

**PLEASE NOTE THAT A HOLDER OF A CLAIM WHO VOTES TO ACCEPT THE PLAN AND WHO DOES NOT TIMELY SUBMIT A RELEASE OPT-OUT IN ACCORDANCE WITH THE BALLOT TO VOTE TO ACCEPT OR REJECT THE PLAN WILL BE DEEMED TO CONSENT TO THE RELEASES CONTAINED IN ARTICLE IX OF THE PLAN, WHICH RELEASES ARE ALSO DISCUSSED IN IN ARTICLE X OF THIS DISCLOSURE STATEMENT. PLEASE CAREFULLY REVIEW SUCH RELEASES BEFORE DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN.**

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

In re:  
  
TRICIDA, INC.,<sup>1</sup>  
  
Debtor.

Chapter 11  
  
Case No. 23-10024 (JTD)

**FOURTH AMENDED DISCLOSURE STATEMENT FOR  
CHAPTER 11 PLAN OF LIQUIDATION FOR TRICIDA, INC.**

**YOUNG CONAWAY  
STARGATT & TAYLOR, LLP**  
Sean M. Beach (No. 4070)  
Allison S. Mielke (No. 5934)  
Andrew A. Mark (No. 6861)  
Carol E. Cox (No. 6936)

Rodney Square  
1000 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 571-6600  
Facsimile: (302) 571-1253

**SIDLEY AUSTIN LLP**  
Samuel A. Newman (admitted *pro hac vice*)  
Julia Philips Roth (admitted *pro hac vice*)  
555 West Fifth Street  
Los Angeles, California 90013  
Telephone: (213) 896-6000  
Facsimile: (213) 896-6600

Charles M. Persons (admitted *pro hac vice*)  
Jeri Leigh Miller (admitted *pro hac vice*)  
Chelsea McManus (admitted *pro hac vice*)  
2021 McKinney Avenue, Suite 2000  
Dallas, Texas 75201  
Telephone: (214) 981-3300  
Facsimile: (213) 981-3400

Michael A. Sabino (admitted *pro hac vice*)  
787 Seventh Avenue  
New York, New York 10019  
Telephone: (212) 839-5300  
Facsimile: (212) 839-5599

<sup>1</sup> The Debtor in this chapter 11 case, together with the last four digits of the Debtor’s federal tax identification number, is Tricida, Inc. (2526). The Debtor’s service address is 7000 Shoreline Court, Suite 201, South San Francisco, CA 94080.



**FOURTH AMENDED DISCLOSURE STATEMENT DATED MARCH 24, 2023<sup>2</sup>**

\* \* \*

All creditors are encouraged to read and carefully consider this Disclosure Statement, including the Plan, and the matters described under “Risk Factors” in Article XIII prior to submitting ballots in response to this solicitation. This Disclosure Statement is being delivered to you because you are the holder of, or have otherwise asserted, a Claim or Claims against Tricida, Inc. (the “Company”, “Tricida”, or the “Debtor”).

\* \* \*

The Debtor believes that the Chapter 11 Plan of Liquidation for Tricida, Inc. (the “Plan”) is in the best interests of creditors and other stakeholders. All claimants entitled to vote thereon are urged to vote in favor of the Plan. A summary of the voting instructions is set forth in Article I.F.2. More detailed instructions are included in the ballots distributed to the creditors entitled to vote on the Plan. To be counted, your ballot must be duly completed, executed, and received by the Debtor’s voting agent by 4:00 p.m., prevailing Eastern Time, on April 26, 2023 (the “Voting Deadline”), unless extended.

\* \* \*

All of the projected Recoveries (as defined below) to creditors are based upon the analysis performed by the Debtor and its professionals. Although the Debtor has made every effort to verify the accuracy of the information presented herein and in the exhibits attached hereto, the Debtor cannot make any representations or warranties regarding the accuracy of the information.

\* \* \*

Although the Debtor has made every effort to ensure that this summary provides adequate information with respect to the Plan, it does not purport to be complete and is qualified to the extent it does not set forth the entire text of the Plan. If there is any inconsistency between the Plan and the Summary of the Plan contained in this Disclosure Statement, the Plan shall control. Accordingly each Holder of a Claim should review the Plan in its entirety.

\* \* \*

The Confirmation and the Effective Date of the proposed Plan are subject to material conditions precedent. See Article IX. There is no assurance that these conditions will be satisfied or waived.

\* \* \*

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<sup>2</sup> Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the *Third Amended Chapter 11 Plan of Liquidation for Tricida, Inc.*, dated March 21, 2023.

**The Plan provides that Holders of Impaired Claims entitled to vote who do not submit a Ballot voting to accept or reject the Plan or those who vote to accept or reject the Plan but do not timely opt-out of the release provisions of the Plan are deemed to have granted the releases therein. Creditors in Classes 3, 4, 5, 6, 7 and 8 should read the release provisions carefully as well as the information on the ballot. If you do not wish to be a Releasing Party, you must return the ballot AND check the opt-out box of the release. Otherwise, you will be deemed a Releasing Party. The Creditors' Committee submits that the Releases proposed in the Plan are not appropriate and reserve all rights on this issue at Confirmation.**

\* \* \*

No person is authorized by the Debtor in connection with the Plan or the solicitation of acceptances of the Plan to give any information or to make any representation other than as contained in this Disclosure Statement and the exhibits attached hereto or incorporated by reference or referred to herein. If such information or representation is given or made, it may not be relied upon as having been authorized by the Debtor. The Debtor will make available to creditors entitled to vote on the Plan such additional information as may be required by applicable law prior to the Voting Deadline.

\* \* \*

The summaries of the Plan and other documents contained in this Disclosure Statement are qualified by reference to the Plan itself, the exhibits thereto, and documents described therein. In the event that any inconsistency or conflict exists between this Disclosure Statement and the Plan, the terms of the Plan will control.

\* \* \*

The information contained in this Disclosure Statement, including the information regarding the history, businesses and operations of the Debtor, the historical and projected financial information regarding the Debtor, and the liquidation analysis relating to the Debtor, is included for purposes of soliciting acceptances of the Plan, but, as to contested matters and adversary proceedings, is not to be construed as admissions or stipulations, but rather as statements made in settlement negotiations.

\* \* \*

This Disclosure Statement contains forward-looking statements based primarily on the current expectations of the Debtor and projections about future events and financial trends affecting the financial condition of the Debtor. The words “believe,” “may,” “estimate,” “continue,” “anticipate,” “intend,” “expect,” and similar expressions identify these forward-looking statements. These forward-looking statements are subject to a number of risks, uncertainties, and assumptions, including those described below under the caption “Risk Factors” in Article XIII. In light of these risks and uncertainties, the forward-looking events and circumstances discussed in this Disclosure Statement may not occur, and actual results could differ materially from those anticipated in the forward-looking statements. The Debtor does not undertake any obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events, or otherwise.

\* \* \*

This Disclosure Statement has not been approved or disapproved by the Securities and Exchange Commission (the “SEC”), any state securities commission, any securities exchange or association; nor has the SEC, any state securities commission, any securities exchange, or association passed upon the accuracy or adequacy of the statements contained herein.

\* \* \*

Since its formation, the Creditors’ Committee has been engaged in diligence concerning the Debtor’s assets, including potential claims, Causes of Action and the proposed Retained Causes of Action belonging to the Debtor’s estate. The Creditors’ Committee believes there are various claims and Causes of Action that could exceed \$50.0 million dollars, that have not been designated as Retained Causes of Action under the Plan and that should not be released or excluded from the Schedule of Retained Causes of Action being transferred to the Liquidating Trust.<sup>3</sup> The Creditors’ Committee does not support the granting of Releases in the Plan without further information and without a contribution from such Released Party, person or entity receiving a Release under the Plan. In the Creditors’ Committee’s view, all claims and Causes of Action the Debtor holds should be preserved and retained under the Plan—not released. A list of the claims and Causes of Action the Creditors’ Committee believes should be identified and included on the Schedule of Retained Causes of Action is attached as Exhibit C to this Disclosure Statement.

The Debtor has reviewed the claims and Causes of Action listed on Exhibit C and believes that any claims or Causes of Action being released under the Plan have *de minimis* value or are being released in exchange for adequate consideration pursuant to the Plan.

In addition to limiting the Retained Causes of Action under the Plan, the Debtor also seeks to limit recovery of any Retained Causes of Action to available insurance. The Creditors’ Committee opposes limiting the recovery of any Retained Causes of Action solely to available insurance. The Debtor considers the decision to retain the Retained Causes of Action, in conjunction with its discussion with the Consenting Noteholders, to be an appropriate exercise of the Debtor’s discretion.

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<sup>3</sup> See Article III.E herein for additional information regarding the findings of the Special Committee investigation.

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**EXHIBITS**

- Exhibit A *Chapter 11 Plan of Liquidation for Tricida, Inc.*
- Exhibit B Liquidation Analysis
- Exhibit C Creditors' Committee's Schedule of Retained Causes of Action

## I. OVERVIEW OF THE PLAN

### RECOMMENDATION BY THE DEBTOR

It is the Debtor's opinion that confirmation and implementation of the Plan is in the best interests of the Debtor's Estate and its creditors. Therefore, the Debtor recommends that all creditors whose votes are being solicited submit a ballot to **accept** the Plan.

#### A. Introduction

The following is a brief overview of certain material provisions of the Plan. This overview is qualified by reference to the provisions of the Plan, which is attached hereto as **Exhibit A**, and the exhibits thereto, as amended from time to time. In the event that any inconsistency or conflict exists between this Disclosure Statement and the Plan, the terms of the Plan will control. The requirements for Confirmation, including the vote of creditors entitled to vote on the Plan and certain of the statutory findings that must be made by the Bankruptcy Court for a plan to be confirmed, are set forth in Article I.F. Confirmation of the Plan and the occurrence of the Effective Date are subject to certain conditions, which are summarized in Article IX. There is no assurance that these conditions will be satisfied or waived. At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the applicable requirements of section 1129 of the Bankruptcy Code are met. Among the requirements for confirmation of a chapter 11 plan are that the plan: (i) is accepted by the requisite holders of claims or interests in impaired classes under the plan; (ii) is in the "best interests" of each holder of a claim or interest in each impaired class under the plan; (iii) is feasible; and (iv) complies with the applicable provisions of the Bankruptcy Code. In this instance, only Holders of Claims in Classes 3, 4, 5, and 6 are entitled to vote to accept or reject the Plan. Because Classes 7 and 8 will receive no distributions under the Plan, those Classes are deemed to reject the Plan. Because Classes 1 and 2 are unimpaired, they are deemed to vote to accept the Plan. *See* Article I.F.5 for a discussion of the Bankruptcy Code's requirements for Plan Confirmation.

#### B. The Plan

The Debtor filed for chapter 11 bankruptcy protection on January 11, 2023. The Debtor has, pursuant to Bankruptcy Court orders, sold substantially all of its assets in the Chapter 11 Case. *See* D.I. 230, 232. The following phase of this Chapter 11 Case is the confirmation and consummation of the Plan, pursuant to which the Debtor will (i) establish a Liquidating Trust to distribute the remaining Cash of the Debtor and appoint the Liquidating Trustee, (ii) establish a Contingent Payments Trust to hold the interest in rights to payments from the Contingent Payments, and appoint the Contingent Payments Trustee, and (iii) establish a Contingent Payments Holding Trust to hold the Contingent Payments Trust Interest and appoint the Contingent Payments Holding Trustee, in each case pursuant to the mechanics as set forth in the Plan.

A chapter 11 bankruptcy case permits a debtor to resolve its affairs and distribute the proceeds of its estate pursuant to a confirmed chapter 11 plan. To that end, the Debtor filed the Plan, the terms of which are more fully described herein, contemporaneously with the filing of this Disclosure Statement. The Plan contemplates a liquidation of the Debtor and its Estate and is therefore referred to as a "plan of liquidation." The primary objective of the Plan is to maximize

the value of recoveries to Holders of Allowed Claims and to distribute all property of the Debtor's Estate that is or becomes available for distribution in accordance with the Bankruptcy Code and Plan. The Debtor asserts that the Plan accomplishes this objective and is in the best interests of its Estate, and therefore seeks to confirm the Plan. The Plan classifies Holders of Claims or Interests according to the type and nature of the Holder's Claim or Interest, as more fully described below.

The Plan designates the Classes of Claims against and Interests in the Debtor and specifies which Classes are (1) Impaired or Unimpaired by the Plan; (2) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code; or (3) deemed to accept or reject the Plan. Claims against the Debtor and Interests in the Debtor are classified in eight separate Classes, as described herein.

### **C. The Adequacy of This Disclosure Statement**

Before soliciting acceptances of a proposed chapter 11 plan, section 1125 of the Bankruptcy Code requires a plan proponent to prepare a written disclosure statement containing information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding acceptance of the plan. The Debtor is providing this Disclosure Statement in accordance with those requirements. This Disclosure Statement includes, without limitation, information about:

- the Plan, including a summary, the procedures for voting on the Plan and projected recoveries thereunder (Article I hereof);
- the statutory requirements for confirming the Plan (Article I.F hereof);
- the Debtor's organizational structure, business operations, and financial obligations (Article II hereof);
- the events leading to the filing of the Debtor's Chapter 11 Case (Article II.D hereof);
- the major events during this Chapter 11 Case, including significant pleadings filed in the Debtor's Chapter 11 Case and certain relief granted by the Bankruptcy Court (Article III hereof);
- certain risk factors that Holders of Claims should consider before voting to accept or reject the Plan (Article XIII hereof);
- the classification and treatment of Claims or Interests under the Plan, including identification of the Holders of Claims entitled to vote on the Plan (Article IV hereof);
- the means for implementation of the Plan, the provisions governing distributions to certain Holders of Claims pursuant to the Plan, the procedures for resolving Disputed Claims and other significant aspects of the Plan (Article V hereof);
- the releases contemplated by the Plan that are integral to the overall settlement of Claims pursuant to the Plan (Article X hereof); and

- certain United States federal income tax consequences of the Plan (Article XIV hereof).

#### **D. Summary of Classes and Treatment of Claims or Interests**

The classification of Claims or Interests, the estimated aggregate amount of Claims in each Class and the amount and nature of distributions to holders of Claims or Interests in each Class are summarized in the table below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, and Priority Tax Claims have not been classified. For a discussion of certain additional matters related to Administrative Claims and Priority Tax Claims, see Article IV.A of the Plan.

Each amount designated in the table below as “Estimated Percentage Recovery” for each Class is the quotient of the estimated Cash or other assets of the Liquidating Trust, the Contingent Payments Holding Trust or the Contingent Payments Trust to be distributed to holders of Allowed Claims in that Class, divided by the estimated aggregate amount of Allowed Claims in that Class. Each of the estimated Cash, other Liquidating Trust Assets, the Contingent Payments Trust Interest, or Contingent Payments Trust Assets and the estimated aggregate amount of Allowed Claims has been made in ranges with both low and high estimates. In determining those amounts, the Debtor has assumed that the Plan is consummated as described herein.

These calculations do not include any value attributed to recoveries by the Liquidating Trust on the Retained Causes of Action. The Debtor is not in a position to provide an estimated value for recoveries on the Retained Causes of Action.

For a discussion of various factors that could materially affect the amount of the Liquidating Trust’s assets to be distributed pursuant to the Plan, Article XIII.

<b>CLASS</b>	<b>CLAIM OR INTEREST</b>	<b>STATUS/ ENTITLED TO VOTE</b>	<b>ESTIMATED ALLOWED CLAIMS</b>	<b>ESTIMATED RECOVERY (%)</b>
<b>Class 1</b>	Other Secured Claims	<b>Unimpaired</b>  Deemed to Accept the Plan.  Not Entitled to Vote.	\$0	100%
<b>Class 2</b>	Other Priority Claims	<b>Unimpaired</b>  Deemed to Accept the Plan.	\$50,000	100%

		Not Entitled to Vote.		
<b>Class 3</b>	Noteholder Claims	<b>Impaired</b>  Entitled to Vote.	\$201,088,888.89 <sup>4</sup>	8%
<b>Class 4</b>	Patheon Rejection Claim	<b>Impaired</b>  Entitled to Vote.	\$20,467,523 - \$149,512,400 <sup>5</sup>	8%
<b>Class 5</b>	General Unsecured Claim	<b>Impaired</b>  Entitled to Vote.	\$14,678,000	8%
<b>Class 6</b>	<i>De Minimis</i> Unsecured Claims	<b>Impaired</b>  Entitled to Vote.	\$60,000	50%
<b>Class 7</b>	Section 510(b) Claims	<b>Impaired</b>  Deemed to Reject the Plan.  Not Entitled to Vote.	\$0	N/A
<b>Class 8</b>	Debtor's Interests	<b>Impaired</b>	\$0	N/A

<sup>4</sup> On or about January 11, 2023, the Debtor paid \$3.5 million toward the accrued and outstanding November 2022 interest payment due under the Debtor's 3.5% Convertible Notes. The Creditors' Committee is investigating whether the interest payment is subject to avoidance under Chapter 5 of the Bankruptcy Code or otherwise. The Creditors' Committee reserves the right to object to the proposed Allowed amount of the Class 3 Claim.

<sup>5</sup> Prior to the commencement of the Chapter 11 Case, Tricida received demand from Patheon for payment in connection with invoiced amounts, as well as alleged termination damages, totaling approximately €140 million euros. On March 8, 2023, Patheon submitted a proof of claim in the amount of \$136,206,149.00 ("the "Patheon Claim""). Tricida has identified defenses to and grounds to contest the amounts alleged to be owed, as well as potential counterclaims against Patheon, and responded to Patheon. Tricida's response disputes Patheon's basis for alleged termination and notes its good faith dispute with respect to the amount of Patheon's asserted claim. Tricida anticipates that it or the Liquidating Trustee may raise such defenses and counterclaims to the Patheon Claim pursuant to this chapter 11 case.

		Deemed to Reject the Plan.		
		Not Entitled to Vote.		

The Creditors' Committee opposes the Debtor's classification of Claims and Interests under the Plan. The Creditors' Committee believes all unsecured claims (Classes 3, 4, and 5) should be classified in one single Class and not separately.

#### **E. Solicitation Package**

The package of materials (the "Solicitation Package") to be sent to Holders of Claims on the Plan will contain:

- a cover letter describing (1) the contents of the Solicitation Package; (2) information about how to obtain access, free of charge, to the Plan, this Disclosure Statement, and the Disclosure Statement Order, together with the exhibits thereto, on the case administration website; and (3) information about how to obtain, free of charge, paper copies of any of the documents included in the Solicitation Package;
- a notice of the Confirmation Hearing;
- for Holders of Claims in the Voting Classes (*i.e.*, Holders of Claims in Classes 3, 4, 5, and 6), an appropriate form of Ballot, instructions on how to complete the Ballot and a pre-paid, preaddressed Ballot return envelope and such other materials as the Bankruptcy Court may direct;
- for Holders of Claims or Interest in Classes 7 and 8, the Form of Notice of Non-Voting Status and Class 8 Release Opt-Out Forms; and
- any supplemental documents filed with the Bankruptcy Court and any documents that the Bankruptcy Court orders to be included in the Solicitation Package.

The Debtor will cause the Notice and Claims Agent to complete the distribution of the Solicitation Packages to Holders of Claims in the Voting Classes within three Business Days after entry of the Disclosure Statement Order.

The Solicitation Package may also be obtained free of charge from Kurtzman Carson Consultants LLC, the Debtor's Bankruptcy Court-appointed claims and noticing agent (the "Notice and Claims Agent") by: (1) visiting <http://www.kccllc.net/tricida>; (2) emailing the Notice and Claims Agent at [TricidaInfo@kccllc.com](mailto:TricidaInfo@kccllc.com); or (3) calling (866) 476-0898 or (781) 575-2114.

## F. Voting and Confirmation of the Plan

The Disclosure Statement Order, among other things, (1) approved this Disclosure Statement pursuant to section 1125 of the Bankruptcy Code and (2) established Plan voting tabulation procedures, which include certain vote tabulation rules that temporarily allow or disallow Claims for voting purposes (the “Tabulation Rules”) pursuant to section 502 of the Bankruptcy Code and Bankruptcy Rule 3018.

### 1. Certain Factors to be Considered Prior to Voting

There are a variety of factors that all Holders of Claims entitled to vote on the Plan should consider prior to voting to accept or reject the Plan. These factors may impact recoveries under the Plan, including:

- the financial information contained in this Disclosure Statement has not been audited and is based on an analysis of data available at the time of the preparation of the Plan and this Disclosure Statement;
- although the Debtor asserts that the Plan complies with all applicable provisions of the Bankruptcy Code, the Debtor can neither assure such compliance nor that the Bankruptcy Court will confirm the Plan; and
- any delays of either Confirmation or consummation could result in, among other things, increased Administrative Claims or Professional Fee Claims that would likely reduce the recoveries to the Holders of Claims.

### 2. Voting Procedures and Requirements

Pursuant to the Bankruptcy Code, only classes of claims against or equity interests in a debtor that are “impaired” under the terms of a plan of liquidation or reorganization are entitled to vote to accept or reject a plan. A class is “impaired” if the legal, equitable or contractual rights attaching to the claims or interests of that class are modified, other than by curing defaults and reinstating maturity. Classes of Claims or Interests that are not impaired are not entitled to vote on the Plan and are conclusively presumed to have accepted the Plan. In addition, Classes of Claims or Interests that do not receive distributions under the Plan are not entitled to vote on the Plan and are deemed to have rejected the Plan. The classification of Claims or Interests is summarized, together with an indication of whether each Class of Claims or Interests is impaired or unimpaired, in Article I.D. March 24, 2023 shall serve as the voting record date (the “Voting Record Date”) for purposes of determining which Holders of Filed or scheduled Claims in Classes 3, 4, 5, and 6 are entitled to receive a Solicitation Package.

**Voting on the Plan by each Holder of a Claim in Classes 3, 4, 5 and 6 is important. Please carefully follow all of the instructions contained on the Ballot(s) provided to you. All Ballots must be completed and returned in accordance with the instructions provided. To be counted, your ballot or ballots must be received by 4:00 p.m., prevailing Eastern Time, on April 26, 2023 (the “Voting Deadline”) at the address set forth on the preaddressed envelope provided to you.**

**If you are entitled to vote and you did not receive a Ballot, received a damaged Ballot or lost your Ballot, please call or email the Debtor’s voting agent, Kurtzman Carson Consultants LLC (the “Voting Agent”), at (866) 476-0898 or (781) 575-2114 or [TricidaInfo@kccllc.com](mailto:TricidaInfo@kccllc.com). Also, this Disclosure Statement, the Plan and all of the related exhibits and schedules are available, without charge, to any party in interest at <http://www.kccllc.net/tricida>.**

**Ballots cannot be transmitted orally, by email or by facsimile. Accordingly, you are urged to return your signed and completed Ballot, by hand delivery, overnight service, regular U.S. mail, or electronically via the Voting Agent’s e-Ballot portal (<http://www.kccllc.net/tricida>) promptly, so that it is received by the Voting Agent before the Voting Deadline.**

3. Plan Objection Deadline

The deadline to file objections to the Confirmation of the Plan (the “Confirmation Objections”) is April 26, 2023, at 4:00 p.m. (prevailing Eastern Time) (the “Objection Deadline”). All Confirmation Objections must be in writing and must specify in detail the name and address of the objector, all grounds for the objection and the amount of the Claim or Interest held by the objector. Any Confirmation Objection must be filed with the Bankruptcy Court and served on the Debtor, the official committee of unsecured creditors appointed in this Chapter 11 Case (the “Creditors’ Committee”), the Consenting Noteholders, and certain other parties in interest in accordance with the Disclosure Statement Order on or before the Objection Deadline.

4. Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on Confirmation of the Plan. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to Confirmation of the Plan. The Bankruptcy Court entered the Disclosure Statement Order, which, among other things, scheduled a Confirmation Hearing. The Confirmation Hearing will commence on May 3, 2023, at 10:00 a.m. (prevailing Eastern Time), before the Honorable John T. Dorsey, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 N. Market St, Fifth Floor, Courtroom 5, Wilmington, Delaware 19801.

The Confirmation Hearing may be conducted virtually, with access instructions filed on the Bankruptcy Court’s docket in the Chapter 11 Case. The Confirmation Hearing may be continued from time to time without further notice other than an adjournment announced in open court or a notice of adjournment filed with the Bankruptcy Court and served on the Entities who have filed Confirmation Objections, without further notice to other parties in interest. The Bankruptcy Court, in its discretion and before the Confirmation Hearing, may put in place additional procedures governing the Confirmation Hearing. The Plan may be modified in accordance with its terms, if necessary, before, during or as a result of the Confirmation Hearing, without further notice to parties in interest.

5. Confirmation

To confirm the Plan, the Bankruptcy Code requires that the Bankruptcy Court make a series of findings concerning the Plan and the Debtor, including that:<sup>6</sup>

- the Plan has classified Claims and Interests in a permissible manner;
- the Plan complies with the applicable provisions of the Bankruptcy Code;
- the Debtor has complied with the applicable provisions of the Bankruptcy Code;
- the Debtor, as proponent of the Plan, has proposed the Plan in good faith and not by any means forbidden by law;
- the disclosure required by section 1125 of the Bankruptcy Code has been made;
- the Plan has been accepted by the requisite votes, except to the extent that cramdown is available under section 1129(b) of the Bankruptcy Code, of creditors and equity interest holders the Plan is feasible;
- all U.S. Trustee Fees due and owing have been paid or the Plan provides for the payment thereof on the Effective Date; and
- the Plan is in the “best interests” of all Holders of Claims or Interests in an impaired Class by providing to those Holders on account of their Claims or Interests property of a value, as of the Effective Date, that is not less than the amount that each Holder would receive or retain in a chapter 7 liquidation, unless each Holder of a Claim or Interest in that Class has accepted the Plan.

6. Acceptance

A plan is accepted by an impaired class of claims if holders of at least two-thirds in dollar amount and a majority in number of claims of that class vote to accept the plan. Only those holders of claims who actually vote (and are entitled to vote) to accept or to reject a plan count in this tabulation.

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 debtor or any successor to the debtor (unless liquidation or reorganization is proposed in the Plan). Because the Plan proposes a liquidation of all of the Debtor’s assets, for purposes of this test the Debtor has analyzed the ability of the Liquidating Trust, the Contingent Payments Holding Trust and the Contingent Payments Trust, and their respective trustees, to meet their obligations under the Plan. Based on the Debtor’s analysis, including the information contained in **Exhibit B**

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<sup>6</sup> The descriptions contained herein are only a summary of certain confirmation requirements; they are not exhaustive of all confirmation requirements and should not be construed as such.

regarding recoveries available to Holders of Allowed Claims under the Plan, the Trust will have sufficient assets to accomplish its tasks under the Plan. Therefore, the Debtor has determined that its liquidation pursuant to the Plan will meet the feasibility requirements of the Bankruptcy Code.

#### 8. Best Interests Test; Liquidation Analysis

Notwithstanding acceptance of the Plan by each impaired Class, to confirm the Plan, the Bankruptcy Court must determine that the Plan is in the best interests of each Holder of a Claim or Interest in any impaired Class who has not voted to accept the Plan. Accordingly, if an impaired Class does not unanimously accept the Plan, the “best interests” test requires that the Bankruptcy Court find that the Plan provides to each member of that impaired Class a recovery on account of the Holder’s Claim or Interest that has a value, as of the Effective Date, at least equal to the value of the distribution that the Holder would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code on the Effective Date.

