracts assumed by the Purchaser, pursuant to the APA.
5. Represents accrued payroll at the closing of the transaction for all Debtor employees, pursuant to the ASA.
6. Reflects payment in full of the DIP Facility, pursuant to the Final DIP Order.

7. Represents an estimate of incurred but unpaid post-petition administrative expenses to be paid from sale proceeds pursuant to the ASA and the Cash Collateral Amendment.
8. Represents the estimated amount of allowed administrative claims (including section 503(b)(9) claims) in the amount of \$500,000 to be paid from sale proceeds pursuant to the ASA and the Cash Collateral Amendment post Effective Date. In the hypothetical liquidation it is assumed, subject to consent of the Prepetition Lenders, that these funds would be available to the Chapter 7 trustee to effectuate the wind down and make distributions to in accordance with the priorities established under the Bankruptcy Code.
9. Represents the remaining KEIP/KERP payments consistent with the Bankruptcy Court order approving such programs, pursuant to the ASA and the Cash Collateral Amendment.
10. Represents \$800,000 of sales proceeds allocated to be used for expenses associated with the orderly wind down of the estate and \$400,000 of the \$500,000 allocation to the Prepetition Lenders and Committee that is estimated to be used prior to the Effective Date pursuant to the ASA and the Cash Collateral Amendment.
11. Represents the \$100,000 unused portion of the \$500,000 allocated to the Prepetition Lenders and Committee and the \$150,000 set aside to fund the Creditors' Trust, pursuant to the ASA and Cash Collateral Amendment, both of which are not expected to be disbursed prior to the Effective Date.
12. Represents Chapter 11 Other Priority Claims which are estimated to be zero.
13. Allowed secured claim against the Debtors in an aggregate principal amount of \$20,000,000, pursuant to the ASA. Realized recovery is calculated at 90% of the Net Sales Proceeds, pursuant to the ASA.
14. Allowed general unsecured claim in an amount equal to \$18,825,000 pursuant to the ASA, which shall share in recoveries pursuant to the ASA after Class 4 creditors receive recoveries in excess of 75%.
15. Represents Chapter 7 trustee fees calculated on an incremental disbursement scale in line with US Trustee guidelines, subject to consent of the Prepetition Lenders.
16. Represents estimated Chapter 7 professional fees as a result of an estimated four month delay due to a Chapter 7 conversion, subject to consent of the Prepetition Lenders.
17. Represents the costs related to various wind down activities that are expected to be performed under both the proposed Chapter 11 plan of liquidation and the Chapter 7 liquidation, subject to consent of the Prepetition Lenders. Under the Chapter 11 plan of liquidation, these costs are funded through the remaining \$100,000 allocated to the Prepetition Lenders and Committee and the \$150,000 set aside to fund the Creditors' Trust. The analysis assumes these same activities and related costs are performed and incurred by the Chapter 7 trustee and its professionals as part of the Chapter 7 wind down and liquidation process.
18. Represents unpaid Chapter 11 administrative claims (including section 503(b)(9) claims) to be paid before any distribution of proceeds to holders of general unsecured claims, subject to consent of the Prepetition Lenders.
19. Represents any other assets owned by the estates that could be monetized for the benefit of creditors, including causes of action which are not quantified ("NQ") for purposes of this analysis.
20. Represents estimated Allowed Unsecured Claims under the plan, which receive a recovery pursuant to the ASA.
21. Represents Intercompany Claims to be released and expunged without any Distribution on account of such Claims.
22. Represents Interests in the Debtors to be canceled, released, and expunged without any Distribution on account of such Interests, on the Effective Date.