Because the Plan proposes a liquidation of all the Debtor’s assets, the Debtor has analyzed factors that will impact recoveries (the “Recoveries”) available to creditors in each scenario. These factors include professionals fees and expenses, asset disposition expenses, applicable taxes, potential Claims arising during the pendency of the Plan or chapter 7 case and trustee fees and expenses.

The information contained in Exhibit B hereto provides a summary of the Recoveries under the Plan and in a chapter 7 liquidation.

In summary, the Debtor has determined that a chapter 7 liquidation would result in diminution in the Recoveries to be realized by Holders of Allowed Claims, as compared to the proposed distributions under the Plan. Consequently, the Debtor has determined that the Plan will provide a greater ultimate return to Holders of Allowed Claims than would a chapter 7 liquidation of the Debtor.

The Creditors’ Committee disagrees with the Debtor’s determination that the Plan is in the best interest of each Holder of a Claim or Interest. The releases set forth in Article IX.A and IX.B of the Plan propose to permanently release and enjoin several claims and Causes of Action the Creditors’ Committee believes to be valuable under the Plan and that the Creditors’ Committee believes could exceed \$50.0 million dollars. A list of the claims and Causes of Action the Creditors’ Committee believes should be identified and included on the Schedule of Retained Causes of Action is attached as Exhibit C to the Disclosure Statement.

The Debtor has reviewed the claims and Causes of Action listed on Exhibit C and believes that any claims or Causes of Action being released under the Plan have *de minimis* value or are being released in exchange for adequate consideration pursuant to the Plan.

#### 9. Compliance with Applicable Provisions of the Bankruptcy Code

Section 1129(a)(1) of the Bankruptcy Code requires that the Plan comply with the applicable provisions of the Bankruptcy Code. The Debtor considered each of these issues in the development of the Plan and has determined that the Plan complies with all provisions of the Bankruptcy Code.

## 10. Alternatives to Confirmation and Consummation of the Plan

The Debtor evaluated alternatives to the Plan, including alternative structures and terms of the Plan. While the Debtor concluded that the Plan is the best alternative and will maximize recoveries by Holders of Allowed Claims, if the Plan is not confirmed, the Debtor, or (subject to the Debtor's exclusive periods under the Bankruptcy Code to file and solicit acceptances of a plan or plans) any other party in interest in the Chapter 11 Case could attempt to formulate and propose a different plan. Further, if no plan under chapter 11 of the Bankruptcy Code can be confirmed, the Chapter 11 Case may be converted to a chapter 7 case. In a liquidation case under chapter 7 of the Bankruptcy Code, a trustee would be appointed to liquidate the remaining assets of the Debtor and distribute proceeds to creditors. The proceeds of the liquidation would be distributed to the respective creditors of the Debtor in accordance with the priorities established by the Bankruptcy Code. For further discussion of the potential impact on the Debtor of the conversion of the Chapter 11 Case to chapter 7 liquidation, see Article XIII.A of this Disclosure Statement. The Debtor has determined that Confirmation and consummation of the Plan is preferable to the available alternatives.

### G. **Releases by the Debtor Set Forth in the Plan**

Article IX.A of the Plan provides that each Released Party is deemed released by the Debtor and its Estate from any and all claims and Causes of Action except as set forth therein. The Debtor has determined that applicable law and the facts support those releases and that the Bankruptcy Court can and should approve them. **The Creditors' Committee disputes the Releases and urges Creditors in Classes 3, 4 and 5 to read the release provisions contained in Article IX of the Plan, and Article X of this Disclosure Statement, carefully. If you do not wish to be a Releasing Party, you must return the ballot AND check the opt-out box of the release. Otherwise, you will be deemed a Releasing Party. The Creditors' Committee submits that the Releases proposed in the Plan are not appropriate and reserve all rights on this issue at Confirmation.**

## II. HISTORY OF THE DEBTOR

### A. **The Debtor's Corporate Structure and History**

Founded in 2013, Tricida is a clinical-stage pharmaceutical company focused on the development and commercialization of ververimer, a drug meant to slow the progression of CKD through the treatment of chronic metabolic acidosis. Tricida is organized under the laws of the State of Delaware, with its headquarters located at 7000 Shoreline Court, Suite 201, South San Francisco, California. Tricida leases its headquarters space and does not own or lease any other property.

Tricida has no subsidiaries or affiliates. Its common stock is publicly traded and listed on the Nasdaq Stock Market ("Nasdaq") under the symbol "TCDA." On December 6, 2022, Tricida received a notice of delisting from Nasdaq indicating that its stock would be delisted on or after June 5, 2023 as a result of the minimum bid price of the company's common stock being below \$1.00 per share for thirty consecutive business days.

## B. Debtor's Prepetition Business Operations

Tricida has no products approved for marketing and has not generated any revenue from product sales or other arrangements to date. Instead, from its inception to the present, Tricida has primarily funded operations through the sale of common stock and convertible preferred stock as a private company prior to its initial public offering; from the sale of common stock from its initial public offering on July 2, 2018; from the sale of common stock from its underwritten public offering on April 8, 2019; from the issuance of \$200.0 million aggregate principal amount of 3.50% convertible senior notes due 2027 on May 22, 2020; from the sale of common stock from its registered direct equity financing on November 15, 2021; and from the proceeds of various other debt entered into and satisfied since the Company's inception.

Tricida has incurred losses in each year since its inception in 2013, with substantially all of its operating losses resulting from expenses incurred in connection with advancing veverimer through development activities and general and administrative costs associated with pre-commercialization activities and administrative functions. As of September 30, 2022, Tricida had an accumulated deficit of \$882.0 million.

As of the Petition Date, Tricida employs thirteen (13) employees, including its senior executives, all but one of whom are full-time employees and all of whom are located in the United States. None of the employees are represented by a labor union or covered by a collective bargaining agreement.

Veverimer is a new chemical entity discovered by Tricida utilizing its own proprietary technology. Tricida's intellectual property portfolio includes 233 patents in 52 different countries, including compositions-of-matter, dosage unit forms, methods-of-treatment, medical use, and methods of manufacture. Tricida anticipates that its patent protection will extend through 2038 in the United States, at least 2037 in Japan, at least 2035 in Australia, China, Europe, Hong Kong, Israel, Mexico, and Russia, and at least 2034 in South Korea and certain other markets.

Further details regarding the Debtor's business and operations may be found in the *Declaration of Lawrence Perkins in Support of the Debtor's Chapter 11 Petition and First Day Pleadings* [D.I. 2] (the "First Day Declaration").

## C. The Debtor's Capital Structure

As of the Petition Date, Tricida has approximately \$201 million in total funded debt obligations under the Convertible Notes, including accrued but unpaid interest. Tricida has no secured debt.

### 1. Convertible Notes

On May 22, 2020, Tricida issued \$200.0 million aggregate principal amount of 3.50% convertible senior notes due 2027 pursuant to an indenture, dated as of May 22, 2020, by and between Tricida, as issuer, and U.S. Bank National Association, as trustee (the "Convertible Notes," and the holders of such notes, the "Convertible Noteholders"). The Convertible Notes are senior unsecured obligations with interest payable semi-annually, in arrears, on May 15 and November 15 of each year. The Convertible Notes mature on May 15, 2027 unless earlier

repurchased, redeemed, or converted, and are not redeemable prior to May 20, 2024. Tricida did not make its interest payment due on November 15, 2022 when originally due (the “Outstanding Interest Payment”).

On December 28, 2022, Tricida received a notice from the trustee for the Convertible Notes stating that an event of default occurred and is continuing as the company had not made the November 15th interest payment and the grace period for such payment had passed. The notice also stated that holders of at least twenty-five percent (25%) in aggregate principal amount of the Convertible Notes directed the trustee to accelerate payment on the Convertible Notes, bringing one hundred percent (100%) of the principal amount of, and the accrued and unpaid interest on, the Convertible Notes due and payable. Pursuant to the terms of the RSA, Tricida made the Outstanding Interest Payment on January 11, 2023.

## 2. Trade and Related Debt

As of the Petition Date, Tricida estimates that amounts in excess of \$140 million in claims may be asserted by trade and other general unsecured creditors against Tricida. These amounts consist primarily of contract termination damages asserted by Patheon in its December 19, 2022 letter and accounts payable to various trade creditors, utility providers, and Tricida’s landlord.

## 3. Equity

Tricida’s equity is publicly traded, with the Company authorized to issue 40 million shares of preferred stock and 400 million shares of common stock. As of December 12, 2022, Tricida had no preferred shares issued or outstanding and 58,028,254 shares of common stock issued and outstanding.

### **D. Events Leading to the Chapter 11 Case**

The development and commercialization of a new pharmaceutical product is a capital intensive, lengthy project. Any setbacks or issues raising liquidity can stall the process and force a company to reevaluate its future. As set forth in more detail below, Tricida’s failure to meet its primary endpoint in the VALOR-CKD trial, along with its inability to raise additional capital, led to the significant cost cutting measures taken at the Company, the marketing of veverimer, along with the remainder of Tricida’s intellectual property portfolio, for sale, and ultimately, the filing of this Chapter 11 Case.

In November 2018, Tricida initiated the VALOR-CKD trial, which was designed as a randomized, double-blind, placebo-controlled, time-to-event trial. Patients were screened to have serum bicarbonate of 12–20 mEq/L, eGFR of 20–40 mL/min/1.73m<sup>2</sup>, with at least three screening values taken at least 2 weeks apart over a 6-week period. Of the subjects screened, just under 2,200 received single-blind treatment with veverimer for 4 to 8 weeks during Part A of the trial. Just over 700 patients were excluded following Part A, with the remaining 1,480 patients then receiving a randomized (1:1), double-blind treatment with veverimer or placebo for Part B of the trial.

VALOR-CKD was designed to generate acidotic and non-acidotic groups using a randomized withdrawal design. However, the veverimer and placebo groups of patients

demonstrated unexpected serum bicarbonate results, with the placebo group failing to decrease to baseline serum bicarbonate levels after withdrawal of veverimer at randomization. In fact, at each of the three-month timepoints between month 3 and month 30 of Part B of the trial, approximately 60% of the patients in the placebo group had a level of serum bicarbonate above the upper limit for initial enrollment in the trial. This was an unexpected result; in prior clinical trials cessation of treatment with veverimer resulted in serum bicarbonate decreasing significantly, toward baseline, within two weeks of stopping veverimer. While the efficacy outcome was unexpected, the VALOR-CKD trial did reinforce veverimer's excellent safety profile. In the prepetition Stifel - Miller-Buckfire sales process described below, Tricida proposed possible clinical trial design features that might help identify patients with chronic metabolic acidosis due to CKD (e.g., adding a 3-month placebo run-in period); no parties expressed interest in conducting another outcome trial using this type of trial design.

On October 24, 2022, Tricida announced that the VALOR-CKD trial did not meet its primary endpoint. The outcome of the VALOR-CKD trial severely harmed Tricida's access to capital, which in turn negatively impacted the Company's business, financial condition, and prospects as a going concern. As a result, Tricida engaged its advisors and began to consider strategic alternatives and next steps.

#### **E. *Pardi v. Tricida***

On January 6, 2021, a putative securities class action was filed in the U.S. District Court for the Northern District of California against Tricida and its Chief Executive Officer and Chief Financial Officer, *Pardi v. Tricida, Inc., et al.*, 21-cv-00076 (the "Pardi Litigation"). In April 2021, the court appointed Jeffrey Fiore as lead plaintiff and Block & Leviton LLP as lead plaintiffs' counsel.

In June 2021, the lead plaintiff filed an amended complaint which alleged that during the period between June 28, 2018 through February 25, 2021, Tricida and its Chief Executive Officer violated federal securities laws, including under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, through alleged public misrepresentations and/or omissions of material facts concerning Tricida's new drug application for veverimer and the likelihood and timing of approval of veverimer by the U.S. Food and Drug Administration (the "FDA").

In July 2021, the defendants filed a motion to dismiss the amended complaint. On July 29, 2022, the court issued an order granting in part and denying in part the defendants' motion to dismiss. The court granted the defendants' motion with respect to all but one of the alleged misrepresentations on the grounds that the lead plaintiff had failed to meet the required pleading standards for a securities fraud claim, but ruled that those requirements had been satisfied with respect to one alleged misrepresentation from May 7, 2020. The court granted the lead plaintiff leave to file an amended complaint within 21 days of the court's order, but the plaintiff chose to proceed with the case based solely on the surviving alleged misrepresentation. A case management conference was held on September 20, 2022 and discovery commenced regarding the one alleged misrepresentation remaining.

On November 23, 2022, lead plaintiff filed a motion for leave to file a second amended complaint. On December 7, 2022, defendants stipulated to the filing of the second amended complaint, reserving all rights to challenge the complaint on any ground. On December 9, 2022, the court granted the parties' stipulation regarding the second amended complaint, which was filed on the docket on December 15, 2022. In the second amended complaint, lead plaintiff added new allegations regarding certain categories of challenged statements previously dismissed by the court, and additional purported misrepresentations and/or omissions regarding the new drug application review process for veverimer. On February 6, 2023, Tricida's Chief Executive Officer moved to dismiss the second amended complaint. Lead plaintiff's opposition is due March 23, 2023, defendant's reply is due April 24, 2023, and a hearing is set for June 1, 2023.

On January 24, 2023, lead plaintiff moved to dismiss Tricida without prejudice from the Pardi Litigation. At a hearing on March 23, 2023, the motion was granted and Tricida was dismissed without prejudice from the Pardi litigation.

#### **F. Derivative Litigation**

On February 15, 2021, a derivative action was filed in the District of Delaware, brought by and on behalf of Tricida, Inc. as a Nominal Defendant, against the Company's directors as well as its Chief Executive Officer and Chief Financial Officer, *Ricks v. Alpern et al.*, Case No. 1:21-cv-000205 (the "Ricks Derivative Case"). The Ricks Derivative Case is based on the allegations of the Pardi Litigation and asserts that by allowing Tricida and senior executives to make the allegedly false and misleading statements at issue in the Pardi Litigation, the defendants breached their fiduciary duties and wasted corporate assets. Additionally, the complaint asserts claims against the senior officers for violation of Sections 10(b) and 21D of the Securities Exchange Act of 1934. No damages amount is specified in the Ricks Derivative Case.

On April 8, 2021 a second derivative action was filed in the District of Delaware, brought by and on behalf of Tricida, Inc. as a Nominal Defendant, against the Company's directors as well as its Chief Executive Officer and Chief Financial Officer, *Goodman v. Klaerner et al.*, Case No. 1:21-cv-00510 (the "Goodman Derivative Case"). As with the Ricks Derivative Case, the Goodman Derivative Case is based on the allegations of the Pardi Litigation and asserts that by allowing Tricida and senior executives to make the allegedly false and misleading statements at issue in the Pardi Litigation, the defendants breached their fiduciary duties. Additionally, the complaint asserts claims against the senior officers for violation of Sections 10(b) and 21D of the Securities Exchange Act of 1934. No damages amount is specified in the Goodman Derivative Case.

On May 27, 2021, a third derivative action was filed in the District of Delaware, brought by and on behalf of Tricida, Inc. as a Nominal Defendant, against the Company's directors as well as its Chief Executive Officer and Chief Financial Officer, *Verica v. Veitinger et al.*, Case No. 1:21-cv-00759 (the "Verica Derivative Case" and collectively with the Goodman Derivative Case and Ricks Derivative Case, the "Derivative Cases"). As with the Goodman Derivative Case and Ricks Derivative Case, the Verica Derivative Case is based on the allegations of the Pardi Litigation and asserts that by allowing Tricida and senior executives to make the allegedly false and misleading statements at issue in the Securities Class Action, the defendants breached their fiduciary duties. Additionally, the complaint asserts claims for violations of Sections 14(a) and

20(a) of the Securities Exchange Act of 1934 and for unjust enrichment and waste of corporate assets. No damages amount is specified in the Verica Derivative Case.

The Derivative Cases were consolidated by order of the District of Delaware Court and lead plaintiffs' counsel has been appointed. Pursuant to an agreement between the parties, the Delaware court issued an order on October 12, 2021, staying the consolidated derivative case pending final resolution of any motions to dismiss filed in the Pardi Litigation. When the Pardi Litigation had moved into discovery, the derivative plaintiffs informed defendants that they planned to file an amended consolidated derivative amended complaint, but has not made any filing to date.

All action in the Derivative Cases has been stayed as against Tricida in light of the chapter 11 filing.

### **G. The Prepetition Sale Process**

On November 2, 2022, Tricida announced to the public that it had engaged Stifel and its wholly-owned affiliate, Miller Buckfire ("Stifel-MB"). In the weeks following its engagement, Stifel-MB met repeatedly with Tricida's management team to conduct diligence on the assets, develop a targeted buyer list, assist with the preparation of marketing materials for potential purchasers, and develop a communication strategy meant to attract the attention of strategically positioned buyers.

Stifel-MB contacted or received inbound interest from approximately 53 strategic and financial parties regarding a potential transaction, primarily comprising large-cap and mid-cap public and private companies with strategic interests in nephrology or renal and metabolic therapeutic categories. With respect to this outreach process, Stifel-MB prioritized parties with both adequate commercial infrastructure and drug development capabilities along with sufficient capital resources—or a reasonable likelihood of being able to obtain such capital—to consummate a transaction that would maximize the value of the Debtor or its assets. These parties were provided non-confidential presentation materials prepared by the Debtor (disclosed in an 8-K filed on November 17, 2022); certain confidential information (including access to a virtual data room) was provided to those parties who executed a non-disclosure agreement.

Although several parties expressed interest in the intellectual property portfolio, ultimately no party was willing to move forward with a sale outside of a chapter 11 proceeding.

### **H. The Restructuring Support Agreement**

On November 10, 2022, Tricida received through its counsel outreach from several of the Convertible Noteholders. Acting on behalf of the Company, Sidley Austin LLP ("Sidley") engaged with the Consenting Noteholder Professionals, providing them with certain diligence materials and otherwise negotiating with the Convertible Noteholders to create a path forward that preserves value while liquidating the Company's assets for the benefit of its creditors and other stakeholders. Sidley met in-person with Davis Polk & Wardwell LLP, FTI Consulting Inc., and certain of the Convertible Noteholders on December 14, 2022 and shortly thereafter began negotiating the terms of a restructuring support agreement.

Following extensive, arm's-length negotiations, the Debtor and the Convertible Noteholders collectively holding over 80% of the aggregate amount of Convertible Notes outstanding executed the RSA. Under the RSA, the Consenting Noteholders are required to vote in favor of the Plan provided, among other things, that (a) Tricida meets certain milestones set forth in the RSA term sheet (the "Milestones"); (b) Tricida operates in accordance with the approved budget, subject to a permitted variance; and (c) the Consenting Noteholders have certain consultation rights, including with respect to any sale of the assets. In addition to customary termination provisions for the Debtor and the Consenting Noteholders for a restructuring support agreement, on or before the date that is thirty (30) days following the Petition Date, counsel to the Consenting Noteholders may elect to provide notice to the Debtor that the Required Objecting Noteholders (representing at least two-thirds of the Consenting Noteholders) have reasonably determined in good faith that the Plan and Disclosure Statement, as each may be amended from time to time after filing, (i) are inconsistent with the terms of the RSA, including the term sheet attached thereto, or (ii) if not addressed in the RSA or term sheet, otherwise adversely affect the Consenting Noteholders or their claims under the Convertible Notes in any material respect. Upon receipt of any such notice, the Debtor may terminate the RSA.

The RSA establishes a means for the implementation of the liquidating plan through the creation of the Liquidating Trust. The Liquidating Trust will, among other things, (a) receive and hold the Liquidating Trust assets, which includes the remaining cash of the Debtor and the proceeds from the sale, minus certain plan distributions to be made on the effective date and holdbacks for the professional fee escrow and wind-down budget; (b) administer, dispute, object to, compromise or otherwise resolve all disputed claims; (c) make distributions pursuant to the confirmed plan; and (d) commence and pursue any retained causes of action set forth in the Plan.

Finally, the RSA sets up a general framework for the treatment of claims against and interests in the Debtor consistent with the Plan and this Disclosure Statement. In sum, Holders of Allowed General Unsecured Claims, along with the Claims of the Convertible Noteholders, will be paid their *pro rata* right to recovery in cash on the Effective Date of the Plan. These claims will additionally have the right to a later true-up payment from the Liquidating Trust. *De minimis* claims of less than \$7,500 will receive fifty percent (50%) of the allowed amount of their claim in cash on the effective date, subject to an aggregate recovery amount for such claims of \$60,000. Finally, disputed General Unsecured Claims and the Patheon Rejection Claim shall receive *pro rata* distributions from the Liquidating Trust at the time the size of their claims are determined and Allowed.

Under the RSA, the Debtor, directors and officers, and the Consenting Noteholders will receive releases as set forth in Article IX of the Plan. In addition, (a) the Consenting Noteholders received payment of prepetition fees and expenses of their advisors incurred and invoiced prior to the Petition Date, and (b) the Convertible Noteholders received payment of the Outstanding Interest Payment originally due November 2022. Both the Debtor and the Consenting Noteholders will have the right to terminate the RSA upon certain termination events, including the Debtor's right to terminate if its Board determines in good faith, and after consulting with counsel, that proceeding with the Sale process and liquidating Plan would be inconsistent with the exercise of its fiduciary duties or its compliance with applicable law.

As of the filing of this amended Disclosure Statement, the Consenting Noteholders are bound, pursuant to the terms of the RSA, to vote in favor of the Plan and have subsequently indicated their intention to do so.

The Creditors' Committee has not agreed to the payment of the Consenting Noteholders' fees and expenses, whether directly or under section 503(b) or 507 of the Bankruptcy Code, and reserves all rights and objections to payment of such fees and expenses, including the fees and expenses incurred by the Consenting Noteholders' professionals. The Creditors' Committee reserves all rights to object the fees and expenses incurred, or payable, to the Consenting Noteholders.

### **III. EVENTS DURING CHAPTER 11 CASE**

#### **A. Commencement of the Chapter 11 Case and the Debtor's Professionals**

On January 11, 2023 (the "Petition Date"), the Debtor filed a petition for relief under chapter 11 of the Bankruptcy Code. The Chapter 11 Case was assigned to the Honorable John T. Dorsey.

The Debtor retained, effective as of the Petition Date, Kurtzman Carson Consultants LLC ("KCC") as its claims and noticing agent [D.I. 3, 42].

#### **B. First Day Motions**

On the Petition Date, the Debtor filed a number of motions and other pleadings (collectively the "First Day Motions") to ensure an orderly transition into chapter 11, including the following:

- motion to authorize the Debtor to redact certain personally identifiable information and modify the requirements to file a list of all equity security holders and certain related relief [D.I. 10];
- motion relating to the continued use of the Debtor's existing cash management system and certain related relief [D.I. 9];
- motion to establish procedures for determining adequate assurance for the provision of utility services and to prohibit utility service providers from altering, refusing, or discontinuing service and certain related relief [D.I. 4];
- motion for authority to pay certain prepetition employee-related obligations and certain related relief [D.I. 8];
- application to retain KCC as the Debtor's claims and noticing agent and certain related relief [D.I. 3];
- motion for authority to pay certain Warehouseman and certain related relief [D.I. 7];

- motion for authority to pay certain prepetition taxes and fees and certain related relief [D.I. 6]; and
- motion for authority to maintain certain insurance policies and programs, to honor insurance obligations and for certain related relief [D.I. 5].

The relief sought in the First Day Motions was granted on an interim basis on January 13, 2023. Pursuant to various court orders, the relief sought in the First Day Motions was granted on a final basis on February 6, 2023. See D.I. 147; D.I. 148; D.I. 149; D.I. 150; D.I. 157; and D.I. 158.

### C. Approval of the Proposed Bidding Procedures

On the Petition Date, the Debtor filed the *Debtor's Motion for Entry of (I) an Order (A) Approving Certain Bidding Procedures and the Form and Notice Thereof, (B) Scheduling an Auction and a Hearing on the Approval of the Sale of All or Substantially All of the Debtor's Assets, (C) Establishing Certain Assumption and Assignment Procedures and Approving the Manner of Notice Thereof, and (D) Granting Related Relief; and (II) an Order (A) Authorizing and Approving the Debtor's Entry into an Asset Purchase Agreement, (B) Authorizing the Sale of All or Substantially All of the Debtor's Assets Free and Clear of All Encumbrances, (C) Approving the Assumption and Assignment of the Assumed Contracts, and (D) Granting Related Relief* [D.I. 11] (the "Bidding Procedures Motion").

Filed concurrently with the Bidding Procedures Motion, the Debtor filed the *Debtor's Motion for Entry of an Order Shortening the Notice Period for the Debtor's Motion for Entry of (I) an Order (A) Approving Certain Bidding Procedures and the Form and Manner of Notice Thereof, (B) Scheduling an Auction and a Hearing on the Approval of the Sale of All or Substantially All of the Debtor's Assets, (C) Establishing Certain Assumption and Assignment Procedures and Approving the Manner of Notice Thereof, and (D) Granting Related Relief; and (II) an Order (A) Authorizing and Approving the Debtor's Entry Into an Asset Purchase Agreement, (B) Authorizing the Sale of All or Substantially All of the Debtor's Assets Free and Clear of All Encumbrances, (C) Approving the Assumption and Assignment of the Assumed Contracts, and (D) Granting Related Relief* [D.I. 12] (the "Motion to Shorten"), which was granted by order entered January 13, 2023 [D.I. 55] (the "Order Shortening Notice"). Pursuant to the Order Shortening Notice, the Bidding Procedures Motion shall be heard, along with any objections thereto, by the Court on January 26, 2023.

Shortly after commencing the chapter 11 case, Stifel-MB launched the postpetition marketing process. This process was designed to build upon the prepetition efforts by marketing the Debtor's assets to an even broader group of potential buyers, which included the parties contacted prepetition, additional parties identified by the Debtor and its advisors, and all parties suggested by the advisors to the Consenting Noteholders and the Creditors' Committee. The expanded process included strategic and financial parties as well as distress-oriented investors who may be interested in the Debtor's intellectual property and fixed assets. As a result, the Debtor and its advisors communicated with a total of eighty-seven (87) parties. Those parties received information regarding the proposed Bidding Procedures and access to non-confidential information, including a corporate presentation. In total, eight (8) parties executed a non-disclosure

agreement and received additional materials, access to a virtual data room and in some cases, meetings with management.

As stated in the Bidding Procedures Motion, given the Debtor's liquidity situation and the robust prepetition marketing process, the Debtor has determined that its best opportunity to maximize the value of its estate for the benefit of all the Debtor's stakeholders relies on its ability to expeditiously proceed through the Chapter 11 Case and complete the proposed Sale (as defined below) in a manner that minimizes administrative expenses.

On January 26, 2023, the Court entered an order [D.I. 100] (the "Bidding Procedures Order") (a) approving certain procedures for interested parties to submit competing bids and, if applicable, participate in an auction (the "Auction") for the Assets (the "Bidding Procedures"), (b) approving the form and manner of the notice of the Auction and the Sale Hearing (the "Sale Notice"), and (c) establishing procedures for the assumption and assignment of the Assumed Contracts, among other things. The Bidding Procedures Order gives the Debtor broad discretion to modify the timeline and other procedures set forth in the Bidding Procedures, in consultation with the Consenting Noteholders and the Creditors' Committee (together the "Consultation Parties"),<sup>7</sup> in order to maximize value.<sup>8</sup>

Following entry of the Bidding Procedures Order, the Debtor served the Sale Notice on the Sale Notice Parties and published the Sale Notice in both the *San Jose Mercury News* and the national edition of the *New York Times*.<sup>9</sup>

#### **D. The Sale of the Debtor's Assets**

In early February 2023 the Debtor received Bids for various subsets of the Assets from four Potential Bidders—Liquidity Services, Inc. ("Liquidity Services"), Heritage Global Partners, Inc. ("HGP"), Renibus Therapeutics, Inc. ("Renibus"), and Patheon Austria GmbH & Co KG ("Patheon").

On February 15, 2023, following extensive in-person, phone, and email consultation with the Consultation Parties, the Auction was held. The Debtor presented the Assets in two lots at the Auction—the first ("Lot One") consisted of the Debtor's equipment, and the second ("Lot Two") comprised all of the Debtor's other Assets. On the record at the Auction, Liquidity Services was

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<sup>7</sup> Section III of the Bidding Procedures, entitled "Determination by the Debtor" provides that the Debtor will consult with the Consultation Parties "as appropriate throughout the Bidding Process."

<sup>8</sup> Specifically, section XIV of the Bidding Procedures provides, "Notwithstanding any of the foregoing, the Debtor, in consultation with the Consultation Parties, reserves the right to modify these Bidding Procedures at or prior to the Auction, including, without limitation, to extend the deadlines set forth herein, modify bidding increments, waive terms and conditions set forth herein with respect to any or all Potential Bidders (including, without limitation, the Bid Requirements), impose additional terms and conditions with respect to any or all potential bidders, adjourn or cancel the Auction at or prior to the Auction, and/or adjourn the Sale Hearing; provided that the Debtor may not amend these Bidding Procedures or the Bidding Process to reduce or otherwise modify its obligations to consult with any Consultation Party without the consent of such Consultation Party or further order of the Court."

<sup>9</sup> See *Certificate of Service of Stanley Y. Martinez re: Notice of Auction and Sale Hearing (Filed by Kurtzman Carson Consultants LLC)* [D.I. 141] and *Affidavit of Publication of the Notice of Auction and Sale Hearing in The New York Times and San Jose Mercury News* [D.I. 181].

determined to have submitted the highest and best bid, and HGP was determined to have submitted the next-highest bid with respect to the equipment assets in Lot One. The Auction was continued with respect to Lot Two to February 16, 2023, at which time Renibus was determined to have submitted the highest bid, and Patheon was determined to have submitted the next-highest bid. Following the objections of both the Consultation Parties and upon the request of the Consenting Noteholders, the Debtor further adjourned the Auction to February 20, 2023 to allow parties time to negotiate additional value for the Estate.

On February 16, 2023, the Debtor filed the Notice of Successful Bidder Regarding Debtor's Equipment Assets [D.I. 203] and Notice of Successful Bidder Regarding Debtor's Intellectual Property Assets [D.I. 204] announcing Liquidity Service and Renibus as the Successful Bidders for Lot 1 and Lot 2, respectively, and providing notice “that Auction remains open and has been continued as set forth in the record at the Auction.” Between February 16, 2023 and February 20, 2023, the Debtor, the Consultation Parties, and Renibus worked around the clock to reach a negotiated settlement resolving the concerns expressed by the Consultation Parties, including through further improvement in the terms of the Renibus acquisition in the form of contingent future milestone payments as additional consideration (the “Renibus Settlement Offer”).

On February 20, 2023, the Auction re-commenced. The Debtor announced on the record that, following consultation with the Consultation Parties, in addition to its bid, Renibus had proposed substantial additional consideration in the form of the Renibus Settlement Offer in an effort to consensually resolve the outstanding creditor objections. Thereafter, the Auction concluded with Renibus determined to have submitted the highest and best bid with respect to Lot Two.

On February 21, 2023, the Court held a hearing to approve the Sale of Lot One and Lot Two to Liquidity Services and Renibus respectively. With all objections to the proposed Sale resolved, the Court approved the Sale of Lot One and Lot Two.<sup>10</sup>

The Renibus Asset Purchase Agreement, attached as Exhibit 1 to the Renibus Sale Order (the “IP Purchase Agreement”), provides for, among other things, certain contingent milestone payments in addition to \$250,000 cash consideration due upon closing (together, the “Contingent Payments”). Those contingent milestone payments include: (i) a one-time \$2.5 million payment upon certain approvals by the FDA in connection with veverimer and (ii) several additional milestone payments, not to exceed \$150 million in the aggregate, upon the occurrence of certain pre-determined Aggregate Net Sales thresholds (as defined and set forth under the Renibus Asset Purchase Agreement) (the “Sale Milestone Payments”). Those Sale Milestone Payments, however, are subject to deduction not to exceed fifty percent (50%) of all consideration pay by Renibus for any right to Third Party Patents (as defined under the Renibus Asset Purchase Agreement) necessary for the manufacturer, use or sale of the Product (as defined under the

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<sup>10</sup> See Order (I) Authorizing and Approving With Respect to the Acquired Assets the Debtor's Entry Into the Purchase Agreement; (II) Authorizing the Sale of the Acquired Assets of the Debtor Free and Clear of All Claims; (III) Approving the Assumption and Assignment of the Assigned Contracts; and (IV) Granting Related Relief [D.I. 230] (the “Renibus Sale Order”); see also Order (I) Authorizing and Approving With Respect to the Equipment Assets (A) the Debtor's Entry Into the Purchase Agreement and (B) Selection of a Next-Highest Bid; (II) Authorizing the Sale of the Equipment Assets of the Debtor Free and Clear of All Claims; and (III) Granting Related Relief [D.I. 232] (the “Equipment Sale Order”).

Renibus Asset Purchase Agreement). The Debtor and Renibus closed the Asset Purchase Agreement on March 9, 2023.

The below demonstrative shows the payments due, including the Sale Milestone Payments, under the IP Purchase Agreement.

### Payments under the Purchase Agreement

<b>Cash at Closing</b>	\$250,000
<b>US FDA Approval Milestone</b> (Payable within 30 days of FDA Approval)	\$2,500,000
<b>Global Milestones</b>	
Aggregate Net Sales exceed \$250,000,000	\$6,250,000
Aggregate Net Sales exceed \$500,000,000	\$12,500,000
Aggregate Net Sales exceed \$750,000,000	\$18,750,000
Aggregate Net Sales exceed \$1,000,000,000	\$25,000,000
Aggregate Net Sales exceed \$1,500,000,000	\$37,500,000
Aggregate Net Sales exceed \$2,000,000,000	\$50,000,000
<b>Total Aggregate Consideration</b>	<b>\$152,750,000</b>

The Liquidity Services Asset Purchase Agreement, attached as Exhibit 1 to the Equipment Sale Order provides for, among other things, a payment of \$230,000 cash consideration due upon closing to the Debtor. The Debtor and Liquidity Services closed the Asset Purchase Agreement on February 28, 2023.

#### E. Special Committee Investigation

In connection with its restructuring efforts, the Debtor's Board of Directors (the "Board") appointed Thomas G. FitzGerald as an independent director (the "Independent Director"). On January 10, 2023 (the "January 10 Resolution"), the Board established a special committee (the "Special Committee"), comprised solely of the Independent Director, and delegated to the Special Committee the authority to evaluate any claims or causes of action of the Debtor involving any actual or potential conflict of interest between the Debtor and any of its Related Parties (such matters, the "Conflict Matters"). The January 10 Resolutions provide, in relevant part, the Special Committee's mandate, which is to engage in the evaluation of any "Conflict Matter" as defined in the January 10 Resolutions (the "Mandate").

At the direction of the Special Committee, counsel to the Debtor, Young Conaway Stargatt & Taylor, LLP ("Young Conaway"), conducted an investigation of potential Conflict Matters

involving the “Related Parties,” defined in the January 10 Resolutions as any of the Company’s (i) equity holders, (ii) affiliates, (iii) directors, (iv) managers, and (v) officers, or (vi) other stakeholders (the “Claims Analysis”). Young Conaway performed substantial due diligence in connection with the Claims Analysis, which included conducting interviews with certain members of the Board and the Debtor’s management, holding discussions with the Debtor’s outside advisors, reviewing numerous documents, and analyzing and discussing the merits of various potential causes of action. The Special Committee investigation included dialogue with advisors to the Consenting Noteholders and some dialogue with advisors to the Creditors’ Committee. As a result of these discussions, the Special Committee evaluated all issues raised by such parties. The Creditors’ Committee and the Consenting Noteholders were provided access to all information reviewed by the Special Committee that Debtor’s counsel determined to be non-privileged. The Special Committee’s investigation included the investigation and analysis of: (i) the verivermer testing and FDA approval process; (ii) the payment of certain prepetition severance and retention payments to insiders in late fall 2022; and (iii) the alleged impairment of value of the Company’s NOLs. With these categories in mind, as discussed in greater detail below, Young Conaway conducted research and analyzed applicable federal, state, and common law to determine whether the retention of any estate claims related to Special Committee’s Mandate would provide a net value to the Company’s bankruptcy estate.

Young Conaway considered numerous possible estate causes of action and ultimately focused its analysis on determining whether the Company may possess the following thirteen (13) potential claims that should be considered as possible retained causes of action (the “Identified Claims”) arising in the applicable two (2), three (3), or four (4) year periods prior to January 11, 2023. The Identified Claims are as follows: (i) a breach of the fiduciary duty of care by the Company’s officers with respect to their decision to reopen the Company’s stock trading window for directors on November 21, 2022, (ii) a breach of the fiduciary duty of care by the Company’s Board for authorizing the Bonus Retention Plan, (iii) a breach of the duty of care by the Company’s directors and officers regarding the design of the verivermer trials, (iv) a breach of the duty of loyalty by the Board in approving the making of a payment under the Bonus Retention Plan to Chief Executive Officer, (v) a breach of the duty of loyalty by a former director in connection with trading activity by an affiliate of such director that contributed to the impairment of the Company’s NOLs, (vi) an additional breach of the duty of loyalty related to insider trading against a former director and affiliated non-debtor entity, (vii) a claim related to insider preferential payments under chapter 5 of the Bankruptcy Code, (viii) a claim for avoidance of certain Severance Payments made to RIF’ed Employees of the Company, (ix) a claim for avoidance of certain “Spot Bonuses” made to the Company’s Employees during the Claims Analysis Period, (x) a claim for avoidance of certain Cash Retention Awards paid to Company personnel in connection with the Bonus Retention Plan, (xi) a claim for avoidance of certain incentive plan payments made to officers, (xii) a claim for actual fraudulent transfer regarding the Severance Payments, Spot Bonuses, Incentive Plan Payments Claims, and Cash Retention Awards, and (xiii) a claim alleging that the Company’s directors or officers engaged in state and federal common law fraud.

Following the completion of its investigation and recommendations, the Special Committee determined that only one (1) claim should be retained by the Debtor and another was outside the Mandate of the Special Committee. On March 8, 2023, the Special Committee convened a meeting with the attorneys and financial advisors of the Creditors’ Committee and the Consenting Noteholders to discuss the Special Committee’s investigation and recommendations.

At the meeting, Young Conaway responded to numerous questions and provided information on all follow-up requests. The Creditors' Committee and the Consenting Noteholders were also provided at a later date with a detailed timeline on relevant events, a summary of the relevant factual information considered by the Special Committee, a list of the Identified Claims, a summary of the relevant case law related to the Identified Claims, and additional information and summaries requested.

The Consenting Noteholders and the Debtor engaged in negotiations regarding the potential claims and Causes of Action on the Schedule of Retained Causes of Action, and reached an agreement to the extent set forth therein, on which potential claims and Causes of Action should be retained. The Creditors' Committee asserts that it was not included, nor consulted in connection with these additional negotiations or the claims and Causes of Action that were ultimately added to the Schedule of Retained Causes of Action. The Debtor disagrees. As a result of the additional negotiations, the Debtor believes that the Debtor Releases under the Plan are appropriate and are in the best interest of the Debtor's estate, subject to retaining certain agreed actions designated as Retained Causes of Action, and, pursuant to the terms of the Restructuring Support Agreement, the Consenting Noteholders support the Plan—including the Debtor Releases.

The Creditors' Committee disagrees with the Debtor and the Consenting Noteholders that the releases set forth in Articles IX.A and IX.B of the Plan are appropriate and are in the best interest of the Debtor's estate. The Creditors' Committee believes that several of the Identified Claims investigated by the Special Committee have significant value that will otherwise be released and waived under the Plan. For example, the Creditors' Committee understands that the Debtor, through its Board, authorized and paid out over \$9.6 million in bonus retention awards, incentive plan payments, or severance payments within one year of the Petition Date. The Liquidating Trust and Liquidating Trustee could potentially realize a recovery against the individuals who received these payments. Yet, the claims and Causes of Action are not being retained on the Schedule of Retained Causes of Action under the Plan.

Consistent with its power and duty to investigate the acts of the Debtor under Bankruptcy Code section 1103(c), the Creditors' Committee has begun its own investigation into potential Causes of Action, including by reviewing SEC filings and certain internal "non-privileged" documents the Debtor has made available to the Creditors' Committee in a data room. This investigation remains ongoing and, given the Creditors' Committee relatively recent formation on January 23, 2023, is not complete. The Creditors' Committee anticipates that upon the Effective Date of the Plan, the Liquidating Trustee appointed under the Plan will expeditiously and effectively continue the Creditors' Committee's investigation. In reviewing the Debtor's records, for example, such trustee will hold the Debtor's attorney-client privilege, giving the Liquidating Trustee important access to information the Creditors' Committee has not been permitted to review and consider. A list of the claims and Causes of Action the Creditors' Committee believes should be identified and included on the Schedule of Retained Causes of Action is attached hereto as **Exhibit C**. The Debtor has reviewed these claims and Causes of Action and believes that any claims or Causes of Action being released under the Plan have *de minimis* value or are being released in exchange for adequate consideration pursuant to the Plan.

## **F. Bar Dates**

On January 17, 2023, the Debtor filed a motion [D.I. 67] (the “Bar Date Motion”) to establish certain bar dates for filing Proofs of Claim against the Debtor. Filed concurrently with the Bar Date Motion, the Debtor filed a motion seeking to shorten notice and objection periods with respect to the Bar Date Motion [D.I. 68].

On January 26, 2023 the Court entered the *Order (I) Setting Bar Dates for Filing Proofs of Claim; (II) Approving Notice of Bar Dates ,and (III) Granting Related Relief* [D.I. 101] (the “Bar Date Order”). The Bar Date Order provides, among other things, that each person or entity (excluding governmental units) that asserts a claim against the Debtor that arose (or is deemed to have arisen) before the Petition Date shall be required to file an original written proof of claim so that such proof of claim is actually received on or before March 8, 2023 at 4:00 p.m. (prevailing Eastern Time) (the “Claims Bar Date”). All governmental units holding claims that arose (or is deemed to have arisen) before the Petition Date shall be required to file an original written proof of claim so that such proof of claim is actually received on or before July 10, 2023 at 4:00 p.m. (prevailing Eastern Time) (the “Government Claims Bar Date”).

The Debtor anticipates commencing the process of reviewing proofs of Claim and expects to file several claims objections once that process is underway. Consequently, the Debtor anticipates that the figures set forth above in Article I.D, which reflect estimates of Allowed Claims, may change significantly following the claims reconciliation process.

## **G. Creditors’ Committee Appointment**

On January 23, 2023, the U.S. Trustee appointed the Creditors’ Committee, consisting of (i) U.S. Bank Trust Company, N.A., as indenture trustee for the 3.50% convertible senior notes due 2027; (ii) Patheon Austria GmbH & Co. KG; and (iii) Medpace Research, Inc.

# **IV. TREATMENT OF CLAIMS AND INTERESTS**

## **A. Unclassified Claims**

### **1. Administrative Claims**

Unless otherwise agreed to by the Holder of an Allowed Administrative Claim and the Debtor or the Liquidating Trustee (as applicable), each Holder of an Allowed Administrative Claim (other than Holders of Professional Fee Claims and Claims for Statutory Fees) will receive in full and final satisfaction of its Allowed Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim in accordance with the following: (1) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date (or, if not then due, when such Allowed Administrative Claim becomes due or as soon as reasonably practicable thereafter); (2) if such Administrative Claim is not Allowed as of the Effective Date, no later than thirty (30) days after the date on which an order allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; or (3) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court.

Except for Professional Fee Claims, and notwithstanding any prior Filing or Proof of Claim, Proofs of Claim seeking the allowance and payment of Administrative Claims must be Filed and served on the Debtor or the Liquidating Trustee (as applicable) and their counsel, no later than the Administrative Claims Bar Date pursuant to the procedures specified in the Confirmation Order and the notice of the occurrence of the Effective Date. The burden of proof for the allowance of Administrative Claims remains on the Holder of the Administrative Claim.

Objection to such Proofs of Claim must be Filed and served on the requesting party within one hundred twenty (120) days after the Effective Date. After notice and a hearing, the Allowed amounts, if any, of Administrative Claims shall be determined by, and satisfied in accordance with, a Final Order.

**Except as otherwise provided in Articles II.B or II.D of the Plan, Holders of Administrative Claims that do not File and serve a Proof of Claim or application for payment of administrative expense requesting the allowance of an Administrative Claim by the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting Administrative Claims against the Debtor, the Estate, the Liquidating Trust, the Liquidating Trustee, or their assets and properties, and any Administrative Claims shall be deemed disallowed as of the Effective Date unless otherwise ordered by the Court.**

a. *Statutory Fees*

All U.S. Trustee Statutory Fees due and payable prior to the Effective Date shall be paid by the Debtor on the Effective Date. After the Effective Date, any and all Statutory Fees shall be paid to the U.S. Trustee by the Liquidating Trustee when due and payable. The Debtor and the Liquidating Trustee (as applicable) shall remain obligated to pay the U.S. Trustee Statutory Fees until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code. Neither the U.S. Trustee nor any other Governmental Unit is required to File a request for an Administrative Claim for Statutory Fees.

b. *Professional Compensation*

(i) **Final Fee Applications and Payment of Professional Fee Claims.**

All requests for payment of Professional Fee Claims by Retained Professionals (other than OCPs) for services rendered and reimbursement of expenses incurred prior to the Effective Date must be Filed no later than forty-five (45) days after the Effective Date. Objections to Professional Fee Claims must be Filed and served no later than fourteen (14) days after the Filing of the Professional Fee Claim. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims of Retained Professionals (other than OCPs) after notice and a hearing in accordance with the procedures established by the Bankruptcy Court. Unless otherwise agreed to by the Debtor and the Retained Professional, the Liquidating Trustee shall pay Professional Fee Claims that are Allowed by Final Order following the Effective Date in Cash from the Professional Fee Reserve.

(ii) **Administrative Claims of OCPs.**

All requests for payment of Professional Fee Claims of OCPs shall be made pursuant to the OCP Order. To the extent any Professional Fee Claims of the OCPs have not been Allowed pursuant to the OCP Order on or before the Effective Date, the amount of Professional Fee Claims owing to the OCPs shall be paid in Cash to such OCPs by the Debtor or the Liquidating Trustee (as applicable) from the Professional Fee Reserve as soon as reasonably practicable after such Professional Fee Claims are Allowed pursuant to the OCP Order.

(iii) **Post-Effective Date Fees and Expenses.**

Except as otherwise specifically provided in the Plan, from and after the Effective Date, the Liquidating Trustee, the Contingent Payments Holding Trustee, or the Contingent Payments Trustee (as applicable) shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to the Chapter 11 Case that are incurred after the Effective Date, subject to the Wind-Down Budget. Upon the Effective Date, any requirement that Retained Professionals comply with sections 327 through 331 of the Bankruptcy Code or the OCP Order in seeking retention or compensation for services rendered after such date shall terminate, and the Liquidating Trustee, the Contingent Payments Holding Trustee, or the Contingent Payments Trustee (as applicable) may employ and pay any retained professionals in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Code, subject to the Wind-Down Budget.

(iv) **Professional Fee Reserve Amount.**

Unless otherwise agreed to prior to the Effective Date by the Debtor and the Retained Professional or the Consenting Noteholder Professional (as applicable), to receive payment for unbilled fees and expenses incurred through the Effective Date, the Retained Professionals and the Consenting Noteholder Professionals shall estimate their Accrued Professional Compensation Claims prior to and as of the Effective Date, and shall deliver such estimate to the Debtor and its counsel no later than three (3) Business Days prior to the Effective Date; *provided* that such estimate shall not be considered an admission with respect to the fees and expenses of such Retained Professional or Consenting Noteholder Professional. If a Retained Professional or Consenting Noteholder Professional does not provide an estimate, the Debtor may estimate the unbilled fees and expenses of such Retained Professional or Consenting Noteholder Professional (as applicable). The total amount so estimated hereunder as of the Effective Date shall comprise the “Professional Fee Reserve Amount.”

(v) **Professional Fee Reserve.**

On or before the Effective Date, the Debtor shall fund the Professional Fee Reserve with Cash equal to the Professional Fee Reserve Amount. The Liquidating Trustee is charged with administering the Professional Fee Reserve after the Effective Date and is permitted to open a new bank account to effectuate this purpose.

The Professional Fee Reserve and amounts funded therein are and shall continue to be maintained in trust solely for each Retained Professional or Consenting Noteholder Professional (as applicable) separately on a per-Retained Professional or Consenting Noteholder Professional

basis. Such funds shall not be considered property of the Debtor, its Estate, or the Liquidating Trust; *provided, however*, the Liquidating Trust shall have a reversionary interest in any Cash remaining in the Professional Fee Reserve after payment in full of all Allowed Professional Fee Claims and all Consenting Noteholder Fees and Expenses without any further notice, action, or order of the Bankruptcy Court. Unless otherwise agreed to by the Debtor and the Retained Professional or Consenting Noteholder Professional (as applicable), the amount owing to the Retained Professional or Consenting Noteholder Professional (as applicable) shall be paid in Cash to such Retained Professional or Consenting Noteholder Professional (as applicable) by the Liquidating Trustee from the Professional Fee Reserve (i) with respect to the Professional Fee Claims, as soon as reasonably practicable after such claims are Allowed by order of the Bankruptcy Court; or (ii) with respect to the Consenting Noteholder Fees and Expenses, as soon as reasonably practicable after the applicable Consenting Noteholder Professional submits an invoice to the Liquidating Trustee.

c. *Consenting Noteholder Fees and Expenses*

On or prior to the Effective Date, the Debtor will pay the Consenting Noteholder Fees and Expenses, which shall constitute Allowed Administrative Claims with priority over all administrative expenses of the kind specified in sections 503(b) and 507 of the Bankruptcy Code except for Professional Fee Claims. The Consenting Noteholder Fees and Expenses shall not be discharged, modified, or otherwise affected by the Plan. The Consenting Noteholder Fees and Expenses shall not be subject to disgorgement, setoff, disallowance, impairment, challenge, contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance, or other claim, cause of action, or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law, or otherwise.

The Creditors' Committee has not agreed to the payment of the Consenting Noteholders' fees and expenses, whether directly or under section 503(b) or 507 of the Bankruptcy Code, and reserves all rights and objections to payment of such fees and expenses, including the fees and expenses incurred by the Consenting Noteholders' professionals.

2. Priority Tax Claims

On the Effective Date, or as soon as reasonably practicable thereafter, except to the extent a Holder of an Allowed Priority Tax Claim and the Debtor agree to less favorable treatment for such Holder, in full and final satisfaction of the Allowed Priority Tax Claim, each Holder thereof will be paid in full in Cash or otherwise receive treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.

**B. Classified Claims**

1. Class 1 - Other Secured Claims

- a. **Composition.** Class 1 consists of all Other Secured Claims against the Debtor.
- b. **Treatment.** On the Effective Date, or as soon as reasonably practicable thereafter, except to the extent that a Holder of an

Allowed Other Secured Claim and the Debtor agree to less favorable treatment for such Holder, in full and final satisfaction of the Allowed Other Secured Claim, each Holder thereof will receive: (i) payment in full in Cash; (ii) delivery of the collateral securing any such Claim and payment of any interest required under section 506(b) of the Bankruptcy Code; (iii) reinstatement of such Claim; or (iv) such other treatment rendering such Claim Unimpaired.

- c. **Voting.** Class 1 is Unimpaired, and Holders of Other Secured Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 1 Other Secured Claims are not entitled to vote to accept or reject the Plan.

2. Class 2 - Other Priority Claims

- a. **Composition.** Class 2 consists of all Other Priority Claims against the Debtor.
- b. **Treatment.** On the Effective Date, or as soon as reasonably practicable thereafter, except to the extent that a Holder of an Allowed Other Priority Claim and the Debtor agree to less favorable treatment for such Holder, in full and final satisfaction of the Allowed Other Priority Claim, each Holder thereof will receive: (i) payment in full in Cash; or (ii) such other treatment rendering such Claim Unimpaired.
- c. **Voting.** Class 2 is Unimpaired, and Holders of Other Priority Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 2 Other Priority Claims are not entitled to vote to accept or reject the Plan.

3. Class 3 - Noteholder Claims

- a. **Composition.** Class 3 consists of all Noteholder Claims against the Debtor.
- b. **Treatment.** On the Effective Date, the Noteholder Claims shall be deemed Allowed in the aggregate amount of \$201,088,888.89, and except to the extent that a Holder of a Noteholder Claim and the Debtor agree to less favorable treatment for such Holder, in full and final satisfaction of the Allowed Noteholder Claim, each Holder thereof will: (i) be paid in Cash on the Effective Date or as soon as reasonably practicable thereafter, its Noteholder Effective Date Distribution; (ii) receive its *pro rata* right to recovery from the Liquidating Trust pursuant to the Liquidating Trust Waterfall; and

(iii) receive its *pro rata* right to recovery from the Contingent Payments Holding Trust.

- c. **Voting.** Class 3 is Impaired, and Holders of Noteholder Claims are entitled to vote to accept or reject the Plan.

4. Class 4 - Patheon Rejection Claim

- a. **Composition.** Class 4 consists of the Patheon Rejection Claim.
- b. **Treatment.** Except to the extent that a Holder of a Patheon Rejection Claim and the Debtor agree to less favorable treatment for such Holder, in full and final satisfaction of the Allowed Patheon Rejection Claim, each Holder thereof will: (i) be paid in Cash from the Liquidating Trust pursuant to the Liquidating Trust Waterfall on the date any of its Patheon Rejection Claim is Allowed, or as soon as reasonably practicable thereafter, its Disputed Claim Distribution; (ii) receive its *pro rata* right to recovery from the Liquidating Trust pursuant to the Liquidating Trust Waterfall; and (iii) receive its *pro rata* right to recovery from the Contingent Payments Holding Trust.
- c. **Voting.** Class 4 is Impaired, and Holders of the Patheon Rejection Claim are entitled to vote to accept or reject the Plan.

5. Class 5 - General Unsecured Claims

- a. **Composition.** Class 5 consists of all General Unsecured Claims against the Debtor.
- b. **Treatment.** On the Effective Date, or as soon as reasonably practicable thereafter, except to the extent that a Holder of an Allowed General Unsecured Claim and the Debtor agree to less favorable treatment for such Holder, in full and final satisfaction of the Allowed General Unsecured Claim, each Holder thereof will: (i) be paid in Cash its GUC Effective Date Distribution; (ii) receive its *pro rata* right to recovery from the Liquidating Trust pursuant to the Liquidating Trust Waterfall; and (iii) receive its *pro rata* right to recovery from the Contingent Payments Holding Trust.
- c. **Voting.** Class 5 is Impaired, and Holders of the General Unsecured Claims are entitled to vote to accept or reject the Plan.

6. Class 6 - *De Minimis* Unsecured Claims

- a. **Composition.** Class 6 consists of all *De Minimis* Unsecured Claims against the Debtor.

- b. **Treatment.** On the Effective Date, or as soon as reasonably practicable thereafter, except to the extent that a Holder of an Allowed *De Minimis* Unsecured Claim and the Debtor agree to less favorable treatment for such Holder, in full and final satisfaction of the Allowed *De Minimis* Unsecured Claim, each Holder thereof will receive in Cash a recovery of fifty percent (50%) of the Allowed amount of their Claim, subject to an aggregate recovery amount for such Allowed *De Minimis* Unsecured Claims of \$60,000.
- c. **Voting.** Class 6 is Impaired, and Holders of the *De Minimis* Unsecured Claims are entitled to vote to accept or reject the Plan.

7. Class 7 - Section 510(b) Claims

- a. **Composition.** Class 7 consists of all Section 510(b) Claims against the Debtor.
- b. **Treatment.** On the Effective Date, all Section 510(b) Claims shall be canceled, released, and extinguished, and will be of no further force or effect, and Holders of such Claims shall not receive any distributions under the Plan on account of such Claim.
- c. **Voting.** Class 7 is Impaired, and Holders of Section 510(b) Claims are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Class 7 Section 510(b) Claims are not entitled to vote to accept or reject the Plan.

8. Class 8 - Debtor Interests

- a. **Composition:** Class 8 consists of all Interests in the Debtor.
- b. **Treatment:** On the Effective Date, all Interests shall be canceled, released, and extinguished, and will be of no further force or effect, and Holders of such Interests shall not receive any distributions under the Plan on account of such Interest.
- c. **Voting:** Class 8 is Impaired, and Holders of Interests are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Class 8 Interests Claims are not entitled to vote to accept or reject the Plan.

**C. Special Provisions Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtor's or the Liquidating Trustee's rights with respect to any Claims, including all legal and equitable defenses to or setoffs or recoupments against any Claims.

**D. Elimination of Vacant Classes**

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

**E. Voting Classes; Presumed Acceptance by Non-Voting Classes**

If a Class contains Claims eligible to vote, and no Holders of Claims eligible to vote in such Class vote to accept or reject the Plan, the Holders of Claims in such Class shall be deemed to have accepted the Plan.

**F. Controversy Concerning Impairment**

If a controversy arises as to whether any Claim or any Class of Claims is Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Hearing.

**G. Subordination of Claims**

The allowance, classification, and treatment of all Allowed Claims and Interests and the respective distributions and treatments under the Plan shall take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, contract, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtor or the Liquidating Trustee (as applicable) reserves the right to re-classify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

**H. Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code**

The Debtor hereby requests confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any Class that is deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code. The Debtor reserves the right to request confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any voting Class that votes to reject the Plan.

**I. Reservation of Rights Regarding Claims**

Except as otherwise provided in the Plan or in other Final Orders of the Bankruptcy Court, nothing will affect the Debtor's or the Liquidating Trustee's respective rights and defenses, whether legal or equitable, with respect to any Claim, including, without limitation, all rights with respect to legal and equitable defenses to alleged rights of setoff or recoupment.

**J. Post-Petition Interest on Claims**

Except as required by applicable bankruptcy law or otherwise expressly provided in the Plan, post-petition interest will not accrue or be payable on account of any Claim.

**K. Insurance**

Notwithstanding anything to the contrary in the Plan, if any Claim is subject to coverage under an Insurance Policy, payments on account of such Claim will first be made from proceeds of such Insurance Policy in accordance with the terms thereof, with the balance of such Claim, if any, treated in accordance with the provisions of the Plan governing the Class applicable to such Claim.

**V. MEANS FOR IMPLEMENTATION OF THE PLAN**

**A. Sources of Consideration for Plan Distributions**

Subject to the provisions of the Plan concerning the Professional Fee Reserve and the Wind-Down Budget, the Debtor, the Liquidating Trustee, the Contingent Payments Trustee, or the Contingent Payments Holding Trustee (as applicable) shall fund distributions under the Plan with Cash on hand on the Effective Date, all other Liquidating Trust Assets, the Contingent Payments Trust Interest, and all Contingent Payments Trust Assets.

**B. Vesting of Assets**

On the Effective Date, pursuant to sections 1141(b) and 1141(c) of the Bankruptcy Code, (1) the Liquidating Trust Assets shall vest in the Liquidating Trust free and clear of all Claims, Liens, encumbrances, charges, and other interests except as otherwise expressly provided in the Plan; (2) the Contingent Payments Trust Assets shall vest in the Contingent Payments Trust free and clear of all Claims, Liens, encumbrances, charges, and other interests except as otherwise expressly provided in the Plan; and (3) the Contingent Payments Trust Interest shall vest in the Contingent Payments Holding Trust free and clear of all Claims, Liens, encumbrances, charges, and other interests except as otherwise expressly provided in the Plan.

**C. Liquidating Trust**

1. Establishment of the Liquidating Trust

On the Effective Date, the Liquidating Trust will be established pursuant to the Liquidating Trust Agreement, which will be Filed with the Bankruptcy Court as part of the Plan Supplement. Upon establishment of the Liquidating Trust, all Liquidating Trust Assets shall be deemed transferred to the Liquidating Trust without any further action of the Debtor or any managers, employees, officers, directors, members, partners, shareholders, agents, advisors, or representatives of the Debtor.

The Creditors' Committee has yet to review the Liquidating Trust Agreement, and believes the Creditors' Committee, not the Debtor and Majority Consenting Noteholders, should select the Liquidating Trustee.

## 2. Transfer of the Liquidating Trust Assets

Pursuant to section 1141 of the Bankruptcy Code, all property transferred to the Liquidating Trust shall be made free and clear of all Claims, Liens, encumbrances, charges, and other interests, except as may be otherwise provided in the Plan. Upon completion of the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Debtor will have no further interest in, or with respect to, the Liquidating Trust Assets or the Liquidating Trust. For all U.S. federal income tax purposes, and subject to the DOF Election described at Article IV.C.6(g) of the Plan, all parties (including, without limitation, the Debtor, the Liquidating Trustee, and the Liquidating Trust Beneficiaries) shall treat the transfer of the Liquidating Trust Assets to the Liquidating Trust in accordance with the terms herein as a transfer to the Liquidating Trust Beneficiaries, followed by a transfer by such Liquidating Trust Beneficiaries to the Liquidating Trust, and the Liquidating Trust Beneficiaries will be treated as the grantors and owners thereof.

## 3. Liquidating Trust Waterfall

The Liquidating Trust Assets shall be distributed by the Liquidating Trust as follows and in the following order: (a) the Disputed Claim Distribution; (b) following the Disputed Claim Distribution, (i) each holder of a Noteholder Claim shall receive a true-up on its *pro rata* right of recovery, which shall be calculated as follows: (1) Effective Date Cash Amount *minus* the aggregate amount of the Noteholder Effective Date Distribution *minus* the aggregate amount of the GUC Effective Date Distribution *minus* the aggregate amount of the Disputed Claim Distribution *multiplied* by (2) the percentage of the Noteholder Claim as determined based on the aggregate amount of Allowed General Unsecured Claims and Noteholder Claims; and (ii) each holder of an Allowed General Unsecured Claim shall receive a true-up on its *pro rata* right of recovery, which shall be calculated as follows: (1) Effective Date Cash Amount *minus* the aggregate amount of the Noteholder Effective Date Distribution *minus* the aggregate amount of the GUC Effective Date Distribution *minus* the aggregate amount of the Disputed Claim Distribution *multiplied* by (2) the percentage of the Allowed General Unsecured Claim as determined based on the aggregate amount of Allowed General Unsecured Claims and Noteholder Claims; and (c) to the extent applicable, *pro rata* to each Holder of a Noteholder Claim, Allowed Patheon Rejection Claim, and Allowed General Unsecured Claim.

## 4. Liquidating Trust Agreement

On the Effective Date, the Debtor shall execute a Liquidating Trust Agreement in substantially the same form as set forth in the Plan Supplement. Any nonmaterial modifications to the Liquidating Trust Agreement made by the Debtor, with the consent of the Majority Consenting Noteholders, will be ratified. The Liquidating Trust Agreement will contain provisions permitting the amendment or modification of the Liquidating Trust Agreement necessary to implement the provisions of the Plan.

The Creditors' Committee has not reviewed the Liquidating Trust Agreement and reserves all rights and objections to the Liquidating Trust Agreement, including the right to amend or modify the agreement and the selection and appointment of the Liquidating Trustee.

## 5. Purpose of the Liquidating Trust

The Liquidating Trust shall be established for the purpose of (a) receiving and holding the Liquidating Trust Assets; (b) administering, disputing, objecting to, compromising, or otherwise resolving all General Unsecured Claims; (c) making distributions to the Liquidating Trust Beneficiaries in accordance with the Liquidating Trust Waterfall; (d) maximizing recoveries for the benefit of the Liquidating Trust Beneficiaries; and (e) commencing and pursuing the Retained Causes of Action and managing and administering any proceeds thereof, with no objective to continue or engage in the conduct of a trade or business in accordance with Treas. Reg. § 301.7701-4(d). Subject to the DOF Election, the Liquidating Trust is intended to qualify as a “grantor trust” for U.S. federal income tax purposes and, to the extent permitted by applicable law, for state and local income tax purposes, with the Liquidating Trust Beneficiaries treated as grantors and owners of the Liquidating Trust. To the extent permitted by applicable law, all parties, including the Liquidating Trustee and any Liquidating Trust Beneficiaries, shall report consistently with the foregoing for all applicable tax reporting purposes.

6. Liquidating Trustee

a. *Appointment of the Liquidating Trustee*

Upon the occurrence of the Effective Date, the Liquidating Trustee shall also be deemed appointed to serve as the trustee and administrator of the Liquidating Trust established pursuant to the Plan and the Liquidating Trust Agreement. The Liquidating Trustee, subject to the terms and conditions of the Plan, the Confirmation Order, and the Liquidating Trust Agreement, shall be authorized to execute, deliver, file, or record such documents, contracts, instruments, releases, and other agreements, and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Liquidating Trustee shall have and perform all of the duties, responsibilities, rights, and obligations set forth in the Plan and the Liquidating Trust Agreement, as applicable.

b. *Liquidating Trustee as Representative of the Estate*

From and after the Effective Date, the Liquidating Trustee shall act as the exclusive representative of the Estate for all purposes other than as set forth in Article IV.D.2(b) and IV.D.3(b) of the Plan. Any successor Liquidating Trustee appointed pursuant to the Liquidating Trust Agreement shall be bound by and comply with the terms of the Plan, the Confirmation Order, and the Liquidating Trust Agreement.

c. *Responsibilities and Authority of the Liquidating Trustee*

The responsibilities and authority of the Liquidating Trustee shall be as set forth in the Liquidating Trust Agreement, and shall include the following rights and responsibilities, which shall be the exclusive rights and responsibilities of the Liquidating Trustee: (i) preserving and liquidating the Liquidating Trust Assets; (ii) administering and paying taxes, including, among other things, (1) filing tax returns, and (2) representing the interest and account of the Liquidating Trust before any taxing authority in all matters including, without limitation, any action, suit, proceeding, or audit; (iii) retaining and paying, without the need for retention or fee applications, professionals in connection with the Liquidating Trustee’s performance of its duties under the Plan and the Liquidating Trust Agreement; (iv) distributing information statements as required for U.S.

federal income tax and other applicable tax purposes; (v) Filing an application for entry by the Bankruptcy Court of a final decree closing the Chapter 11 Case; (vi) making distributions to Retained Professionals for Allowed Professional Fee Claims and to Consenting Noteholder Professionals for Consenting Noteholder Fees and Expenses, including from the Professional Fee Reserve; (vii) making distributions to the Liquidating Trust Beneficiaries in accordance with the Plan and Liquidating Trust Agreement; and (viii) such other responsibilities as may be vested in the Liquidating Trustee pursuant to the Plan, the Liquidating Trust Agreement, or an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of the Plan.

d. *Powers of the Liquidating Trustee*

The powers of the Liquidating Trustee shall be as set forth in the Liquidating Trust Agreement, and shall include the following: (i) the power to invest funds of the Liquidating Trust, and withdraw, make distributions, and pay taxes and other obligations owed by the Liquidating Trust from such funds in accordance with the Plan and the Liquidating Trust Agreement; (ii) the power to engage and compensate, without prior Bankruptcy Court order or approval, employees and professionals to assist the Liquidating Trustee with respect to its responsibilities; (iii) the power to pursue, prosecute, resolve, compromise, and settle any Retained Causes of Action, without notice to or approval from the Bankruptcy Court; (iv) the power to object to Claims, including, without limitation, the power to seek subordination or recharacterization of Claims by objection, motion, or adversary proceeding, as applicable; and (v) such other powers as may be vested in or assumed by the Liquidating Trustee pursuant to the Plan, the Liquidating Trust Agreement, or by an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of the Plan.

e. *Compensation of the Liquidating Trustee*

The Liquidating Trustee shall be compensated as set forth in the Liquidating Trust Agreement. The Liquidating Trustee shall fully comply with the terms, conditions and rights set forth in the Plan, the Confirmation Order, and the Liquidating Trust Agreement. The Liquidating Trustee (and any Liquidating Trustee retained professionals) shall not be required to File a fee application to receive compensation.

f. *Retention and Payment of Professionals*

The Liquidating Trustee shall have the right, without Court approval, to retain the services of attorneys, accountants, and other professionals and agents, to assist and advise the Liquidating Trustee in the performance of his, her, or its duties, and to compensate and reimburse expenses of such professionals in accordance with the Liquidating Trust Agreement.

g. *DOF Election*

The Liquidating Trust Agreement shall require the Liquidating Trustee to elect to treat that portion of the Liquidating Trust Assets subject to the Disputed Claims as a disputed ownership fund described in Treasury Regulation Section 1.468B-9 (the “DOF Election”) unless, as of the Trust Election Date, either all of the Liquidating Trust Assets have been distributed to the Liquidating Trust Beneficiaries or the percentage of the Liquidating Trust Assets distributable to

each of the Liquidating Trust Beneficiaries under the Liquidating Trust Waterfall has become fixed and determinable.

#### 7. Termination of the Liquidating Trust

The Liquidating Trust shall be dissolved upon the earlier of (a) the distribution of all of the Liquidating Trust Assets to the Liquidating Trust Beneficiaries; and (b) the fifth anniversary of the creation of the Liquidating Trust; *provided* that, if warranted by the facts and circumstances involved in resolving or monetizing any Liquidating Trust Assets, upon application to, and if approved by, the Bankruptcy Court upon a finding that such extension is necessary or appropriate for purposes of resolving or monetizing such Liquidating Trust Assets and distributing the proceeds to Liquidating Trust Beneficiaries, the term of the Liquidating Trust may be extended by the Liquidating Trustee for a specified term. Notwithstanding the foregoing, unless otherwise ordered by the Bankruptcy Court, the Liquidating Trust shall be automatically terminated in the event that a final decree is entered closing the Chapter 11 Case or the Chapter 11 Case is converted to a case under chapter 7 of the Bankruptcy Code or dismissed.

#### 8. Exculpation Relating to the Liquidating Trust

No Holder of a Claim or Interest or any other party in interest will have, or otherwise pursue, any claim or Cause of Action against the Liquidating Trustee, the Liquidating Trust, or the consultants or professionals thereof (for each of the foregoing, solely in the performance of their duties) for making payments and distributions in accordance with the Plan and the Liquidating Trust Agreement or for fulfilling any functions incidental to implementing the provisions of the Plan or the Liquidating Trust Agreement, except for any acts or omissions that are the result of gross negligence or willful misconduct, as set forth more fully in the Liquidating Trust Agreement.

### **D. Contingent Payments Holding Trust and Contingent Payments Trust**

#### 1. Trust Agreements

On the Effective Date, the Debtor shall execute (a) a Contingent Payments Holding Trust Agreement and (b) a Contingent Payments Trust Agreement, each in substantially the same form as set forth in the Plan Supplement. The Contingent Payments Trust shall be treated as a grantor trust for tax purposes, with either the Holders of Allowed Class 3, 4, and 5 Claims or the Contingent Payments Holding Trust treated as the owner / grantor of the Contingent Payments Trust Interest as of the Effective Date, as described in Article IV.E.1 of the Plan, and the Contingent Payments Trust Agreement shall provide as such. The Contingent Payments Holding Trust shall be treated either as a grantor trust or a complex trust, as described in Article IV.E.1 of the Plan, and the Contingent Payments Holding Trust Agreement shall provide as such. To the extent permitted by applicable law, all parties, including the Contingent Payments Trust Trustee, the Contingent Payments Holding Trust Trustee, and any Liquidating Trust Beneficiaries, shall report consistently with the foregoing for all applicable tax reporting purposes. Any nonmaterial modifications to the Contingent Payments Holding Trust Agreement or to the Contingent Payments Trust Agreement made by the Debtor, with the consent of the Majority Consenting Noteholders, will be ratified. The Contingent Payments Holding Trust Agreement and the

Contingent Payments Trust Agreement will contain provisions permitting the amendment or modification of such agreements necessary to implement the provisions of the Plan.

2. Contingent Payments Holding Trustee

a. *Appointment of the Contingent Payments Holding Trustee*

Upon the occurrence of the Effective Date, the Contingent Payments Holding Trustee shall be deemed appointed to serve as the administrator of the Contingent Payments Holding Trust pursuant to the Plan and the Contingent Payments Holding Trust Agreement. The Contingent Payments Holding Trustee, subject to the terms and conditions of the Plan, the Confirmation Order, and the Contingent Payments Holding Trust Agreement, shall be authorized to execute, deliver, file, or record such documents, contracts, instruments, releases, and other agreements, and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Contingent Payments Holding Trustee shall have and perform all of the duties, responsibilities, rights, and obligations set forth in the Plan and the Contingent Payments Holding Trust Agreement, as applicable.

b. *Contingent Payments Holding Trustee as Representative of the Estate*

From and after the Effective Date, the Contingent Payments Holding Trustee shall act as representative of the Estate, pursuant to section 1123(b)(3) of the Bankruptcy Code, solely for the purpose of administering the Contingent Payments Holding Trust, which shall in turn act as the sole holder of the Contingent Payments Trust Interest, prior to its dissolution upon resolution of the Disputed Claims as set forth in Article IV.E of the Plan. Any successor Contingent Payments Holding Trustee appointed pursuant to the Contingent Payments Holding Trust Agreement shall be bound by and comply with the terms of the Plan, the Confirmation Order, and the Contingent Payments Holding Trust Agreement.

c. *Responsibilities and Authority of the Contingent Payments Holding Trustee*

The responsibilities and authority of the Contingent Payments Holding Trustee shall be as set forth in the Contingent Payments Holding Trust Agreement, and shall include the following rights and responsibilities, which shall be the exclusive rights and responsibilities of the Contingent Payments Holding Trustee: (i) preserving and administering the assets of the Contingent Payments Holding Trust; (ii) administering and paying taxes, including, among other things, (1) filing tax returns (to the extent not the obligation of any Purchaser), and (2) representing the interest and account of the Contingent Payments Holding Trust before any taxing authority in all matters including, without limitation, any action, suit, proceeding, or audit; (iii) retaining and paying, without the need for retention or fee applications, professionals in connection with the Contingent Payments Holding Trustee's performance of its duties under the Plan and the Contingent Payments Holding Trust Agreement; and (iv) such other responsibilities or powers as may be vested in or assumed by the Contingent Payments Holding Trustee pursuant to the Plan, the Contingent Payments Holding Trust Agreement, or by an order of the Bankruptcy Court

(including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of the Plan.

d. *Powers of the Contingent Payments Holding Trustee*

The powers of the Contingent Payments Holding Trustee shall be as set forth in the Contingent Payments Holding Trust Agreement, and shall include the following: (i) the power to invest funds of the Contingent Payments Holding Trust, if any, and pay taxes and other obligations owed by the Contingent Payments Holding Trust in accordance with the Plan and the Contingent Payments Holding Trust Agreement; (ii) the power to engage and compensate, without prior Bankruptcy Court order or approval, employees and professionals to assist the Contingent Payments Holding Trustee with respect to its responsibilities; and (iii) such other powers as may be vested in or assumed by the Contingent Payments Holding Trustee pursuant to the Plan, the Contingent Payments Holding Trust Agreement, or by an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of the Plan.

e. *Compensation of the Contingent Payments Holding Trustee*

The Contingent Payments Holding Trustee shall be compensated as set forth in the Contingent Payments Holding Trust Agreement. The Contingent Payments Holding Trustee shall fully comply with the terms, conditions and rights set forth in the Plan, the Confirmation Order, and the Contingent Payments Holding Trust Agreement. The Contingent Payments Holding Trustee (and any Contingent Payments Holding Trustee retained professionals) shall not be required to File a fee application to receive compensation.

f. *Retention and Payment of Professionals*

The Contingent Payments Holding Trustee shall have the right, without Court approval, to retain the services of attorneys, accountants, and other professionals and agents, to assist and advise the Contingent Payments Holding Trustee in the performance of his, her, or its duties, and to compensate and reimburse expenses of such professionals in accordance with the Contingent Payments Holding Trust Agreement.

3. Contingent Payments Trustee

a. *Appointment of the Contingent Payments Trustee*

Upon the occurrence of the Effective Date, the Contingent Payments Trustee shall be deemed appointed to serve as the administrator of the Contingent Payments Trust pursuant to the Plan and the Contingent Payments Trust Agreement. The Contingent Payments Trustee, subject to the terms and conditions of the Plan, the Confirmation Order, and the Contingent Payments Trust Agreement, shall be authorized to execute, deliver, file, or record such documents, contracts, instruments, releases, and other agreements, and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Contingent Payments Trustee shall have and perform all of the duties, responsibilities, rights, and obligations set forth in the Plan and the Contingent Payments Trust Agreement, as applicable.

b. *Contingent Payments Trustee as Representative of the Estate*

From and after the Effective Date, the Contingent Payments Trustee shall act as representative of the Estate, pursuant to section 1123(b)(3) of the Bankruptcy Code, solely for the purpose of administering the Contingent Payments Trust. Any successor Contingent Payments Trustee appointed pursuant to the Contingent Payments Trust Agreement shall be bound by and comply with the terms of the Plan, the Confirmation Order, and the Contingent Payments Trust Agreement.

c. *Responsibilities and Authority of the Contingent Payments Trustee*

The responsibilities and authority of the Contingent Payments Trustee shall be as set forth in the Contingent Payments Trust Agreement, and shall include the following rights and responsibilities, which shall be the exclusive rights and responsibilities of the Contingent Payments Trustee: (i) preserving and administering the assets of the Contingent Payments Trust; (ii) administering and paying taxes, including, among other things (1) filing tax returns (to the extent not the obligation of any Purchaser) and (2) representing the interest and account of the Contingent Payments Trust before any taxing authority in all matters, including, without limitation, any action, suit, proceeding, or audit; (iii) retaining and paying, without the need for retention or fee applications, professionals in connection with the Contingent Payments Trustee's performance of its duties under the Plan and the Contingent Payments Trust Agreement; (iv) the power to enforce the Sale Documents as against the Purchasers; and (v) such other powers as may be vested in or assumed by the Contingent Payments Trustee pursuant to the Plan, the Contingent Payments Trust Agreement, or by an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of the Plan.

d. *Powers of the Contingent Payments Trustee*

The powers of the Contingent Payments Trustee shall be as set forth in the Contingent Payments Trust Agreement, and shall include the following: (i) the power to invest funds of the Contingent Payments Trust, if any, and pay taxes and other obligations owed by the Contingent Payments Trust in accordance with the Plan and the Contingent Payments Trust Agreement; (ii) the power to engage and compensate, without prior Bankruptcy Court order or approval, employees and professionals to assist the Contingent Payments Trustee with respect to its responsibilities; and (iii) such other powers as may be vested in or assumed by the Contingent Payments Trustee pursuant to the Plan, the Contingent Payments Trust Agreement, or by an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of the Plan.

e. *Compensation of the Contingent Payments Trustee*

The Contingent Payments Trustee shall be compensated as set forth in the Contingent Payments Trust Agreement. The Contingent Payments Trustee shall fully comply with the terms, conditions and rights set forth in the Plan, the Confirmation Order, and the Contingent Payments

Trust Agreement. The Contingent Payments Trustee (and any Contingent Payments Trustee retained professionals) shall not be required to File a fee application to receive compensation.

f. *Retention and Payment of Professionals*

The Contingent Payments Trustee shall have the right, without Court approval, to retain the services of attorneys, accountants, and other professionals and agents, to assist and advise the Contingent Payments Trustee in the performance of his, her, or its duties, and to compensate and reimburse expenses of such professionals in accordance with the Contingent Payments Trust Agreement.

4. Exculpation Relating to the Contingent Payments Holding Trustee and the Contingent Payments Trustee

No Holder of a Claim or Interest or any other party in interest will have, or otherwise pursue, any claim or Cause of Action against the Contingent Payments Holding Trustee, the Contingent Payments Trustee, or the consultants or professionals thereof (for each of the foregoing, solely in the performance of their duties) for actions taken in accordance with the Plan, the Contingent Payments Holding Trust Agreement, or the Contingent Payments Trust Agreement, or for fulfilling any functions incidental to implementing the provisions of the Plan, the Contingent Payments Holding Trust Agreement or the Contingent Payments Trust Agreement, except for any acts or omissions that are the result of gross negligence or willful misconduct, as set forth more fully in the Contingent Payments Holding Trust Agreement or the Contingent Payments Trust Agreement (as applicable).

**E. Trust Mechanics**

1. Treatment of Trusts for Tax Purposes

The U.S. federal income tax classification of the Liquidating Trust and Contingent Payments Holding Trust will be determined pursuant to subsections (a) or (b) below, as applicable.

a. *Disputed Claims Resolved Before Trust Election Date*

If all Disputed Claims are resolved prior to the Trust Election Date, each of the Liquidating Trust and the Contingent Payments Holding Trust is intended to be classified as a liquidating trust described in Treasury Regulation Section 301.7701-4(d) that is treated as a “grantor trust” for U.S. federal income tax purposes, and the Liquidating Trust Agreement and the Contingent Payments Holding Trust Agreement, as applicable, shall provide as such, and the Contingent Payments Trust is intended to be classified as an investment trust described in Treasury Regulation Section 301.7701-4(c) that is also treated as a grantor trust for U.S. federal income tax purposes, and the Contingent Payments Trust Agreement shall provide as such. On the Effective Date, the Debtor will be deemed to have distributed to the Holders of Allowed Class 3, 4 and 5 Claims an undivided interest in the Liquidating Trust Assets and the Contingent Payments Trust Assets, and such Holders will be deemed to have contributed such Liquidating Trust Assets and Contingent Payments Trust Assets to the Liquidating Trust and to the Contingent Payments Holding Trust in exchange for beneficial interests in the Liquidating Trust and Contingent Payments Holding Trust, respectively.

To the extent permitted by applicable law, all parties, including the Liquidating Trustee, Contingent Payments Trust Trustee, the Contingent Payments Holding Trust Trustee, and any Liquidating Trust Beneficiaries, shall report consistently with the foregoing for all applicable tax reporting purposes.

b. *Disputed Claims Unresolved by Trust Election*

If all Disputed Claims have not been resolved by the Trust Election Date, then (a) the Liquidating Trustee will elect to treat that portion of the Liquidating Trust Assets subject to the Disputed Claims as a “disputed ownership fund” as described in Treasury regulations section 1.468B-9. The Liquidating Trustee shall file all income tax returns with respect to any income attributable to the disputed ownership fund and shall pay the U.S. federal, state, and local income taxes attributable to such disputed ownership fund based on the items of income, deduction, credit, or loss allocable thereto. Any taxes imposed on the disputed ownership fund or its assets will be paid out of the assets of the disputed ownership fund (including any assets of the Liquidating Trust allocable to disputed claims) and any subsequent distributions in respect of the allowance or disallowance of such claims will be reduced accordingly. In the event, and to the extent, that any Cash in any disputed ownership fund is insufficient to pay the portion of any taxes attributable to taxable income arising from assets of the disputed ownership fund, assets of the disputed ownership fund (including those otherwise distributable) may be sold to pay such taxes. The undisputed portion of the Liquidating Trust Assets will be treated as held in a grantor trust, with deemed distribution to and contribution from the Holders of Allowed Claims in Classes 3, 4, and 5 as described in the immediately preceding paragraph; (b) if all Disputed Claims have not been resolved by the Trust Election Date, the Contingent Payments Holding Trustee shall not file the election to be treated as a disputed ownership fund and shall instead file its tax return as a “complex trust” and all parties shall report accordingly; and (c) the Contingent Payments Trust shall report its income as an investment trust described in Treasury Regulation Section 301.7701-4(c) that is treated as a grantor trust for U.S. federal income tax purposes and as to which the Contingent Payments Holding Trust is the grantor.

The Contingent Payments Holding Trustee shall file all income tax returns with respect to any income attributable to the Contingent Payments Holdings Trust and shall pay the U.S. federal, state, and local income taxes attributable to such trust based on the items of income, deduction, credit, or loss allocable thereto.

To the extent permitted by applicable law, all parties, including the Liquidating Trustee, the Contingent Payments Holding Trustee, the Contingent Payments Trustee, and any Liquidating Trust Beneficiaries, shall report consistently with the foregoing for all applicable tax reporting purposes.

The Debtor will provide information to the Liquidating Trustee, the Contingent Payments Trustee and the Contingent Payments Holding Trustee as to its valuation determinations with respect to the Retained Causes of Action and the Contingent Payments on the Effective Date to facilitate consistent tax reporting by the Liquidating Trust, Contingent Payments Trust, and the Contingent Payments Holding Trust.

## 2. Status of Claims Notices

The Liquidating Trustee shall File a notice with the Bankruptcy Court when all Disputed Claims have been resolved, and if all Disputed Claims have not been resolved on or before the Trust Election Date, shall File a general status notice so that Holders of such Claims shall have some indication as to the potential tax treatment of the Liquidating Trust and the Contingent Payments Holding Trust.

Upon the resolution of all Disputed Claims, (a) the Liquidating Trustee shall make a *pro rata* distribution of any remaining assets to the Liquidating Trust Beneficiaries in accordance with the Liquidating Trust Waterfall; and (b) the Contingent Payments Trustee shall distribute the Contingent Payments Trust Interest from the Contingent Payments Holding Trust *pro rata* to the Liquidating Trust Beneficiaries and, following such distribution, shall dissolve.

### **F. Preservation of Causes of Action**

Except as otherwise provided in Article IX herein or in any contract, instrument, release, or agreement entered into in connection with the Plan or the Sale, in accordance with section 1123(b) of the Bankruptcy Code, all Retained Causes of Action are preserved and transferred to the Liquidating Trust on the Effective Date.

The Creditors' Committee believes all of the Causes of Action, including those identified by the Creditors' Committee and attached to this Disclosure Statement as **Exhibit C** should be retained, not released. The Debtor has reviewed these claims and Causes of Action and believes that any claims or Causes of Action being released under the Plan have *de minimis* value or are being released in exchange for adequate consideration pursuant to the Plan.

The Debtor retained the Retained Causes of Action pursuant to a global settlement with the Consenting Noteholders encompassed within the Plan. The Debtor believes that the D&O Policies cover the Retained Causes of Action. Other than with respect to the Severance Payment Claim, recovery on the Retained Causes of Action shall be limited to available insurance, if any, provided under the D&O Policies, subject to the provisions of any such D&O Policies and applicable law. Other than with respect to the Severance Payment Claim, (i) no party shall have a right to recovery on the Retained Causes of Action outside or in excess of the available insurance under the D&O Policies, and (ii) no person or entity other than the Debtor's insurers under the D&O Policies shall be liable for any of the Retained Causes of Action. The Creditors' Committee opposes limiting any Retained Causes of Action to available insurance.

### **G. Corporate Action**

#### 1. Transfer of Assets and Assumption of Liabilities

On the Effective Date, (a) the Debtor shall, in accordance with the Plan, cause the Liquidating Trust Assets to be transferred to the Liquidating Trust, the Contingent Payments Trust Assets to be transferred to the Contingent Payments Trust, and the Contingent Payments Trust Interest to be transferred to the Contingent Payments Holding Trust; and (b) the Liquidating Trust shall assume all obligations of the Debtor under the Plan other than (i) obligations relating solely to the Contingent Payments Trust Assets, which shall be assumed by the Contingent Payments

Trustee; and (ii) obligations relating solely to the Contingent Payments Trust Interest, which shall be assumed by the Contingent Payments Holding Trustee.

2. Dissolution of the Debtor; Removal of Directors and Officers; Termination of Employees

On the Effective Date, and upon the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Contingent Payments Trust Assets to the Contingent Payments Trust, and the Contingent Payments Trust Interest to the Contingent Payments Holding Trust, the Debtor shall be dissolved for all purposes unless the Liquidating Trustee determines that dissolution can have any adverse impact on the Liquidating Trust Assets, the Contingent Payments Trust Assets, or the Contingent Payments Trust Interest, or the Contingent Payments Holding Trustee determines that dissolution can have any adverse impact on the Contingent Payments Holding Trust; *provided, however*, that neither the Debtor nor any party released pursuant to Article IX herein shall be responsible for any liabilities that may arise as a result of non-dissolution of the Debtor; *provided further, however*, that nothing in the Plan shall be construed as relieving the Debtor or the Liquidating Trustee (as applicable) of their duties to pay Statutory Fees to the U.S. Trustee as required by the Bankruptcy Code and applicable law until such time as a final decree is entered in the Debtor's case or the case is dismissed or converted to a case under chapter 7 of the Bankruptcy Code. The Liquidating Trustee shall submit with the appropriate governmental agencies a copy of the Confirmation Order, which Confirmation Order shall suffice for purposes of obtaining a Certificate of Dissolution from the Delaware Secretary of State.

Without limiting the foregoing, on the Effective Date and upon the Debtor causing the Liquidating Trust Assets to be transferred to the Liquidating Trust, the Contingent Payments Trust Assets to the Contingent Payments Trust, and the Contingent Payments Trust Interest to the Contingent Payments Holding Trust, the Debtor shall have no further duties or responsibilities in connection with implementation of the Plan, and the directors and officers of the Debtor shall be deemed to have resigned and the employees of the Debtor terminated. From and after the Effective Date, the Liquidating Trustee shall be authorized to act on behalf of the Estate, provided that the Liquidating Trustee shall have no duties other than as expressly set forth in the Plan and the Liquidating Trust Agreement (as applicable).

**H. Cancellation of Existing Securities and Agreements**

On the Effective Date, all agreements and other documents evidencing (1) any Claim or rights of any Holder of a Claim against the Debtor, including any notes evidencing such Claims; or (2) any Interest in the Debtor, including any options or warrants to purchase Interests, shall be cancelled. The Holders of, or parties to, such cancelled agreements and documents shall have no rights arising from or relating to such agreements and documents or the cancellation thereof, except as to the allowance and distribution on pre-Confirmation Claims as provided pursuant to the Plan.

**I. Plan Transactions**

On the Effective Date or as soon reasonably practicable thereafter, the Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, and the Contingent Payments Trustee may take any and all actions as may be necessary or appropriate to effect any transaction

described in, approved by, contemplated by, or necessary to effectuate the Plan, including, but not limited to, (1) the execution and delivery of appropriate agreements or other documents of consolidation, conversion, disposition, transfer, or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law; (2) the execution and delivery of any appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, duty, or obligation on terms consistent with the Plan; (3) the filing of appropriate documents with the appropriate governmental authorities pursuant to applicable law; and (4) any and all other actions that the Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, or the Contingent Payments Trustee determine are necessary or appropriate to effectuate the Plan.

#### **J. Effectuating Documents and Further Transactions**

Upon entry of the Confirmation Order, the Debtor, the Liquidating Trustees, the Contingent Payments Holding Trustee, and the Contingent Payments Trustee shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, consents, certificates, resolutions, programs, and other agreements or documents, and take such acts and actions as may be reasonable, necessary, or appropriate to effectuate, implement, consummate, and/or further evidence the terms and conditions of the Plan and any transactions described in or contemplated by the Plan. The Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, and the Contingent Payments Trustee (as applicable), all Holders of Claims receiving distributions pursuant to the Plan, and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents, and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

#### **K. Section 1146 Exemption from Certain Taxes and Fees**

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation all such instruments or other documents governing or evidencing such transfers without the payment of any such tax, recordation fee, or governmental assessment. Such exemption specifically applies, without limitation, to the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Contingent Payments Trust Assets to the Contingent Payments Trust, and the Contingent Payments Trust Interest to the Contingent Payments Holding Trust.

#### **L. Sale Order**

Notwithstanding anything to the contrary herein, nothing in the Plan shall affect, impair or supersede the Sale Orders or Sale Documents, each of which remains in full force and effect and governs in the event of any inconsistency with the Plan.

**M. Authority to Act**

Prior to, on, or after the Effective Date (as appropriate), all matters expressly provided for under the Plan that would otherwise require approval of the stockholders, security holders, officers, directors, or other owners of the Debtor shall be deemed to have occurred and shall be in effect prior to, on, or after the Effective Date (as applicable) pursuant to the applicable law of the state in which the Debtor is formed, without any further vote, consent, approval, authorization, or other action by such stockholders, security holders, officers, directors, or other owners of the Debtor or notice to, order of, or hearing before, the Bankruptcy Court.

**L. No Revesting of Liquidating Trust Assets**

No Liquidating Trust Asset will revest in the Debtor on or after the date such asset is transferred to the applicable Trust, but will vest upon such transfer in the applicable Trust to be administered by the applicable Trustee in accordance with the Plan and the applicable Trust Agreement.

**M. Settlement of Claims and Controversies**

Pursuant to Section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the distributions and other benefits provided under the Plan, the provisions of the Plan will constitute a good faith compromise and settlement of all claims or controversies relating to the rights that a Debtor may have with respect to any Allowed Claim or Allowed Interest or any distribution. The entry of the Confirmation Order will constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such claims or controversies and the Bankruptcy Court's finding that such compromise or settlement is in the best interests of the Debtor, its Estate and Claim and Interest Holders, and is fair, equitable and reasonable. Notwithstanding any other provision in the Plan, the settlements are approved among the parties that have agreed to them (among any other party who has expressly entered into a written settlement), and the treatment of claims and interests is being afforded pursuant to Confirmation by satisfying the requirements of Section 1129.

**VI. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. General Treatment**

On the Effective Date, except as otherwise provided in the Plan (which exclusion includes the Insurance Policies), all Executory Contracts or Unexpired Leases not previously assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court, will be deemed rejected, in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code other than those Executory Contracts or Unexpired Leases that are the subject of a motion to assume that is pending on the Confirmation Date.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Sale Documents or the Plan, and payment of any cure amounts relating thereto, shall, upon satisfaction of the applicable requirements of section 365 of the Bankruptcy Code, result in the full, final, and complete release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults or provisions restricting the change in control of ownership interest composition

or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

#### **B. Rejection Damages Claims**

If the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan and Confirmation Order results in a Claim, then, unless otherwise ordered by the Court, such Claim shall be forever barred and shall not be enforceable against the Debtor, the Estate, the Liquidating Trustee, Liquidating Trust, or any of their respective assets and properties unless a Proof of Claim is Filed with the Notice and Claims Agent and served upon counsel to the Liquidating Trustee within thirty (30) days of the Effective Date.

The foregoing applies only to Claims arising from the rejection of an Executory Contract or Unexpired Lease under the Plan and Confirmation Order; any other Claims held by a party to a rejected Executory Contract or Unexpired Lease shall have been evidenced by a Proof of Claim Filed by the applicable Bar Date or shall be barred and unenforceable. Claims arising from the rejection of Executory Contracts or Unexpired Leases under the Plan and Confirmation Order shall be classified as General Unsecured Claims and shall, if Allowed, be treated in accordance with Article III.B.5 of the Plan.

**Any Claims arising from the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan and Confirmation Order that are not timely Filed within thirty (30) days of the Effective Date will be automatically disallowed, forever barred from assertion, and shall not be enforceable against, as applicable, the Debtor, the Estate, the Liquidating Trustee, Liquidating Trust, or any of their respective assets and properties.**

#### **C. Reservation of Rights**

The inclusion of any contract or lease in the Schedules or in any Plan Supplement shall not constitute an admission by the Debtor that such contract or lease is in fact an Executory Contract or Unexpired Lease or that the Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtor or the Liquidating Trustee (as applicable) may elect within thirty (30) calendar days following entry of a Final Order resolving such dispute to alter the treatment of such contract or lease under the Plan by filing a notice of such election on the docket of the Chapter 11 Case.

#### **D. Preexisting Obligations to Debtor Under Executory Contracts or Unexpired Leases**

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of preexisting obligations owed to the Debtor or Liquidating Trustee (as applicable) under such Executory Contracts or Unexpired Leases. In particular, notwithstanding any non-bankruptcy law to the contrary, the Debtor and the Liquidating Trustee (as applicable) expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties, indemnity or continued maintenance obligations.

### **E. Insurance Preservation**

Nothing in the Plan, the Confirmation Order, or the Liquidating Trust Agreement, alters the rights and obligations of the Debtor (and its Estate) and the Debtor's insurers (and third-party claims administrators) under the Insurance Policies or modifies the coverage or benefits provided thereunder or the terms and conditions thereof or diminishes or impairs the enforceability of the Insurance Policies. All of the Debtor's rights and its Estate's rights under any Insurance Policy to which the Debtor and/or the Debtor's Estate may be beneficiaries shall vest with the Liquidating Trust for the benefit of the Liquidating Trust Beneficiaries and all of the beneficiaries of such policies. The Debtor shall be deemed to have assumed only the D&O Policies, and any Insurance Policy other than a D&O Policy shall be deemed terminated on the Effective Date.

### **F. Modifications, Amendments, Supplements, Restatements, or Other Agreements**

Modifications, amendments, supplements, and restatements to a prepetition Executory Contract and/or Unexpired Lease that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease.

## **VII. PROVISIONS GOVERNING DISTRIBUTIONS**

### **A. Distribution Record Date**

As of the close of business on the Distribution Record Date, the various transfer registers for each of the Classes of Claims or Interests as maintained by the Debtor, or its respective agents, shall be deemed closed, and there shall be no further changes in the record holders of any of the Claims or Interests. The Disbursing Agent shall have no obligation to recognize any ownership transfer of the Claims or Interests occurring on or after the Distribution Record Date. The Disbursing Agent shall be entitled to recognize and deal for all purposes hereunder only with those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date, to the extent applicable.

Except as otherwise provided in the Plan, the Disbursing Agent shall make distributions to Holders of Allowed Claims as of the Distribution Record Date at the address for each such Holder as indicated on the Debtor's records as of the date of any such distribution; *provided, however*, that the manner of such distributions shall be determined at the discretion of the Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, or the Contingent Payments Trustee (as applicable); *provided further, however*, that the address for each Holder of an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim Filed by that Holder.

### **B. Withholdings**

The Liquidating Trustee, Contingent Payments Holding Trustee, or Contingent Payments Trustee (as applicable) shall (1) withhold, deduct, and pay over to the appropriate governmental authority any amount required to be withheld under tax laws with respect to any distribution pursuant to the Liquidating Trust Agreement, the Contingent Payments Holding Trust Agreement, or the Contingent Payments Trust Agreement (as applicable); and (2) comply with any reporting

requirements imposed by any federal, state, local, or foreign taxing authority. The Liquidating Trustee, Contingent Payments Holding Trustee, or Contingent Payments Trustee (as applicable) may withhold all or the appropriate portion of any distribution due to any Liquidating Trust Beneficiary until such time as such Liquidating Trust Beneficiary provides the necessary information to comply with any withholding requirements of any governmental authority. Any tax withheld shall be treated as distributed and received by the applicable beneficiary for all purposes of the Liquidating Trust Agreement, Contingent Payments Holding Trust Agreement, Contingent Payments Trust Agreement, and Plan. If a beneficiary fails to provide the information necessary to comply with any withholding requirements of any governmental authority on or before the day that is one year after the Effective Date of the Plan, then such beneficiary's distribution may be treated as unclaimed property in accordance with the Liquidating Trust Agreement, the Contingent Payments Holding Trust Agreement, or the Contingent Payments Trust Agreement (as applicable).

### **C. Date of Distributions**

Distributions made after the Effective Date to Holders of Allowed Claims shall be deemed to have been made on the Effective Date and no interest shall accrue or be payable with respect to such Claims or any distribution related thereto. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on or as soon as reasonably practicable after the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

### **D. Disbursing Agent**

Except as otherwise provided in the Plan, all distributions under the Plan shall be made by the Disbursing Agent on or after the Effective Date. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties. If the Disbursing Agent is otherwise ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Liquidating Trust.

### **E. Powers of Disbursing Agent**

The Disbursing Agent may (1) effect all actions and execute all agreements, instruments, and other documents necessary to carry out the provisions of the Plan; (2) make all distributions contemplated hereby; and (3) perform such other duties as may be required of the Disbursing Agent pursuant to the Plan.

### **F. Surrender of Instruments**

As a condition precedent to receiving any distribution under the Plan, each holder of a certificated instrument or note must surrender such instrument or note held by it to the Disbursing Agent or its designee. Any holder of such instrument or note that fails to (1) surrender the instrument or note; or (2) execute and deliver an affidavit of loss or indemnity reasonably satisfactory to the Disbursing Agent and furnish a bond in form, substance, and amount reasonably satisfactory to the Disbursing Agent within six months of being entitled to such distribution shall

be deemed to have forfeited all rights and claims and may not participate in any distribution hereunder.

#### **G. IRS Forms**

In connection with the Plan, to the extent applicable and not an obligation of the Purchasers under the Sale Documents, the Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, and the Contingent Payments Trustee (as applicable) shall comply with all tax withholding and reporting requirements imposed on it by any Governmental Unit, and all distributions made pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, and the Contingent Payments Trustee (as applicable) shall be authorized to take all actions necessary to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, and the Contingent Payments Trustee (as applicable) reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, Liens, and encumbrances.

As a condition precedent to receiving any distribution under the Plan, each Holder of an Allowed Claim that is entitled to a distribution under the Plan must provide the Liquidating Trustee an executed IRS Form. An Allowed Claim of a Holder that fails to provide an executed IRS Form within sixty (60) days after service (by first class mail) of a formal request for the same by the Liquidating Trustee shall be deemed disallowed and expunged for purposes of distributions under the Plan.

#### **H. Delivery of Distributions**

Subject to applicable Bankruptcy Rules, all distributions to Holders of Allowed Claims shall be made by the Disbursing Agent, who shall transmit such distributions to the applicable Holders of Allowed Claims or their designees.

If any distribution to a Holder of an Allowed Claim (1) is returned as undeliverable for lack of a current address or otherwise; or (2) is not cashed or otherwise presented for collection by the Holder of the Allowed Claim within ninety (90) calendar days after the mailing of such distribution, the Liquidating Trustee shall file with the Bankruptcy Court the name and last known address of the Holder of undeliverable distribution or uncashed distribution, as applicable. If, after the passage of thirty (30) calendar days after such Filing, the payment or distribution on the Allowed Claim still cannot be made, then (1) the Holder of such Claim shall cease to be entitled to the undeliverable distribution or uncashed distribution, which will revert to the Liquidating Trust; and (2) the Allowed Claim of such Holder shall be deemed disallowed and expunged for purposes of further distributions under the Plan.

**I. Manner of Payment**

Any distributions to be made by or on behalf of the Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, or the Contingent Payments Trustee (as applicable) pursuant to the Plan shall be made by checks drawn on accounts maintained by the Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, or the Contingent Payments Trustee (as applicable) or by wire transfer if circumstances justify, at the option of the Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, or the Contingent Payments Trustee (as applicable).

**J. Foreign Currency Exchange Rate**

As of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in *The Wall Street Journal* on the Petition Date.

**K. Setoffs and Recoupments**

The Debtor and the Liquidating Trustee, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable bankruptcy and/or nonbankruptcy law, without the approval of the Bankruptcy Court and upon no less than fourteen (14) calendar days' notice to the applicable Holder of a Claim, or as may be agreed to by the Holder of a Claim, may, but shall not be required to, set off against or recoup against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Allowed Claim (before any distribution is to be made on account of such Allowed Claim), any claims of any nature whatsoever that the Debtor or its Estate may have against the Holder of such Allowed Claim; *provided, however*, that neither the failure to effect such a setoff or recoupment nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor or the Liquidating Trustee of any such claim the Debtor or its Estate may have against the Holder of such Claim.

**L. Minimum Distributions**

No payment of Cash in an amount of less than one hundred U.S. dollars (\$100.00) shall be required to be made on account of any Allowed Claim. Such undistributed amount may instead be used in accordance with the Plan and the Liquidating Trust Agreement.

If the Cash available for the final distribution is less than the cost to distribute such funds, the Liquidating Trustee may donate such funds to the unaffiliated charity of its choice.

**M. Allocation of Distributions Between Principal and Interest**

To the extent that any Allowed Claim entitled to a distribution under the Plan includes both principal and accrued but unpaid prepetition interest, such distribution shall be allocated to the principal amount (as determined for U.S. federal income tax purposes) of the Claim first, and then to accrued but unpaid prepetition interest.

**N. Distributions Free and Clear**

Except as otherwise provided in the Plan, any distribution or transfer made under the Plan, including distributions to any Holder of an Allowed Claim, shall be free and clear of any Liens, Claims, encumbrances, charges, and other interests, and no other entity shall have any interest, whether legal, beneficial, or otherwise, in property distributed or transferred pursuant to the Plan.

**O. Claims Paid or Payable by Third Parties**1. Claims Paid by Third Parties

If a Holder of a Claim receives a payment or other satisfaction of its Claim other than through the Debtor and/or the Liquidating Trustee (as applicable) on account of such Claim, such Claim shall be reduced by the amount of such payment or satisfaction without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, and if the Claim was paid or satisfied in full other than through the Debtor and/or the Liquidating Trustee (as applicable), then such Claim shall be disallowed and any recovery in excess of a single recovery in full shall be paid over to the Liquidating Trustee without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment or satisfaction from a party that is not the Debtor and/or the Liquidating Trustee (as applicable) on account of such Claim, such Holder shall, within fourteen (14) Business Days of receipt thereof, repay or return the distribution to the Debtor or Liquidating Trustee (as applicable), to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan.

2. Claims Payable by Third Parties

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtor's Insurance Policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such Insurance Policy. To the extent that one or more of the Debtor's insurers agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

3. Applicability of Insurance Policies

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable Insurance Policy. Except as set forth in Article IX of the Plan, nothing in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtor or any Entity, including the Liquidating Trust, may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained in the Plan constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

## **VIII. PROCEDURES FOR RESOLVING DISPUTED CLAIMS**

### **A. Allowance of Claims**

After the Effective Date, the Liquidating Trustee shall have and retain any and all rights and defenses that the Debtor had with respect to any Claim or Interest immediately prior to the Effective Date.

### **B. Claims Administration Responsibilities**

Except as otherwise specifically provided in the Plan, after the Effective Date, the Liquidating Trustee shall have the authority to: (1) File, withdraw, or litigate to judgment, objections to Claims or Interests; (2) settle or compromise any Disputed Claim, including, for the avoidance of doubt, the Patheon Rejection Claim, without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

### **C. Estimation of Claims**

Before or after the Effective Date, the Debtor or the Liquidating Trustee (as applicable) may (but are not required to) at any time request that the Bankruptcy Court estimate any Disputed Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection.

Notwithstanding any provision otherwise in the Plan, a Claim that has been expunged or disallowed from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars (\$0.00) unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions), and the Debtor or the Liquidating Trustee (as applicable) may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim.

### **D. Adjustment to Claims Without Objection**

Any Claim that has been paid, satisfied, or assumed by Purchasers in the Sale, or any Claim that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Debtor or the Liquidating Trustee (as applicable) without an objection to such Claim having to be Filed following notice filed on the docket in the Bankruptcy Court of such adjustment or expungement.

**E. Time to File Objections to Claims**

Except as otherwise provided in the Plan, any objections to Claims shall be filed on or before the Claims Objection Bar Date (as such date may be extended upon presentment of an order to the Bankruptcy Court by the Liquidating Trustee).

**F. Disallowance of Late Claims**

Except as provided in the Plan or otherwise agreed to by the Debtor or the Liquidating Trustee (as applicable), any Holder of a Claim Filed, via Proof of Claim, after the Bar Date shall not receive any distributions on account of such Claims, unless on or before the Confirmation Hearing such late Claim has been deemed timely Filed by a Final Order.

**G. Disputed Claims**

All Claims held by Persons or Entities against whom or which the Debtor has commenced a proceeding asserting a Cause of Action under sections 542, 543, 544, 545, 547, 548, 549, or 550 of the Bankruptcy Code or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 548, 549 or 724(a) of the Bankruptcy Code shall be deemed Disputed Claims pursuant to section 502(d) of the Bankruptcy Code and Holders of such Claims shall not be entitled to vote to accept or reject the Plan. A Claim deemed Disputed pursuant to this Article VII.G shall continue to be Disputed for all purposes until the relevant proceeding against the Holder of such Claim has been settled or resolved by a Final Order and any sums due to the Debtor or the Liquidating Trustee from such Holder have been paid.

**H. Amendment to Claims**

Except as provided in the Plan, on or after the Effective Date, without the prior authorization of the Bankruptcy Court or the Liquidating Trustee, a Claim may not be Filed or amended and any such new or amended Claim Filed shall be deemed disallowed in full and expunged without any further notice to or action, order or approval of the Bankruptcy Court.

**I. No Distributions Pending Allowance**

If an objection to a Claim, Proof of Claim, or portion thereof is Filed, no payment or distribution provided under the Plan shall be made on account of such Claim, Proof of Claim, or portion thereof unless and until the Disputed Claim becomes an Allowed Claim.

**J. Distributions After Allowance**

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Disbursing Agent shall provide to the Holder of such Claim the distribution (if any) to which such Holder is entitled under the Plan as of the Effective Date, without any interest, dividends, or accruals to be paid on account of such Claim. No interest shall accrue or be paid on any Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Claim.

## **IX. CONDITIONS PRECEDENT TO THE EFFECTIVE DATE**

### **A. Conditions to Effective Date**

The Effective Date will not occur and the Plan will not be consummated unless and until each of the following conditions has been satisfied or duly waived pursuant to Article VIII.B. of the Plan:

1. The Bankruptcy Court shall have approved the Disclosure Statement as containing adequate information with respect to the Plan within the meaning of section 1125 of the Bankruptcy Code.
2. The Confirmation Order shall have been entered and shall be in full force and effect.
3. There shall have been no modification or stay of the Confirmation Order or entry of any other order prohibiting the transactions contemplated by the Plan from being consummated.
4. The Professional Fee Reserve shall have been fully funded pursuant to the terms of the Plan.
5. All Consenting Noteholder Fees and Expenses incurred and invoiced as of the Effective Date shall have been paid in full.
6. The RSA shall not have been terminated and shall remain in full force and effect and the Debtor and the Consenting Noteholders shall be in compliance therewith.
7. All actions, documents and agreements necessary to implement the Plan shall have been effected, executed and/or tendered for delivery. All conditions precedent to the effectiveness of such documents and agreements shall have been satisfied or waived pursuant to the terms thereof (or will be satisfied and waived substantially concurrently with the occurrence of the Effective Date).
8. The Liquidating Trustee shall have been appointed and assumed its rights and responsibilities under the Plan and the Liquidating Trust Agreement, as applicable.
9. The Contingent Payments Holding Trustee shall have been appointed and assumed its rights and responsibilities under the Plan and the Contingent Payments Holding Trust Agreement, as applicable.
10. The Contingent Payments Trustee shall have been appointed and assumed its rights and responsibilities under the Plan and the Contingent Payments Trust Agreement, as applicable.
11. The Debtor shall have received all authorizations, consents, regulatory approvals, rulings, letters, no-action letters, opinions, or documents necessary to implement the Plan and any transaction contemplated hereby that are required by law, regulation, or order.

**B. Waiver of Conditions to Effective Date**

The conditions to the Effective Date set forth in Article VIII.A. of the Plan may be waived in whole or part by the Debtor, with the consent of the Majority Consenting Noteholders, without notice to any other parties in interest or the Bankruptcy Court and without a hearing.

**C. Effect of Vacatur of the Confirmation Order**

If the Confirmation Order is vacated (1) the Plan will be null and void in all respects, including with respect to the release of Claims and distributions for Allowed Claims; and (2) nothing contained in the Plan will (a) constitute a waiver or release of any Claims by or against, or any Interest in, the Debtor or (b) prejudice in any manner the rights, including any claims or defenses, of the Parties or any other party in interest.

**D. Votes Solicited in Good Faith**

Upon entry of the Confirmation Order, the Debtor will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code.

**X. EXCULPATION, RELEASES, AND INJUNCTION**

**A. Exculpation**

**Except as otherwise specifically provided in the Plan, no Exculpated Party<sup>11</sup> shall have or incur liability for, and each Exculpated Party is exculpated from any Cause of Action for any Claim related to any act or omission in connection with, relating to, or arising out of, the Chapter 11 Case, the formulation, preparation, dissemination, negotiation, or filing of the Debtor's in-court restructuring efforts, the Term Sheet, the RSA, the Disclosure Statement, the Sale Motion, the Plan, the Plan Supplement, or any restructuring transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Sale, the Plan, the Plan Supplement, the Chapter 11 Case, the filing of the Chapter 11 Case, the pursuit of the Confirmation Order, the pursuit of the Sale Order, the pursuit of consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence or omission taking place between the Petition Date and the Effective Date, except for claims related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted actual intentional fraud, willful misconduct, or gross negligence of such Person, but in all respects such Entities shall be entitled to reasonably rely upon the written advice of counsel with respect to their duties and responsibilities pursuant to the Plan.**

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<sup>11</sup> As set forth in the Plan, "Exculpated Party" means, in each case in its capacity as such, (a) the Debtor; (b) the Debtor's directors and officers during the Chapter 11 Case; (c) each of the respective current professionals, advisors, accountants, attorneys, investment bankers, consultants, employees, agents, and other representatives of the Debtor; (d) the Retained Professionals; and (e) each of the Retained Professionals' current professionals, advisors, accountants, attorneys, investment bankers, consultants, employees, agents, and other representatives. The Creditors' Committee believes that exculpation should not apply to any prepetition conduct of any Exculpated Party.

## B. Releases

### 1. Releases by the Debtor

As of the Effective Date, pursuant to section 1123(b) of the Bankruptcy Code and for good and valuable consideration, each Released Party<sup>12</sup> is deemed released by the Debtor and its estate from any and all claims and Causes of Action, whether known or unknown, including any claims and Causes of Action that the Debtor or its estate would have been legally entitled to assert in its own right including any claims or Causes of Action that could be asserted derivatively or on behalf of the Debtor (or its estate), that such Entity would have been legally entitled to assert (whether individually or collectively), based on, or relating to, or in any manner arising from, in whole or in part, the Debtor (including the management, ownership, or operation thereof, or otherwise), any securities issued by the Debtor and the ownership thereof, the Debtor's in- or out-of-court restructuring efforts, any avoidance actions, the Chapter 11 Case, the formulation, preparation, dissemination, negotiation, or filing of the Term Sheet, the RSA, the Disclosure Statement, the Sale Motion, the Plan, the Plan Supplement, or any other transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Sale, the Plan, the Plan Supplement, the Chapter 11 Case, the filing of the Chapter 11 Case, the pursuit of the Confirmation Order, the pursuit of the Sale Order, the pursuit of consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence or omission taking place on or before the Effective Date; *provided, however*, that this provision shall not operate to waive or release any Claims or Causes of Action related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted actual intentional fraud, willful misconduct, or gross negligence of such Person. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (1) any post Effective Date obligations of any party or entity under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan; (2) any obligations under or in respect of the Sale Order; or (3) the Retained Causes of Action, recovery on account of which, other than with respect to the Severance Payment

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<sup>12</sup> As set forth in the Plan, "Released Party" means each of, and in each case in its capacity as such: (a) the Debtor; (b) the Consenting Noteholder Releasing Parties; and (c) each Related Party of the Debtor or the Consenting Noteholder Releasing Parties, including, for the avoidance of doubt, any professional retained by the Debtor or the Consenting Noteholders in connection with this Chapter 11 Case. Notwithstanding the foregoing, the definition of "Released Party" shall not be deemed to include any shareholder solely to the extent acting in such person's capacity as a shareholder.

"Related Party" means each of, and in each case in its capacity as such, current and former directors, managers, officers, committee members, members of any governing body, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, Affiliates, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, attorneys (including any other attorneys or professionals retained by any current or former director or manager in his or her capacity as director or manager of an Entity), accountants, investment bankers, consultants, representatives, and other professionals and advisors and any such Person's or Entity's respective heirs, executors, estates, and nominees. The Creditors' Committee opposes the releases set forth in Article IX.A and IX.B of the Plan.

**Claim, will be limited to the extent of available insurance proceeds, if any, provided under the D&O Policies in accordance with the terms thereof and subject to the provisions and limitations of any such D&O Policies and applicable law.**

**Each Person and Entity deemed to grant the Debtor releases shall be deemed to have granted such releases notwithstanding that such Person or Entity may hereafter discover facts in addition to, or different from, those which such Person or Entity now knows or believes to be true, and without regard to the subsequent discovery or existence of such different or additional facts, and such Person or Entity expressly waives any and all rights that such Person or Entity may have under any statute or common law principle, including, without limitation, section 1542 of the California Civil Code, to the extent such section is applicable, which would limit the effect of such releases to those claims or Causes of Action actually known or suspected to exist on the Effective Date. Section 1542 of the California Civil Code generally provides as follows: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”**

2. Releases by Holders of Claims and Interests

**As of the Effective Date, each Releasing Party<sup>13</sup> is deemed to have released and discharged each Released Party from any and all claims and Causes of Action, whether known or unknown, including any claims and Causes of Action that the Debtor or its estate would have been legally entitled to assert in its own right including any claims or Causes of Action that could be asserted derivatively or on behalf of the Debtor (or its estate), that such Entity would have been legally entitled to assert (whether individually or collectively), based on, relating to, or in any manner arising from, in whole or in part, the Debtor (including the management, ownership or operation thereof, or otherwise), any securities issued by the Debtor and the ownership thereof, the Debtor’s in- or out-of-court restructuring efforts, any avoidance actions, the Chapter 11 Case, the formulation, preparation, dissemination, negotiation, or filing of the Term Sheet, the RSA, the Disclosure Statement, the Sale Motion, the Plan, the Plan Supplement, or any other transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Sale, the Plan, the Plan Supplement, the Chapter 11 Case, the filing of the Chapter 11 Case, the pursuit of the Confirmation Order, the pursuit of the Sale Order, the pursuit of consummation, the administration and implementation of the Plan, including the distribution of property under**

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<sup>13</sup> As set forth in the Plan, “Releasing Parties” means, collectively, and in each case, in their respective capacities as such, (a) the Consenting Noteholder Releasing Parties; (b) all Holders of Claims deemed hereunder to have accepted the Plan that have not filed an objection to the release contained in Article IX herein prior to the Voting Deadline; (c) all Holders of a Claim or Interest that (i) vote to accept or reject the Plan and do not timely submit a Release Opt-Out, or (ii) do not vote to accept or reject the Plan and either do not timely submit a Release Opt-Out or do not file an objection to the releases contained in Article IX herein prior to the Voting Deadline; (d) to the maximum extent permitted by Law; each current and former Affiliate of each Person or Entity in clauses (a) through (c); and (e) to the maximum extent permitted by Law, each Related Party of each Entity in clauses (a) through (c).

the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence or omission taking place on or before the Effective Date; *provided, however*, that this provision shall not operate to waive or release any Claims or Causes of Action related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted actual intentional fraud, willful misconduct, or gross negligence of such Person; *provided further, however*, that notwithstanding anything to the contrary in the Disclosure Statement and Plan, this provision shall not apply with respect to any unimpaired Claim until such unimpaired Claim has been paid in full in the Allowed amount of such Claim determined in accordance with applicable law, or on terms agreed to between the Holder of such Claim and the Debtor or the Liquidating Trustee, as applicable, at which time this provision shall apply in all respects as to the applicable unimpaired claim. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (1) any post Effective Date obligations of any party or entity under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan; (2) any obligations under or in respect of the Sale Order; or (3) the Retained Causes of Action, recovery on account of which, other than with respect to the Severance Payment Claim, will be limited to the extent of available insurance proceeds, if any, provided under the D&O Policies in accordance with the terms thereof and subject to the provisions and limitations of any such D&O Policies and applicable law.

Each Person and Entity deemed to grant the releases described in this Section shall be deemed to have granted such releases notwithstanding that such Person or Entity may hereafter discover facts in addition to, or different from, those which such Person or Entity now knows or believes to be true, and without regard to the subsequent discovery or existence of such different or additional facts, and such Person or Entity expressly waives any and all rights that such Person or Entity may have under any statute or common law principle, including, without limitation, section 1542 of the California Civil Code, to the extent such section is applicable, which would limit the effect of such releases to those claims or Causes of Action actually known or suspected to exist on the Effective Date. Section 1542 of the California Civil Code generally provides as follows: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

The Creditors’ Committee opposes the Releases contained in Article IX.A and IX.B of the Plan and encourages Holders of Allowed Claims to vote against the Plan and affirmatively “Opt-Out” of the third party release by marking / checking the “Opt-Out Release Box” on the Ballot.

### C. Injunction

Except as otherwise provided in the Plan or the Confirmation Order, all Entities who have held, hold, or may hold claims, Interests, Causes of Action, or liabilities that: (1) are subject to compromise and settlement pursuant to the terms of the Plan; (2) have been

released pursuant to the Plan; (3) were purchased and released by a purchaser in connection with the Sale; (4) are subject to exculpation pursuant to the Plan; or (5) are otherwise discharged, satisfied, stayed, released, or terminated pursuant to the terms of the Plan, are permanently enjoined and precluded, from and after the Effective Date, from commencing or continuing in any manner, any action or other proceeding, including on account of any claims, Interests, Causes of Action, or liabilities that have been compromised or settled against the Debtor or any Entity so released or exculpated (or the property or estate of any Entity, directly or indirectly, so released or exculpated) on account of, or in connection with or with respect to, any discharged, released, settled, compromised, or exculpated claims, Interests, Causes of Action, or liabilities, including being permanently enjoined and precluded, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtor, the Liquidating Trust, the Released Parties, or Exculpated Parties (as applicable): (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims or Interests; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such claims or Interests; (3) creating, perfecting, or enforcing any lien or encumbrance of any kind against such Entities or the property or the estate of such Entities on account of or in connection with or with respect to any such claims or Interests; (4) asserting any right of setoff or subrogation of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such claims or Interests unless such Entity has timely asserted such setoff right in a document filed with the Bankruptcy Court explicitly preserving such setoff, and notwithstanding an indication of a Claim or Interest or otherwise that such Entity asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims or Interests released or settled pursuant to the Plan.

Upon the Bankruptcy Court's entry of the Confirmation Order, all Holders of Claims and Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan by the Debtor, the Liquidating Trustee, and their respective affiliates, employees, advisors, officers and directors, or agents.

#### **D. Release Opt-Out for Lead Plaintiff**

Notwithstanding anything to the contrary set forth in the Plan, the solicitation materials (including but not limited to the Disclosure Statement, the non-voting status notice, and the Release Opt-Out), the Plan Supplement, or the Confirmation Order, Jeffrey M. Fiore ("Lead Plaintiff"), the court-appointed lead plaintiff in the securities class action captioned as *Michael Pardi v. Tricida, Inc. and Gerrit Klaerner, Case No. 4:21-cv-00076-HSG*, the Pardi Litigation, pending in the United States District Court for the Northern District of California, Oakland Division, together with each member of the putative class Lead Plaintiff represents (including as may be redefined or certified) in the Pardi Litigation (the "Proposed Class"), shall be deemed to have opted out of the third party release contained in Article IX.B herein with respect to claims

asserted or to be asserted against any non-Debtor party in the Pardi Litigation (the “Opt-Out Claims”), and shall not be required to execute, complete, or deliver the Release Opt-Out forms by the Voting Deadline / opt-out deadline. The Confirmation Order shall (a) contain the provisions of this paragraph and (b) provide that Lead Plaintiff and the Proposed Class are not Releasing Parties with respect to the Opt-Out Claims.

#### **E. No Discharge**

Because the Debtor is liquidating, it is not entitled to a discharge of obligations pursuant to section 1141 of the Bankruptcy Code with regard to any Holders of Claims or Interests.

#### **F. Release of Liens**

Except as otherwise provided herein or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estate shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Debtor and its successors and assigns.

If any Holder of an Other Secured Claim or any agent for such Holder has filed or recorded publicly any Liens and/or security interests to secure such Holder’s Other Secured Claim, as soon as practicable on or after the Effective Date, such Holder (or the agent for such Holder) shall take any and all steps requested by the Liquidating Trustee that are necessary or desirable to record or effectuate the cancellation and/or extinguishment of such Liens and/or security interests, including the making of any applicable filings or recordings, and the Liquidating Trustee shall be entitled to make any such filings or recordings on such Holder’s behalf.

#### **G. Opt-Out Election**

**Each Holder of a Claim or Interest may opt-out of the releases set forth in the Plan by selecting the opt-out item in the ballot form distributed to each Holder of a Claim entitled to vote, the notice of Impaired non-voting status, the notice of Unimpaired non-voting status (the “Release Opt-Out”). If such Holder elects to opt-out of the consensual third-party releases set forth herein and Article IX of the Plan, it must complete and return the Release Opt-Out so as to be received by KCC on or before the Opt-Out Deadline.**

**Class 8 Holders of Debtor’s Interests may also opt-out of the releases set forth in the Plan by executing the opt-out form distributed to such Holders of Interests. Such opt-out form must be properly executed, completed, and delivered so as to be actually received by KCC on or before the Opt-Out Deadline.**

### **XI. RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court will retain such jurisdiction over the Chapter 11 Case, the Sale, the Sale Documents, the Confirmation Order, and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to each of the following:

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims or Interests.
2. Resolve any cases, controversies, suits, or disputes that may arise in connection with Claims, including Claim objections, allowance, disallowance, subordination, estimation and distribution.
3. Decide and resolve all matters related to the granting and denying, in whole or in part of, any applications for allowance of compensation or reimbursement of expenses to Retained Professionals authorized pursuant to the Bankruptcy Code or the Plan.
4. Resolve any matters related to: (a) the assumption or assumption and assignment of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor may be liable and to hear, determine, and, if necessary, liquidate, any cure amount arising therefrom; and/or (b) any dispute regarding whether a contract or lease is or was executory or expired.
5. Adjudicate, decide or resolve any motions, adversary proceedings, contested, or litigated matters, and any other matters, and grant or deny any applications involving the Debtor that may be pending on the Effective Date.
6. Adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code.
7. Adjudicate, decide or resolve any motion, adversary proceedings, contested, or litigated matters, and any other matters relating to the Retained Causes of Action.
8. Enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan or the Disclosure Statement.
9. Resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the interpretation or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan.
10. Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with enforcement of the Plan.
11. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the releases, injunctions, and other provisions contained in the Plan and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions.

12. Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated.
13. Determine any other matters that may arise in connection with or related to the Sale Documents, the Disclosure Statement, the Plan, and the Confirmation Order.
14. Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan.
15. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by any Holder for amounts not timely repaid.
16. Adjudicate any and all disputes arising from or relating to distributions under the Plan.
17. Consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order.
18. Hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or the Confirmation Order.
19. Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code.
20. To recover all assets of the Debtor and property of the Debtor's Estate, wherever located.
21. To consider requests for extensions of the term of the Liquidating Trust as provided in the Plan.
22. To hear and determine any Causes of Action that may be brought by the Liquidating Trustee.
23. To hear and determine any other rights, claims, or Causes of Action held by or accruing to the Debtor Liquidating Trustee, the Contingent Payments Holding Trustee, or the Contingent Payments Trustee pursuant to the Bankruptcy Code or any applicable state or federal statute or legal theory.
24. Enter an order or final decree concluding or closing the Chapter 11 Case.
25. Enforce all orders previously entered by the Bankruptcy Court.
26. Hear any other matter over which the Court has jurisdiction.

The foregoing is not intended to (a) expand the Bankruptcy Court's jurisdiction beyond that allowed by applicable law, (b) impair the rights of an Entity to invoke the jurisdiction of a court, commission, or tribunal or (c) impair the rights of an Entity to seek the withdrawal of the reference in accordance with 28 U.S.C. § 157(d).

## **XII. MISCELLANEOUS PROVISIONS**

### **A. Debtor's Operation from Confirmation Hearing Through Effective Date**

During the period from the Confirmation Hearing through and until the Effective Date, the Debtor shall continue to operate as a debtor in possession, subject to the oversight of the Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules, and all orders of the Bankruptcy Court that are then in full force and effect.

### **B. Preservation of Books and Records**

Until the entry of a final order of judgment or settlement in the litigation captioned as *Michael Pardi v. Tricida, Inc. and Gerritt Klaerner, Case No. 4:21-cv-00076-HSG* (the "Pardi Litigation") pending in the United States District Court for the Northern District of California, Oakland Division, the Debtor and the Purchaser and any other transferee of the Debtor's books, records, documents, files, electronic data (in whatever format, including native format), or any tangible object potentially relevant to the Pardi Litigation, wherever stored (collectively, the "Potentially Relevant Books and Records") shall preserve and maintain the Potentially Relevant Books and Records, and shall not destroy, abandon, transfer, or otherwise render unavailable such Potentially Relevant Books and Records without providing counsel to the plaintiff in the Pardi Litigation at least sixty days' advance written notice and an opportunity to object and be heard by a court of competent jurisdiction. In the event the plaintiff in the Pardi Litigation timely objects to any such destruction, abandonment, or transfer, the Potentially Relevant Books and Records shall be preserved pending a final order of the Bankruptcy Court or other court of competent jurisdiction; *provided, however*, notwithstanding the foregoing the Debtor will retain true copies of any Potentially Relevant Books and Records transferred to the Purchaser, subject to the same conditions described in this paragraph, and the Debtor shall have primary responsibility for responding to and/or producing documents in response to any discovery requests in the Pardi Litigation, including any discovery seeking production of books and records transferred to the Purchaser.

### **C. Immediate Binding Effect**

Notwithstanding Bankruptcy Rules 3020(e) or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and the documents and instruments contained in the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the Debtor, the Liquidating Trustee, all Holders of Claims against and Interests in the Debtor (regardless of whether any such Holder has voted or failed to vote to accept or reject the Plan and regardless of whether any such Holder is entitled to receive any distribution under the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan, any and all non-Debtor parties to Executory Contracts and Unexpired Leases, and all parties in interest.

#### **D. Dissolution of the Creditors' Committee**

On the Effective Date, any duly appointed official committee of unsecured creditors will dissolve and the members thereof will be released and discharged from all duties and obligations arising from or related to the Chapter 11 Case; *provided, however*, that, after the Effective Date, the Creditors' Committee will continue to exist solely with respect to (i) any applications for Professional Fee Claims or expense reimbursements for members of the Creditors' Committee, including preparing same, objecting to same, defending same and attending any hearing with respect to same; (ii) any motions or other actions seeking enforcement or implementation of the provisions of the Plan or Confirmation Order; and (iii) any appeal pending as of the Effective Date or filed thereafter, the outcome of which could reasonably be expected to affect in any material way the treatment of the Holders of General Unsecured Claims, including, but not limited to, any cases, controversies, suits or disputes arising in connection with the consummation, interpretation, implementation or enforcement of the Plan or the Confirmation Order. Following the Effective Date, the Creditors' Committee's Professionals shall be entitled to reasonable compensation for services rendered in connection with the matters identified in clauses (i) – (iii). Any such payments made in connection therewith shall be made without any further notice to or action, order, or approval of the Bankruptcy Court.

#### **E. Modification of the Plan**

Subject to the limitations contained in the Plan, the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules (1) to amend or modify the Plan prior to the entry of the Confirmation Order, including amendments or modifications to satisfy section 1129 of the Bankruptcy Code; and (2) after the entry of the Confirmation Order, the Debtor may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

In the event that the Sale is not consummated prior to the Effective Date, at the request of the Majority Consenting Noteholders, the Debtor and the Majority Consenting Noteholders shall use commercially reasonable efforts to modify the Plan to effectuate and structure the Plan in a tax efficient manner as determined by the Debtor and the Majority Consenting Noteholders.

#### **F. Revocation of the Plan; Effect of Non-Occurrence of Conditions to the Effective Date**

Subject to the conditions to the Effective Date, the Debtor, reserves the right to revoke or withdraw the Plan prior to the entry of the Confirmation Order and to File subsequent plans of reorganization or liquidation. If the Debtor revokes or withdraws the Plan, or if entry of the Confirmation Order or the Effective Date does not occur, then (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan, assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant hereto shall be deemed null and void; and (3) nothing contained in the Plan, the Confirmation Order, or the Disclosure Statement shall (a) constitute a waiver or release of any Claims, Interests, or Causes of Action, (b) prejudice in any manner the rights of the Debtor or any

other Entity, or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtor or any other Entity.

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

Except as otherwise provided in the Plan, to the maximum extent permitted by applicable law and subject to the Bankruptcy Court's post-confirmation jurisdiction to modify the injunctions and stays under the Plan (1) all injunctions with respect to or stays against an action against property of the Debtor or the Debtor's Estate arising under or entered during the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code, and in existence on the date the Confirmation Order is entered, shall remain in full force and effect until such property is no longer property of the Debtor or the Debtor's Estate; and (2) all other injunctions and stays arising under or entered during the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code shall remain in full force and effect until the earliest of (a) the date that the Chapter 11 Case is closed pursuant to a Final Order of the Bankruptcy Court, or (b) the date that the Chapter 11 Case is dismissed pursuant to a Final Order of the Bankruptcy Court. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect indefinitely.

#### **H. Inconsistency**

In the event of an inconsistency between the Plan and the Disclosure Statement, the Plan and the Plan Supplement, or the Plan and the RSA, the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall control.

#### **I. Exhibits and Schedules**

All exhibits and schedules to the Plan, including any Plan Supplement, are incorporated into and constitute a party of the Plan as if set forth in the Plan.

#### **J. Additional Documents**

On or before the Effective Date, the Debtor may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, or the Contingent Payments Trustee (as applicable), all Holders of Claims or Interests receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may reasonably be necessary or advisable to effectuate the provisions and intent of the Plan or the Confirmation Order.

#### **K. Severability**

If prior to the entry of the Confirmation Order, any term or provision of the Plan is determined by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court may, at the request of the Debtor, alter and interpret such term or provision to the extent necessary to render it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or

provision will then be applicable as so altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remaining terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**L. Reservation of Rights**

The Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order. None of the Filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by the Debtor with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of the Debtor with respect to the Holders of Claims or Interests prior to the Effective Date.

**M. Successors and Assigns**

Except as expressly provided otherwise in the Plan, the rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, beneficiaries or guardian, if any, of each Entity.

**N. Determination of Tax Liabilities**

As of the Effective Date, the Liquidating Trustee will be responsible for preparing and filing any tax forms or returns on behalf of the Debtor's Estate and Liquidating Trust (to the extent not the responsibility of the Purchasers); *provided, however*, that the Liquidating Trustee shall not be responsible for preparing or filing any tax forms for Holders of Interests in the Debtor (which Interests shall be cancelled pursuant to the Plan), but shall provide such Holders with any information reasonably required to prepare such forms. As of the Effective Date, the Contingent Payments Holding Trustee will be responsible for preparing and filing any tax forms or returns on behalf of the Contingent Payments Holding Trust, and the Contingent Payments Trustee will be responsible for preparing and filing any tax forms or returns on behalf of the Contingent Payments Trust. The Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, and the Contingent Payments Trustee shall have the right to request an expedited determination of any tax liability pursuant to section 505 of the Bankruptcy Code, including on any unpaid liability of the Debtor's Estate, the Liquidating Trust, the Contingent Payments Holding Trust, or the Contingent Payments Trust for any tax incurred during the administration of the Chapter 11 Case.

**O. Closing of Chapter 11 Case**

On or after the Effective Date, the Liquidating Trustee will be authorized, subject to compliance with Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court at any time to submit a motion seeking the closure of any of the Chapter 11 Case without prejudice to the rights of any party in interest to seek to reopen such Chapter 11 Case.

**P. Service of Documents**

Any pleading, notice or other document required by the Plan or Confirmation Order to be served on or delivered to the Debtor, the Liquidating Trustee, the Creditors' Committee, or the Consenting Noteholders must be sent to:

1. The Debtor

**Tricida, Inc.**

Attn: Robert McKague  
7000 Shoreline Court  
South San Francisco, CA 94080  
[bmckague@tricida.com](mailto:bmckague@tricida.com)

With a copy to:

**Sidley Austin LLP**

Attn: Samuel A. Newman  
Julia Philips Roth  
555 West Fifth Street  
Los Angeles, CA 90013  
[sam.newman@sidley.com](mailto:sam.newman@sidley.com)  
[julia.roth@sidley.com](mailto:julia.roth@sidley.com)

Attn: Charles M. Persons  
Jeri Leigh Miller  
2021 McKinney Avenue, Suite 2000  
Dallas, Texas 75201  
[cpersons@sidley.com](mailto:cpersons@sidley.com)  
[jeri.miller@sidley.com](mailto:jeri.miller@sidley.com)

-and-

**Young Conaway Stargatt & Taylor, LLP**

Attn: Sean M. Beach  
Allison Mielke  
1000 N. King Street  
Wilmington, DE 19801  
[sbeach@ycst.com](mailto:sbeach@ycst.com)  
[amielke@ycst.com](mailto:amielke@ycst.com)

-and-

**SierraConstellation Partners**

Attn: Lawrence Perkins  
Roger Gorog  
355 S. Grand Avenue, Suite 1450

Los Angeles, CA 90071  
[lperkins@scpllc.com](mailto:lperkins@scpllc.com)  
[rgorog@scpllc.com](mailto:rgorog@scpllc.com)

2. The Liquidating Trustee: to be included in the Plan Supplement
3. The Contingent Payments Holding Trustee: to be included in the Plan Supplement
4. The Contingent Payments Trustee: to be included in the Plan Supplement
5. The Creditors' Committee

c/o  
Womble Bond Dickinson (US) LLP  
Attn: Donald J. Detweiler  
Todd A. Atkinson  
1313 North Market Street, Suite 1200  
Wilmington, DE 19801  
[don.detweiler@wbd-us.com](mailto:don.detweiler@wbd-us.com)  
[todd.atkinson@wbd-us.com](mailto:todd.atkinson@wbd-us.com)

6. The Consenting Noteholders

c/o  
Davis Polk & Wardwell LLP  
Attn: Darren S. Klein  
Abraham Bane  
450 Lexington Avenue  
New York, NY 10017  
[darren.klein@davispolk.com](mailto:darren.klein@davispolk.com)  
[Abraham.Bane@davispolk.com](mailto:Abraham.Bane@davispolk.com)

### **XIII. RISK FACTORS**

Prior to voting on the Plan, Holders of Claims in Classes 3, 4, 5 and 6 as well as entities in non-voting Classes, should consider carefully the risk factors described below, as well as all of the information contained in this Disclosure Statement, including the Exhibits hereto. These risk factors should not, however, be regarded as constituting the only risks involved in connection with the Plan and its implementation. See Article XIV for a discussion of tax law considerations.

#### **A. Plan Confirmation, Release and Exculpation Provisions and Classification**

There is no guarantee that the Plan will be confirmed. If the Plan, or a substantially similar plan, is not confirmed, the terms and timing of any plan of liquidation ultimately confirmed in the Chapter 11 Case, and the treatment of Claims and Interest will be unknown. In addition, if the Plan is not confirmed, a significant risk exists that the Chapter 11 Case may be converted to a case

under chapter 7. In that event, the Debtor believes that creditor recoveries would be substantially diminished.

In particular, the Debtor understands that certain parties may believe that they have valid objections to the release and exculpation provisions in the Plan. The Debtor and Consenting Noteholders believe that any such objection is without merit; however, in the event that such objection is sustained by the Bankruptcy Court and such release and/or exculpation provisions are modified or stricken from the Plan, the Consenting Noteholders may withdraw their support for the Plan, which may result in the Debtor being unable to confirm the Plan or any other chapter 11 plan.

In addition, there is no guarantee that the Bankruptcy Court will agree with the classification of Claims and Interests as proposed by the Plan. Section 1122 of the Bankruptcy Code provides that a chapter 11 plan may place a claim or an equity interest in a particular class only if that claim or interest is substantially similar to the other claims or interests in that class. As is described herein, the Debtor believes that the Plan's classification of Claims and Interests complies with the requirements under the Bankruptcy Code. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

The Creditors' Committee opposes the Debtor's classification of Claims and Interests under the Plan. Specifically, the separate classification of the unsecured claims in Classes 3, 4, and 5 under the Plan. The Creditors' Committee believes all unsecured claims should be classified in one single Class and has indicated it intends to object to the Debtor's classification at the hearing to confirm the Plan.

#### **B. The Effective Date May Not Occur**

The Plan provides that there are conditions precedent to the occurrence of the Effective Date. There is no guarantee as to the timing of the Effective Date. Additionally, if the conditions precedent to the Effective Date are not satisfied or waived, the Bankruptcy Court may vacate the Confirmation Order. In that event, the Plan would be deemed null and void, and the Debtor or any other party may propose or solicit votes on an alternative plan of liquidation that may not be as favorable to parties in interest as the Plan.

#### **C. Allowance of Claims**

This Disclosure Statement has been prepared based on preliminary information concerning filed Claims and the Debtor's books and records. The actual amount of Allowed Claims may differ from the Debtor's current estimates.

#### **D. Risk Factors That May Affect Recoveries Available to Holders of Allowed Claims Under the Plan**

1. The Amounts of Allowed Claims May Adversely Affect the Recovery of Some Holders of Allowed Claims

The distributions available to Holders of Allowed Claims in Classes 3, 4, and 5 under the Plan can be affected by a variety of contingencies, including, without limitation, the amount of

Allowed Administrative Claims, Priority Tax Claims, Class 1 Claims, and Class 2 Claims, thereby reducing the amount of distributions available for other Holders of Allowed Claims. Additionally, distributions available to Holders of Allowed Claims in Classes 3 and 4, and 5 can be affected by the aggregate amount of Allowed Claims in Classes 1 and 2. The Debtor cannot determine with any certainty at this time the number or amount of such Claims that will ultimately be Allowed. Thus, the projected recoveries for Holders of Allowed Claims in Classes 3, 4, and 5 disclosed in this Disclosure Statement are highly speculative.

2. Any Valuation of Any Assets to be Distributed Under the Plan is Speculative

Any valuation of any of the assets to be distributed under the Plan is necessarily speculative, including but not limited to the potential recoveries, if any, in respect of the Retained Causes of Action. Accordingly, the ultimate value, if any, of these assets could materially affect, among other things, recoveries to the Holders of Allowed Claims in Classes 3, 4, and 5.

3. The Debtor Cannot Guarantee the Timing of Distributions

The timing of actual distributions to Holders of Allowed Claims may be affected by many factors that cannot be predicted. Therefore, the Debtor cannot guarantee the timing of any recovery on an Allowed Claim.

4. Certain Tax Implications of the Debtor's Bankruptcy

Holders of Allowed Claims should carefully review Article XIV of this Disclosure Statement, "Certain U.S. Federal Income Tax Consequences of Consummation of the Plan," for a description of certain tax implications of the Plan and the Debtor's Chapter 11 Case. As described more fully in that Article, the tax treatment of the Trusts is subject to substantial uncertainty and the intended tax treatment of the Trusts will not be known until the earlier of the resolution of the Disputed Claims and the Trust Election Date. This date may be later than the due date for a Holder's federal income tax return for its taxable year that includes the Effective Date. For example, assuming the Effective Date occurs in 2023, an individual U.S. Holder's federal income tax return would normally be due on April 15, 2024, but the intended tax treatment of the Trusts may not be known until as late as September 1, 2024. Thus, a Holder may be required to file for an extension of the filing date for such tax returns or may be required to amend such tax returns if it files them prior to the date the intended tax treatment of the Trusts is determined. Further, even if an extension is obtained, the extension generally does not extend the due date for paying any taxes associated with the extended tax return. Holders are urged to consult their tax advisors with respect to the need to file for an extension or amend such tax returns.

5. Trust's Expenses

The ultimate amount of Cash available to satisfy the amount of Allowed Claims in Classes 3, 4, and 5 depends, in part, on the manner in which the Liquidating Trustee operates its Trust and the expenses it incurs. Such expenses may include, without limitation, the ordinary course and other expenses of administering the Liquidating Trust, including any taxes relating thereto and the costs to liquidate the Liquidating Trust Assets, investigate and prosecute the Retained Causes of Action, prosecute objections to Claims, and make distributions. The expenses of the Liquidating

Trustee will be given priority over distributions to holders of Claims in Classes 3, 4, and 5. As a result, if the Liquidating Trustee incurs professional or other expenses in excess of current expectations, the amount of distributable assets remaining to satisfy Allowed Claims in Classes 3, 4, and 5 will decrease.

#### **E. Risk Factors Relating to Securities Law**

Section 1145(a)(1) of the Bankruptcy Code exempts the offer and sale of securities under a plan from registration under the Securities Act and state securities laws if three principal requirements are satisfied: (1) the securities must be offered and sold under a plan and must be securities of the debtor, an affiliate participating in a joint plan with the debtor or a successor to the debtor under the plan; (2) the recipients of the securities must hold a pre-petition or administrative expense claim against the debtor or an interest in the debtor; and (3) the securities must be issued entirely in exchange for the recipient's claim against or interest in the debtor, or principally in such exchange and partly for cash or property. To the extent that the rights to distributions from the Liquidating Trust are deemed to constitute securities issued in accordance with the Plan, the Debtor believes that those interests satisfy the requirements of section 1145(a)(1) of the Bankruptcy Code and, therefore, those interests are exempt from registration under the Securities Act and applicable state securities laws.

##### **1. Uncertainty of Value**

In addition to the prohibition on the transfer of rights to distributions from the Liquidating Trust as discussed above, the value of such rights will depend on various significant risks and uncertainties, including, without limitation, (a) the success of the Liquidating Trust in securing judgments and settlements on a favorable basis with respect to the Retained Causes of Action; (b) the effect of substantial delays in liquidating claims and other contingent assets and liabilities; and (c) the effects of any changes in tax and other government rules and regulations applicable to the Liquidating Trust. All of these risks are beyond the control of the Liquidating Trust. The amount of any recovery realized by the Liquidating Trust and its respective beneficiaries will vary depending upon the extent to which these risks materialize. In addition, the resolution of the Retained Causes of Action by the Liquidating Trust may require a substantial amount of time to be resolved and liquidated. The associated delays could reduce the value of any recovery.

#### **F. Disclosure Statement Disclaimer**

##### **1. The Financial Information Contained in This Disclosure Statement Has Not Been Audited**

In preparing this Disclosure Statement, the Debtor and its advisors relied on financial data derived from the Debtor's books and records that was available at the time of such preparation. Although the Debtor has used its reasonable business judgment to ensure the accuracy of the financial information, and any conclusions or estimates drawn from that financial information, provided in this Disclosure Statement, and although the Debtor believes that the financial information herein fairly reflects the financial condition of the Debtor, the Debtor is unable to warrant that the financial information contained herein, or any conclusions or estimates drawn therefrom, is without inaccuracies.

2. Information Contained in This Disclosure Statement Is For Soliciting Votes

The information contained in this Disclosure Statement is for the purpose of soliciting acceptances of the Plan and may not be relied upon for any other purpose.

3. This Disclosure Statement Was Not Reviewed or Approved by the SEC

This Disclosure Statement was not filed with the SEC under the Securities Act or applicable state securities laws. Neither the SEC nor any state regulatory authority has passed upon the accuracy or adequacy of this Disclosure Statement or the exhibits or the statements contained in this Disclosure Statement.

4. This Disclosure Statement May Contain Forward Looking Statements

This Disclosure Statement may contain “forward looking statements” within the meaning of the “safe harbor” provisions of the Private Securities Litigation Reform Act of 1995, as amended. Statements containing words such as “may,” “believe,” “anticipate,” “expect,” “intend,” “plan,” “project,” “projections,” “business outlook,” “estimate,” or similar expressions constitute forward-looking statements and may include, without limitations, information regarding the Debtor’s expectations with respect to future events. These forward-looking statements are subject to a number of risks, uncertainties and assumptions, including those risks described in this Article.

5. No Legal or Tax Advice Is Provided to You by This Disclosure Statement

This Disclosure Statement is not legal advice to you. The contents of this Disclosure Statement should not be construed as legal, business or tax advice. Each Holder of a Claim or an Interest should consult his or her own legal counsel, accountant or other applicable advisor with regard to any legal, tax and other matters concerning his, her or its Claim or Interest. This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan or object to Confirmation of the Plan.

6. No Admissions Made

The information and statements contained in this Disclosure Statement will neither (a) constitute an admission of any fact or liability by any entity (including, without limitation, the Debtor) nor (b) be deemed evidence of the tax or other legal effects of the Plan on the Debtor, Holders of Allowed Claims or Interests, or any other parties in interest.

7. Failure to Identify Potential Objections

No reliance should be placed on the fact that a particular Retained Cause of Action or potential objection to a particular Claim or Interest is, or is not, identified in this Disclosure Statement. The Liquidating Trustee may, pursuant to the Plan, object to applicable Claims or Interests after the Effective Date of the Plan irrespective of whether this Disclosure Statement identifies a particular Retained Cause of Action or objection to a Claim.

8. No Waiver of Right to Object or Right to Recover Transfers and Assets

The vote by a Holder of a Claim or Interest for or against the Plan does not constitute a waiver or release of any claims, causes of action or rights of the Debtor (or any entity, as the case may be) to object to that Holder's Claim or Interest, or recover any preferential, fraudulent or other voidable transfer of assets, regardless of whether any claims or causes of action of the Debtor or its Estate are specifically or generally identified in this Disclosure Statement.

9. Information Was Provided by the Debtor and Was Relied Upon by the Debtor's Advisors

The Debtor's advisors have relied upon information provided by the Debtor in connection with the preparation of this Disclosure Statement. Although the Debtor's advisors have performed certain limited due diligence in connection with the preparation of this Disclosure Statement, they have not independently verified the information contained in this Disclosure Statement.

10. Potential Exists for Inaccuracies, and the Debtor Has No Duty to Update

The statements contained in this Disclosure Statement are made by the Debtor as of the date of this Disclosure Statement, unless otherwise specified in this Disclosure Statement, and the delivery of this Disclosure Statement after the date of this Disclosure Statement does not imply that there has not been a change in the information set forth in this Disclosure Statement since that date. While the Debtor has used its reasonable business judgment to ensure the accuracy of all of the information provided in this Disclosure Statement and in the Plan, the Debtor nonetheless cannot, and do not, confirm the current accuracy of all statements appearing in this Disclosure Statement. Further, although the Debtor may subsequently update the information in this Disclosure Statement, the Debtor has no affirmative duty to do so unless ordered to do so by the Bankruptcy Court.

11. No Representations Outside This Disclosure Statement are Authorized

No representations concerning or relating to the Debtor, this Chapter 11 Case or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. Any representations or inducements made to secure your acceptance or rejection of the Plan that are other than as contained in, or included with, this Disclosure Statement should not be relied upon by you in arriving at your decision. You should promptly report unauthorized representations or inducements to counsel to the Debtor and the U.S. Trustee.

**XIV. CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF CONSUMMATION OF THE PLAN**

The following discussion summarizes certain U.S. federal income tax consequences of the implementation of the Plan to the Debtor and certain Holders of Allowed Claims. The following summary is based on the Internal Revenue Code of 1986, as amended (the "IRC"), Treasury Regulations promulgated thereunder, judicial decisions, administrative rules and pronouncements as in effect on the date hereof. Changes in such rules or new interpretations thereof may have retroactive effect and could significantly affect the U.S. federal income tax consequences described herein. This summary addresses certain U.S. federal income tax consequences only to

Holders of Claims that are entitled to vote (i.e., Holders of Claims in Classes 3, 4, 5 and 6) and it does not address the U.S. federal income tax consequences to Holders of Interests or to Holders of Claims that are not entitled to vote on the Plan. The U.S. federal income tax consequences of the Plan are complex and are subject to significant uncertainties.

This discussion does not address all aspects of U.S. federal income taxation that may be relevant to a particular Holder of an Allowed Claim in light of such Holder's particular facts and circumstances (such as the effects of Section 451(b) of the IRC conforming the timing of certain income accruals to financial statements). In addition, this summary addresses only U.S. federal income taxes. Thus, the following discussion does not address foreign, state, or local tax consequences, or any estate, gift, or other non-income tax consequences, of the Plan, nor does it purport to address the U.S. federal income tax consequences of the Plan to Holders of Allowed Claims that are subject to special treatment under the IRC (such as Persons who are related to the Debtor within the meaning of the IRC, Holders liable for the alternative minimum tax, Holders whose functional currency is not the U.S. dollar, Holders that received their Claims as compensation, broker dealers, banks, mutual funds, insurance companies, financial institutions, small business investment companies, regulated investment companies, tax exempt organizations, governmental entities, pass-through entities such as partnerships or S corporations and investors therein, and Holders of Claims who are themselves in bankruptcy). Accordingly, this summary should not be relied upon for purposes of determining the specific tax consequences of the Plan with respect to a particular Holder of a Claim.

If a partnership (including any entity or arrangement treated as a partnership for U.S. federal income tax purposes) holds an Allowed Claim, the tax treatment of a partner or other investor in such partnership will generally depend upon the status of the partner or investor and the activities of the partnership. If you are a partner or other investor in a partnership holding an Allowed Claim, you should consult your tax advisors.

For purposes of this discussion, a "U.S. Holder" is a beneficial owner of Allowed Class 3, 4, 5 or 6 Claims that is: (A) an individual citizen or resident of the United States for U.S. federal income tax purposes; (B) a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized under the laws of the United States, any state thereof or the District of Columbia; (C) an estate the income of which is subject to U.S. federal income taxation regardless of the source of such income; or (D) a trust (1) if a court within the United States is able to exercise primary jurisdiction over the trust's administration and one or more United States persons have authority to control all substantial decisions of the trust or (2) that has a valid election in effect under applicable Treasury Regulations to be treated as a United States person (as defined in the IRC), and a "Non-U.S. Holder" is a Holder (other than an entity treated as a partnership for U.S. federal income tax purposes) that is not a U.S. Holder.

The following discussion assumes that the Plan will be implemented as described herein and does not address the tax consequences if the Plan is not carried out. Furthermore, this discussion assumes that Holders of Allowed Claims only hold Claims in a single Class. This discussion further assumes that the various debt and other arrangements to which the Debtor is a party will be respected for U.S. federal income tax purposes in accordance with their form. In addition, a substantial amount of time may elapse between the confirmation date and the receipt of a final distribution under the Plan. Events subsequent to the date of this Disclosure Statement,

such as additional tax legislation, court decisions or administrative changes, could affect the U.S. federal income tax consequences of the Plan and the transactions contemplated thereunder.

This summary of the U.S. federal income tax consequences of the Plan is not binding on the Internal Revenue Service (“IRS”), and no ruling will be sought or has been sought from the IRS with respect to any of the tax aspects of the Plan, no opinion of counsel has been obtained or will be obtained by the Debtor with respect thereto, and no tax opinion is given by this Disclosure Statement. The U.S. federal income tax consequences of certain aspects of the Plan may therefore be uncertain due to the lack of applicable legal authority and may be subject to administrative or judicial interpretations that differ from the discussion below.

The following discussion is not exhaustive and the U.S. federal income tax consequences to each Holder of an Allowed Claim will differ and will depend on factors specific to each such Holder, including (A) whether the Holder’s Allowed Claim (or portion thereof) constitutes a claim for principal or interest; (B) the origin of the Holder’s Allowed Claim; (C) whether the Holder reports income using the accrual or cash basis method; (D) whether the Holder receives distributions under the Plan in more than one taxable year; (E) whether the Holder has previously included in income any accrued but unpaid interest with respect to the Allowed Claim; and (F) whether the Holder has previously taken a bad debt deduction or otherwise recognized a loss with respect to the Allowed Claim. The discussion is not a substitute for careful tax planning and professional tax advice based upon the individual circumstances of each Holder of an Allowed Claim. Accordingly, each Holder of an Allowed Claim is strongly urged to consult with its own tax advisor regarding the U.S. federal, state, local, and foreign income and other tax consequences of the Plan.

#### **A. U.S. Federal Income Tax Consequences to the Debtor**

The proposed Sale contemplated by the Plan is expected to be treated as a taxable sale of the Debtor’s assets for U.S. federal income tax purposes. The Debtor has minimal tax basis in the assets that are the subject of the Sale and thus expects to recognize a gain generally equal to the net cash sales proceeds arising from the Sale plus the fair market value of the right to the Contingent Payments (as described more fully below). As of December 31, 2021, the Debtor had approximately \$739 million of net operating loss (“NOL”) carryforwards and expects that it incurred additional NOLs in 2022. Subject to the limitation on the use of NOLs discussed below, the Debtor can use its NOLs to offset its gain resulting from the Sale. If the available NOLs exceed the gain, the Debtor should not be required to pay any U.S. federal income tax as a result of any gain triggered by the Sale. As described more fully below, the Debtor expects that it will have sufficient NOL carryforwards eligible to be used against expected gain from the Sale so that no material U.S. federal income tax should arise as a result of the Sale.

A corporation’s use of its NOL carryforwards is subject to various limitations in the IRC. For example, NOLs generated after December 31, 2017 generally can only be utilized to offset 80 percent of a corporation’s taxable income in a subsequent taxable year. In this regard, approximately \$650 million of the Debtor’s \$739 million NOL carryforwards as of December 31, 2021 were generated after December 31, 2017, while approximately \$89 million were generated prior to that date (and thus are not subject to the 80 percent limitation). These unrestricted NOLs are generally available to be used prior to the restricted NOLs.

In determining the Company's gain arising from the Sale, the Company will be required to recognize gain equal to the fair market value of the right to the Contingent Payments no later than the Effective Date. In addition, the Company may be required to recognize gain on the Effective Date equal to the fair market value of the Causes of Action transferred to the Liquidating Trust. The NOLs could be utilized to offset these gains, subject to the limitations described above. The Debtor does not expect that the fair market value of the right to the Contingent Payments and the Causes of Action, together with the cash received in the Sale, will exceed \$89 million on the Effective Date. Accordingly, the Debtor does not expect the 80% limitation to apply to its use of the NOLs.

Another potential limitation on use of NOLs is IRC Section 382. If a corporation is treated as undergoing an ownership change under Section 382, its annual use of its pre-ownership change NOLs is limited to a specified amount (the “Annual Section 382 Limitation”), generally the product of its equity value immediately before the ownership change multiplied by a rate published monthly by the Treasury Department (2.97 percent for ownership changes that occurred during November 2022). Any unused portion of the Annual Section 382 Limitation generally is available for use in subsequent years. The Annual Section 382 Limitation is increased in the case of a corporation that has net unrealized built-in gains (“NUBIG”), i.e., gains economically accrued but unrecognized at the time of the ownership change, in excess of a threshold amount. Such a corporation can use NOLs in excess of its Annual Section 382 Limitation to the extent that it realizes those NUBIGs for U.S. federal income tax purposes in the five years following the ownership change.

The Company believes it may have experienced multiple ownership changes under Section 382, including a potential ownership change in November of 2022. However, the Company believes that it had a significant NUBIG at the time of this ownership change and expects that this NUBIG exceeds the amount of any gain it will recognize as a result of the Sale and transfer of the Causes of Action. The Company also expects the Effective Date to occur within the five-year period following the November 2022 ownership change date. Moreover, the Company does not believe that any prior ownership changes limit its ability to offset gain arising from the Sale or transfer of the Causes of Action. As a result, IRC Section 382 is not anticipated to have a material impact on the Company’s ability to use its NOLs to offset gain arising from the Sale or the transfer of the Causes of Action.

It is possible that the Company may undergo an additional ownership change under Section 382 prior to the Sale. However, because the Company expects that it will continue to have a significant NUBIG, it does not expect any additional limitations resulting from such an ownership change to have a material impact on the Company’s ability to use its NOLs to offset gain arising from the Sale or transfer of the Causes of Action.

## **B. U.S. Federal Income Tax Consequences to Holders of Allowed Claims**

### **1. U.S. Federal Income Tax Consequences to U.S. Holders of Allowed Claims in Class 3, 4, 5, or 6**

In accordance with the Plan, Holders of Allowed Claims in Classes 3, 5 and 6 will receive Cash on the Effective Date or as soon as reasonably practicable thereafter. In addition, Holders of

Allowed Claims in Classes 3, 4 and 5 will be entitled to receive Distributions from the Liquidating Trust, the Contingent Payments Holding Trust and the Contingent Payments Trust (collectively, the “Trusts”). The treatment of Holders of Allowed Claims in Classes 3, 4 and 5 will depend on the U.S. federal income tax classification of the Trusts, which in turn will depend on whether the Disputed Claims are resolved prior to the Trust Election Date.

If the Disputed Claims are resolved prior to the Trust Election Date, each of the Liquidating Trust and the Contingent Payments Holding Trust is intended to be classified from inception as a liquidating trust described in Treasury Regulation Section 301.7701-4(d) that is treated as a “grantor trust” for U.S. federal income tax purposes (with Holders being grantors), and the Contingent Payments Trust is intended to be classified as an investment trust described in Treasury Regulation Section 301.7701-4(c) that is also treated as a grantor trust for U.S. federal income tax purposes (with Holders being grantors). If the Disputed Claims are not resolved prior to the Trust Election Date, (i) the Liquidating Trust is intended to be classified from inception in part as a liquidating trust described in Treasury Regulation Section 301.7701-4(d) that is treated as a grantor trust for U.S. federal income tax purposes (with Holders being grantors) and in part as a disputed ownership fund described in Treasury Regulation Section 1.468B-9, (ii) the Contingent Payments Holding Trust is intended to be classified as a trust described in Subpart C of Part I of Subchapter J of the IRC (a “complex trust”), and (iii) the Contingent Payments Trust is still intended to be classified as an investment trust described in Treasury Regulation Section 301.7701-4(c) that is treated as a grantor trust for U.S. federal income tax purposes (with the Contingent Payments Holding Trust as grantor). No opinion of counsel or ruling from the IRS has been requested by the Debtor concerning the tax status of the Trusts. Accordingly, there can be no assurance that the IRS would not take a contrary position. In particular, it is possible that the IRS could take the position that, even if the Disputed Claims are not resolved prior to the Trust Election Date, the Contingent Payments Holding Trust may not be treated as a complex trust and should be treated, in whole or in part, as a liquidating trust described in Treasury Regulation Section 301.7701-4(d) that is treated as a grantor trust for U.S. federal income tax purposes (with Holders being grantors) or a disputed ownership fund described in Treasury Regulation Section 1.468B-9. If the IRS were to challenge successfully the classification of one or more of the Trusts, different (and possibly adverse) tax consequences to the Trusts or to the Holders of Allowed Claims in Classes 3, 4, and 5 could result. The remainder of this discussion assumes that the intended tax classifications of the Trusts described in this paragraph will be respected. Holders are urged to consult their tax advisors with respect to the proper characterization and potential U.S. federal income tax treatment of the Trusts.

The intended tax treatment of the Trusts will not be known until the earlier of the resolution of the Disputed Claims and the Trust Election Date. This date may be later than the due date for a Holder’s federal income tax return for its taxable year that includes the Effective Date. For example, assuming the Effective Date occurs in 2023, an individual U.S. Holder’s federal income tax return would normally be due on April 15, 2024, but the intended tax treatment of the Trusts may not be known until as late as September 1, 2024. Thus, a Holder may be required to file for an extension of the filing date for such tax returns or may be required to amend such tax returns if it files them prior to the date the intended tax treatment of the Trusts is determined. Further, even if an extension is obtained, the extension generally does not extend the due date for paying any taxes associated with the extended tax return. Holders are urged to consult their tax advisors with respect to the need to file for an extension or amend such tax returns.

a. *Disputed Claims Resolved Prior to Trust Election Date*

If all Disputed Claims are resolved prior to the Trust Election Date and the intended tax classification described above is respected, the Trusts will each be treated as a grantor trust for U.S. federal income tax purposes, meaning no Trust is treated as a taxable entity and any income earned by each Trust pending distribution is taxable to its beneficiaries on a current basis. On the Effective Date, the Debtor will be deemed to have distributed to the Holders of Allowed Class 3, 4 and 5 Claims an undivided interest in the Liquidating Trust Assets and the Contingent Payments Trust Assets, and such Holders will be deemed to have contributed such Liquidating Trust Assets and Contingent Payments Trust Assets to the Liquidating Trust and to the Contingent Payments Holding Trust in exchange for beneficial interests in the Liquidating Trust and Contingent Payments Holding Trust, respectively. The tax basis of the Trusts' assets deemed received in the exchange will equal the fair market value of such assets as of the Effective Date. Any income generated by the Liquidating Trust Assets or the Contingent Payments pending distribution will be taxable to such Holders based on their pro rata share of the amounts deemed contributed. No additional gain or loss will be recognized by the Holders upon distribution of Cash to them from the Trusts or from the subsequent distribution of beneficial interests in the Contingent Payments Trust to them by the Contingent Payments Holding Trust once the Disputed Claims are resolved.

Each U.S. Holder of Allowed Class 3, 4, 5 and 6 Claims will recognize gain or loss upon consummation of the Plan equal to the difference between the "amount realized" by such U.S. Holder and such U.S. Holder's adjusted tax basis in his, her or its Claim. The amount realized will include the amount of any Cash received directly from the Debtor, plus the fair market value of such U.S. Holder's pro rata share (if any) of the Trusts' assets deemed received as described above, less the amount (if any) allocable to accrued but unpaid interest, as discussed below under the heading "Accrued Interest and Imputed Interest." Any such gain or loss realized by a U.S. Holder generally should constitute capital gain or loss to such U.S. Holder, unless such Claim is not a capital asset in the hands of such U.S. Holder. If an Allowed Class 3, 4, 5 or 6 Claim, as applicable, is a capital asset and it has been held for more than one year, the U.S. Holder will realize long-term capital gain or loss. The deductibility of capital losses is subject to limitations.

b. *Disputed Claims Not Resolved Prior to Trust Election Date*

If the Disputed Claims are not resolved prior to the Trust Election Date, the Liquidating Trust intends to make a DOF Election, in which case the Liquidating Trust is intended to be treated as a disputed ownership fund described in Treasury Regulation Section 1.468B-9 with respect to that portion of the Liquidating Trust Assets that remain subject to Disputed Claims, while any undisputed portion of the Liquidating Trust Assets is intended to be treated as held in a liquidating trust described in Treasury Regulation Section 301.7701-4(d) that is treated as a grantor trust as described above. The receipt of the Liquidating Trust Assets by the disputed ownership fund would not be a taxable event to the Liquidating Trust for these purposes, but the Liquidating Trust would be subject to a separate entity-level tax on any income earned in respect of the portion of the Liquidating Trust Assets for which a DOF Election was made as if it were a corporation (with the current corporate tax rate being 21%) or, in certain circumstances, as if it were a "qualified settlement fund" (with the current top marginal rate being 37%). Consequently, distributions to

U.S. Holders of Allowed Claims from the Liquidating Trust may be reduced to satisfy any taxes payable by the Liquidating Trust.

In addition, if the Disputed Claims are not resolved prior to the Trust Election Date, the Contingent Payments Holding Trust will not make a DOF Election but will instead take the position that it is a complex trust. A complex trust is also treated as a separate entity for U.S. federal income tax purposes, but is taxable in accordance with the trust provisions of section 641 et seq. of the IRC. Any net income earned by a complex trust is generally taxable at the rates applicable to individuals (with the current top marginal rate being 37% for ordinary income and 20% for net capital gain (plus the 3.8% Medicare surtax described below)). The trust is generally allowed a deduction for amounts distributed to a holder during the same taxable year (or within the first 65 days following the close of the taxable year) to the extent that distributable net income is carried out to such holder, with such amounts being includible in such holder's gross income.

U.S. Holders should not recognize any gain or loss with respect to the portion of the Liquidating Trust Assets for which a DOF Election is made until the Liquidating Trust distributes such assets to them, with such distribution to occur upon the eventual resolution of the Disputed Claims. While less clear, the Contingent Payments Holding Trust intends to take the position that no gain or loss is recognized by U.S. Holders with respect to the distribution to them of beneficial interests in the Contingent Payments Holding Trust (i.e., upon the initial funding of the Contingent Payments Holding Trust). Consistent with this position but also less clear, each U.S. Holder would likely have taxable gain or loss when the Contingent Payments Holding Trust distributes beneficial interests in the Contingent Payments Trust to holders (i.e., upon the resolution of the Disputed Claims) equal to the difference between the fair market value of such beneficial interests at the time they are distributed and such U.S. Holder's adjusted tax basis in his, her or its Claim. A U.S. Holder should take a tax basis in such beneficial interests (and the underlying right to Contingent Payments) equal to such fair market value. Thereafter, because the Contingent Payments Trust is intended to be treated as an investment trust described in Treasury Regulation Section 301.7701-4(c) and as a grantor trust for tax purposes, any subsequent Contingent Payments would be directly taxable to the U.S. Holder (subject to possible reduction by any tax basis therein), but not subject to an additional entity-level tax.

As indicated above, if the Disputed Claims are not resolved prior to the Trust Election Date and a U.S. Holder's recovery remains subject to such resolution, the timing of the U.S. Holder's recognition of gain or loss with respect to his, her or its Claim is unclear. It is possible that a U.S. Holder would recognize gain or loss based on the amount of any Cash received from the Debtor and then gain or loss (and imputed interest) as and when distributions are made from the portion of the Liquidating Trust Assets for which a DOF Election is made or the Contingent Payments Holding Trust. It is also possible that the recognition of any loss realized by a U.S. Holder may be deferred until all payments have been made out of the Liquidating Trust and the Contingent Payments Holding Trust is terminated. Any gain or loss realized by a U.S. Holder generally should constitute capital gain or loss to such U.S. Holder, unless such Claim is not a capital asset in the hands of such U.S. Holder. If an Allowed Class 3, 4 or 5 Claim, as applicable, is a capital asset and it has been held for more than one year, the U.S. Holder will realize long-term capital gain or loss. The deductibility of capital losses is subject to limitations.

## 2. Accrued Interest and Imputed Interest

A U.S. Holder of an Allowed Claim generally will recognize ordinary income to the extent that such Holder receives Cash or property that is allocable to accrued but unpaid interest that such Holder has not yet included in its income. If an Allowed Claim includes interest, and if the U.S. Holder receives less than the amount of the Allowed Claim pursuant to the Plan, the U.S. Holder must allocate the Plan consideration between principal and interest. The Plan provides that all distributions to a U.S. Holder of an Allowed Claim will apply first to the principal amount of such Claim until such principal amount is paid in full and then to any interest accrued on such Claim prior to the Petition Date, and the remaining portion of such distributions, if any, shall apply to any interest accrued on such Claim after the Petition Date. There is no assurance, however, that the IRS will respect this treatment and will not determine that all or a portion of amounts distributed to such U.S. Holder, and attributable to principal under the Plan, is properly allocable to interest. U.S. Holders of Allowed Claims are urged to consult their own tax advisors in this regard. If the Plan consideration allocable to interest with respect to an Allowed Claim is less than the amount that the U.S. Holder has previously included as interest income, the previously included but unpaid interest may be deducted, generally as a loss.

In addition, the imputed interest provisions of the IRC may apply to the receipt of any Contingent Payments or to distributions from the Liquidating Trust (to the extent treated as a disputed ownership fund) or from the Contingent Payments Holding Trust (to the extent treated as a complex trust). When applicable, the imputed interest provisions of the IRC recharacterize a portion of a payment as interest based on the difference between the total payment and the present value of that payment, discounted using the “applicable federal rate” published by the IRS.

## 3. Market Discount

If a U.S. Holder of an Allowed Claim purchased the Claim for an amount that is less than its stated redemption price at maturity, the amount of the difference may be treated as “market discount” for U.S. federal income tax purposes, unless the difference is less than a specified de minimis amount. Under the market discount rules, the U.S. Holder is required to treat any gain on the sale, exchange, retirement or other disposition of the Allowed Claim as ordinary income to the extent of the market discount that the U.S. Holder has not previously included in income and which is treated as having accrued on the Allowed Claim at the time of its payment or disposition.

## 4. Bad Debt Deduction

A U.S. Holder who receives in respect of an Allowed Claim an amount less than the U.S. Holder’s tax basis in the Claim may be entitled in the year of receipt (or in an earlier or later year) to a bad debt deduction in some amount under IRC Section 166(a). The rules governing the character, timing and amount of bad debt deductions place considerable emphasis on the facts and circumstances of the U.S. Holder, the obligor and the instrument with respect to which a deduction is claimed. U.S. Holders of Allowed Claims, therefore, are urged to consult their tax advisors with respect to their ability to take such a deduction.

## 5. Medicare Surtax

Subject to certain limitations and exceptions, U.S. Holders who are individuals, estates or trusts may be required to pay a 3.8% Medicare surtax on all or part of that U.S. Holder's "net investment income," which includes, among other items, dividends on stock and interest (including original issue discount) on debt, royalties, and capital gains from the sale or other taxable disposition of stock or debt. U.S. Holders should consult their own tax advisors regarding the effect, if any, of this surtax on their receipt of distributions pursuant to the Plan.

#### 6. U.S. Federal Income Tax Consequences to Non-U.S. Holders

Payments to a Non-U.S. Holder that are attributable to: (a) accrued but untaxed interest on its Claim, and (b) its pro rata share of any interest earned by the Liquidating Trust (if the Liquidating Trust is treated as a liquidating trust described in Treasury Regulation Section 301.7701-4(d)) that is treated as a grantor trust for tax purposes generally will not be subject to U.S. federal income or withholding tax, provided that the withholding agent has received or receives, prior to payment, appropriate documentation (generally, IRS Form W-8BEN or W-8BEN-E) establishing that the Non-U.S. Holder is not a U.S. person, unless:

- (i) the Non-U.S. Holder actually or constructively owns 10 percent or more of the total combined voting power of all classes of the Debtor's stock entitled to vote (after application of certain attribution rules);
- (ii) the Non-U.S. Holder is a "controlled foreign corporation" that is a "related person" with respect to the Debtor;
- (iii) the Non-U.S. Holder is a bank receiving interest described in Section 881(c)(3)(A) of the IRC; or
- (iv) such interest is effectively connected with the conduct by the Non-U.S. Holder of a trade or business within the United States and, if required by an applicable income tax treaty, is attributable to a U.S. permanent establishment or fixed base of the Non-U.S. Holder (in which case, provided the Non-U.S. Holder provides a properly executed IRS Form W-8ECI (or successor form) to the withholding agent, the Non-U.S. Holder (x) generally will not be subject to withholding tax, but (y) will be subject to U.S. federal income tax in the same manner as a U.S. Holder (unless an applicable income tax treaty provides otherwise), and a Non-U.S. Holder that is a corporation for U.S. federal income tax purposes may also be subject to a branch profits tax with respect to such Non-U.S. Holder's effectively connected earnings and profits that are attributable to the accrued but untaxed interest at a rate of 30 percent (or at a reduced rate or exemption from tax under an applicable income tax treaty)).

Any imputed interest with respect to Contingent Payments or distributions from the Liquidating Trust (if treated as a disputed ownership fund) or Contingent Payments Holding Trust (if treated as a complex trust) as discussed above under the heading "Accrued Interest and Imputed Interest" may not qualify for the general exemption from withholding tax pursuant to clauses (i) - (iv) above. A Non-U.S. Holder that does not qualify for exemption from withholding tax pursuant to clauses (i) - (iv) above generally will be subject to withholding of U.S. federal income

tax on such interest or imputed interest at a 30 percent rate (or at a reduced rate or exemption from tax under an applicable income tax treaty). For purposes of providing a properly executed IRS Form W-8BEN or W-BENE, special procedures are provided under applicable Treasury Regulations for payments through qualified foreign intermediaries or certain financial institutions that hold customers' securities in the ordinary course of their trade or business.

Any gain recognized by a Non-U.S. Holder generally will not be subject to U.S. federal income tax with respect to property (including Cash) received in exchange for such Claim, unless:

- (i) such Non-U.S. Holder is engaged in a trade or business in the United States to which income, gain or loss from the exchange is "effectively connected" for U.S. federal income tax purposes, or
- (ii) if such Non-U.S. Holder is an individual, such Holder is present in the United States for 183 days or more during the taxable year of the exchange and certain other requirements are met.

Gain described in the first situation above generally will be subject to U.S. federal income tax on a net income basis at the regular rates. A Non-U.S. Holder that is a foreign corporation also may be subject to a branch profits tax at a rate of 30 percent (or such lower rate specified by an applicable income tax treaty) on such effectively connected gain, as adjusted for certain items.

Gain described in the second situation above will be subject to U.S. federal income tax at a rate of 30 percent (or such lower rate specified by an applicable income tax treaty), which may be offset by certain U.S. source capital losses of the Non-U.S. Holder (even though the individual is not considered a resident of the United States), provided the Non-U.S. Holder has timely filed U.S. federal income tax returns with respect to such losses.

It is unclear whether a Non-U.S. Holder's receipt of income attributable to the Contingent Payments (including the receipt of Cash from the Contingent Payments Holding Trust or the Contingent Payments Trust and the receipt of beneficial interests in the Contingent Payments Trust from the Contingent Payments Holding Trust (if the Contingent Payments Holding Trust is treated as a complex trust)) that is not otherwise classified as imputed interest will be treated as gain subject to the rules described above or as some other type of income. If such income is not treated as gain, a Non-U.S. Holder may be subject to withholding of U.S. federal income tax on such income at a 30 percent rate (or at a reduced rate or exemption from tax under an applicable income tax treaty) unless such income is effectively connected with the conduct by the Non-U.S. Holder of a trade or business within the United States (and thus otherwise subject to U.S. federal income tax).

Non-U.S. Holders should consult their tax advisors regarding any applicable income tax treaties that may provide for different rules.

### **C. Backup Withholding and Information Reporting**

Generally, information reporting requirements will apply to all payments or distributions under the Plan and by the Trusts, unless you are an exempt recipient. Additionally, a U.S. Holder may be subject to backup withholding at applicable rates, unless the U.S. Holder (1) is a person

exempt from backup withholding and, when required, demonstrates this or (2) provides a correct taxpayer identification number (“TIN”) on IRS Form W-9 (or a suitable substitute form) and timely provides the other information, makes the representations required by such form and complies with the other requirements of the backup withholding rules. A U.S. Holder may become subject to backup withholding if, among other things, the U.S. Holder (1) fails to properly report interest and dividends for U.S. federal income tax purposes or (2) in certain circumstances, fails to certify, under penalty of perjury, that it has furnished a correct TIN. A U.S. Holder that does not timely provide a correct TIN also may be subject to penalties imposed by the IRS. Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against your U.S. federal income tax liability provided the required information is properly furnished to the IRS.

Under the Foreign Account Tax Compliance Act (“FATCA”), unless otherwise subject to an exception, foreign financial institutions and certain other foreign entities must report certain information with respect to their U.S. account holders and investors or be subject to withholding on the receipt of “withholdable payments.” For this purpose, “withholdable payments” are generally U.S. source payments of fixed or determinable, annual or periodical income (including interest). FATCA withholding will apply even if the applicable payment would not otherwise be subject to U.S. federal nonresident withholding tax. Each Non-U.S. Holder should consult its own tax advisor regarding the possible impact of these rules, including the availability of an exemption on such Non-U.S. Holder’s ownership of the consideration being received under the Plan.

#### **D. Importance of Obtaining Professional Tax Assistance**

**The foregoing is intended to be only a summary of certain U.S. federal income tax consequences of the Plan and is not a substitute for careful tax planning with a tax professional. The U.S. federal, state, local, and foreign income and other tax consequences of the Plan are complex and in some cases uncertain. Such consequences may also vary based on the individual circumstances of each Holder of an Allowed Claim. Accordingly, each Holder of an Allowed Claim is strongly urged to consult with his, her, or its own tax advisor regarding the U.S. federal, state, local, and foreign income and other tax consequences of the Plan.**

#### **XV. ADDITIONAL INFORMATION**

Any statements in this Disclosure Statement concerning the provisions of any document are not necessarily complete, and in each instance reference is made to such document for the full text thereof. Certain documents described or referred to in this Disclosure Statement have not been attached as exhibits because of the impracticability of furnishing copies of these documents to all recipients of this Disclosure Statement. The Debtor will file all exhibits to the Plan with the Bankruptcy Court and make them available for review on <http://www.kccllc.net/tricida> no later than seven days before the deadline to object to Confirmation.

#### **XVI. RECOMMENDATION AND CONCLUSION**

For all of the reasons set forth in this Disclosure Statement, the Debtor believes that the Confirmation and consummation of the Plan is preferable to all other alternatives. Consequently,

the Debtor urges all holders of Claims in Classes 3, 4, 5 and 6, the only Classes entitled to vote on the Plan, to vote to accept the Plan and to evidence their acceptance by duly completing and returning their ballots so that they will be received on or before the Voting Deadline.

In addition, the Debtor is authorized by the Consenting Noteholders to state that the Consenting Noteholders also supports the Plan and urges all Holders of Claims to vote to accept the Plan. Enclosed with the Solicitation Package is a letter from the Consenting Noteholders to that effect.

Dated: March 24, 2023

Respectfully submitted,

*/s/ Bob McKague*

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By: Bob McKague  
General Counsel and  
Chief Compliance Officer  
TRICIDA, Inc.

**EXHIBIT A**

**Chapter 11 Plan**

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

In re:

TRICIDA, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 23-10024 (JTD)

**THIRD AMENDED CHAPTER 11 PLAN OF LIQUIDATION FOR TRICIDA, INC.**

**YOUNG CONAWAY  
STARGATT & TAYLOR, LLP**

Sean M. Beach (No. 4070)  
Allison S. Mielke (No. 5934)  
Andrew A. Mark (No. 6861)  
Carol E. Cox (No. 6936)

Rodney Square  
1000 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 571-6600  
Facsimile: (302) 571-1253

Dated: March 21, 2023

**SIDLEY AUSTIN LLP**

Samuel A. Newman (admitted *pro hac vice*)  
Julia Philips Roth (admitted *pro hac vice*)  
555 West Fifth Street  
Los Angeles, California 90013  
Telephone: (213) 896-6000  
Facsimile: (213) 896-6600

Charles M. Persons (admitted *pro hac vice*)  
Jeri Leigh Miller (admitted *pro hac vice*)  
Chelsea McManus (admitted *pro hac vice*)  
2021 McKinney Avenue, Suite 2000  
Dallas, Texas 75201  
Telephone: (214) 981-3300  
Facsimile: (213) 981-3400

Michael A. Sabino (admitted *pro hac vice*)  
787 Seventh Avenue  
New York, New York 10019  
Telephone: (212) 839-5300  
Facsimile: (212) 839-5599

*Counsel for Debtor and Debtor in Possession*

<sup>1</sup> The Debtor in this chapter 11 case, together with the last four digits of the Debtor's federal tax identification number, is Tricida, Inc. (2526). The Debtor's service address is 7000 Shoreline Court, Suite 201, South San Francisco, CA 94080.

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**EXHIBITS**

Exhibit A – Schedule of Retained Causes of Action

## INTRODUCTION

Tricida, Inc. (the “Debtor”) proposes this third amended chapter 11 plan (this “Plan”) under section 1121 of the Bankruptcy Code. The Debtor is the proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. Supplemental agreements and documents referenced in this Plan and the Disclosure Statement are available for review on both the Bankruptcy Court’s docket and on the Debtor’s case information website: <http://www.kcellc.net/Tricida>.

Reference is made to the Disclosure Statement Filed contemporaneously with the Plan for a discussion of the Debtor’s history, business, historical financial information, and liquidation analysis, as well as a summary and analysis of the Plan and certain related matters, including distributions to be made under this Plan.

**ALL HOLDERS OF CLAIMS AND INTERESTS ARE ENCOURAGED TO READ THIS PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.**

## ARTICLE I. DEFINED TERMS AND RULES OF INTERPRETATION

### A. Definitions

The following terms, when used in this Plan, or any subsequent amendments or modifications thereof, have the respective meanings hereinafter set forth and shall be equally applicable to the singular and plural of terms defined.

1. “Accrued Professional Compensation Claim” means all Claims for accrued fees and expenses of the Retained Professionals and the Consenting Noteholder Professionals from January 11, 2023 through and including the Effective Date, to the extent such fees and expenses have not been paid pursuant to the Interim Compensation Order, the OCP Order, or any other order of the Bankruptcy Court and regardless of whether a fee application has been Filed for such fees and expenses. To the extent the Bankruptcy Court denies or reduces Accrued Professional Compensation Claims by a Final Order, then the amount by which such fees or expenses are reduced or denied shall reduce the applicable Accrued Professional Compensation Claim(s).

2. “Administrative Claim(s)” means a Claim entitled to priority under section 503(b) or 507(a)(2) of the Bankruptcy Code, including actual and necessary costs and expenses incurred on or after the Petition Date of preserving the Estate and ongoing liquidation operations of the Debtor.

3. “Administrative Claims Bar Date” means the deadline for Filing all requests for allowance and payment of Administrative Claims, which shall be thirty (30) days after the Effective Date.

4. “Affiliate” means any “affiliate,” as defined in section 101(2) of the Bankruptcy Code, as if such entity was a debtor in a case under the Bankruptcy Code.

5. “Allowed” means, with respect to any Claim, except as otherwise provided in the Plan: (a) a Claim that is evidenced by a Filed Proof of Claim (or for which Claim under the Plan, the Bankruptcy Code, or pursuant to a Final Order a Proof of Claim is not or shall not be required to be Filed); (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim has been Filed; or (c) a Claim Allowed pursuant to the Plan or a Final Order of the Bankruptcy Court; *provided* that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if, and to the extent that, with respect to such Claim, no objection to the allowance thereof has been Filed by the Debtor, the Liquidating Trustee, or any other party in interest within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection was so Filed and the Claim shall have been Allowed by a Final Order of the Bankruptcy Court. Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim is Filed by the Bar Date, is not considered Allowed and shall be expunged without further action by the Debtor or the Liquidating Trustee (as applicable) and without further notice to any party or action, approval, or order of the Bankruptcy Court. Notwithstanding anything to the contrary herein, no Claim of any Entity subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such Entity pays in full the amount that it owes the Debtor to the Debtor or the Liquidating Trust (as applicable). “Allow” and “Allowing” shall have correlative meanings.

6. “Bankruptcy Code” means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as amended from time to time.

7. “Bankruptcy Court” means the United States Bankruptcy Court for the District of Delaware.

8. “Bankruptcy Rule(s)” means the Federal Rules of Bankruptcy Procedure, as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code

9. “Bar Date” means, as applicable, the Administrative Claims Bar Date, and any other date or dates established by an order of the Bankruptcy Court by which Proofs of Claim must be Filed, including the general bar date and bar date for Governmental Units, each as set forth in the *Order (I) Fixing Deadline for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [Docket No. 101]. Notwithstanding the foregoing, the Professional Fee Claims shall be Filed in accordance with Article II.B herein and shall not otherwise be subject to the Bar Date.

10. “Business Day” means any day, other than a Saturday, Sunday, or “legal holiday” (as that term is defined in Bankruptcy Rule 9006(a)).

11. “Cash” means cash and cash equivalents in legal tender of the United States of America.

12. “Causes of Action” means any claims, interests, damages, remedies, causes of action, demands, rights, actions, controversies, proceedings, agreements, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, liens, indemnities, guaranties,

and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, secured or unsecured, assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, whether arising before, on, or after the Petition Date, in contract, tort, law, equity, or otherwise. Causes of Action also include: (a) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by law or in equity; (b) claims pursuant to federal securities law; (c) the right to object to or otherwise contest Claims or Interests; (d) claims pursuant to section 362 or chapter 5 of the Bankruptcy Code; (e) such claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (f) any avoidance actions arising under chapter 5 of the Bankruptcy Code or under similar local, state, federal, or foreign statutes and common law, including fraudulent transfer laws.

13. “Chapter 11 Case” means the chapter 11 case Filed by the Debtor under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

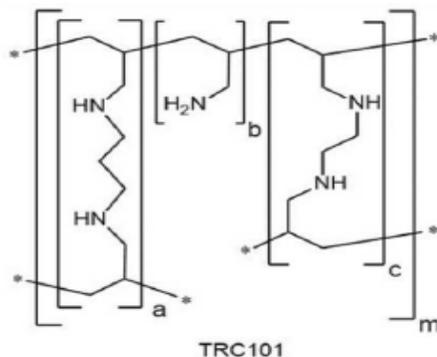
14. “Claim(s)” means any “claim”, as defined in section 101(5) of the Bankruptcy Code, against the Debtor or the Estate.

15. “Claims Objection Bar Date” means the date that is three hundred and sixty-five (365) days after the Effective Date, which date may be extended upon presentment of an order to the Bankruptcy Court by the Liquidating Trustee.

16. “Class” means a category of Claims or Interests as established by and set forth in Article III herein pursuant to section 1122(a) of the Bankruptcy Code.

17. “Committee” means the Official Committee of Unsecured Creditors, appointed on January 23, 2023, and consisting of (a) U.S. Bank Trust Company, N.A.; (b) Patheon Austria GmbH & Co. KG; and (c) Medpace Research, Inc.

18. “Compound” means the highly cross-linked, aliphatic amine polymer originally synthesized by the Debtor, also known as veverimer and formerly known as TRC101, which has the chemical name poly(allylamine-co-N,N'-diallyl-1,3-diaminopropane-co-1,2-diaminoethane) with the following structure:



a = residue of N,N'-diallyl-1,3-diaminopropane dihydrochloride (monomer and crosslinker);

b = residue of allylamine (monomer);

c = residue of 1,2-dichloroethane (ethylene crosslink between two amines); an ethylene linkage between two allylamine groups is shown as an example of one of many possible linkages between amines; and

m = a larger number indicating an extended polymer network.

19. “Confirmation” means the entry of the Confirmation Order by the Bankruptcy Court.

20. “Confirmation Date” means the date upon which the Bankruptcy Code enters the Confirmation Order on the docket of the Chapter 11 Case.

21. “Confirmation Hearing” means the hearing(s) conducted by the Bankruptcy Court pursuant to section 1128(a) of the Bankruptcy Code to consider Confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

22. “Confirmation Order” means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code, in form and substance reasonably acceptable to the Majority Consenting Noteholders.

23. “Consenting Noteholder(s)” means the Convertible Noteholders collectively holding two-thirds of the aggregate amount of Convertible Notes outstanding who have executed or otherwise joined the RSA.

24. “Consenting Noteholder Fees and Expenses” means (a) the reasonable and documented fees and expenses of the Consenting Noteholder Professionals; (b) all fees and expenses due to U.S. Bank Trust Company, National Association, as trustee; and (c) any other reasonable and documented fees, costs, and expenses of any of the Consenting Noteholders incurred in connection with the Chapter 11 Case.

25. “Consenting Noteholder Professional(s)” means (a) Davis Polk & Wardwell LLP, as counsel to the Consenting Noteholders and the Trustee; (b) FTI Consulting, Inc., as financial advisor to the Consenting Noteholders and the Trustee; and (c) Greenberg Traurig LLP, as counsel to the Trustee.

26. “Consenting Noteholder Releasing Parties” means, each of, and in each case in its capacity as such: (a) the Consenting Noteholders; (b) the Trustee; (c) to the maximum extent permitted by Law; each current and former Affiliate of each Entity in clauses (a) through (b); and (d) to the maximum extent permitted by Law, each Related Party of each Entity in clauses (a) through (c).

27. “Contingent Payments” means the milestone payments to be made by the Purchaser to the Debtor in the amount of (a) a one-time milestone payment of \$2,500,000 to be paid within thirty (30) days after the approval by the FDA of a new drug application for a Product; and (b) a one-time milestone payment to be made within thirty (30) days after the end of a calendar quarter

in which the aggregate net sales of the Product in the territory set forth in the IP Purchase Agreement exceed the values set forth below, all as more fully described in Section 2.3 of the IP Purchase Agreement.

Sale Milestone Event	Sale Milestone Payment
Aggregate net sales exceed \$250,000,000	\$6,250,000
Aggregate net sales exceed \$500,000,000	\$12,500,000
Aggregate net sales exceed \$750,000,000	\$18,750,000
Aggregate net sales exceed \$1,000,000,000	\$25,000,000
Aggregate net sales exceed \$1,500,000,000	\$37,500,000
Aggregate net sales exceed \$2,000,000,000	\$50,000,000

28. “Contingent Payments Holding Trust” means the trust established on the Effective Date to hold the Contingent Payments Trust Interest pursuant to Article IV herein and the Contingent Payments Holding Trust Agreement.

29. “Contingent Payments Holding Trust Agreement” means the agreement, filed with the Plan Supplement and executed as of the Effective Date, that establishes and governs the Contingent Payments Holding Trust.

30. “Contingent Payments Trust” means the grantor trust established on the Effective Date to hold the Contingent Payments Trust Assets.

31. “Contingent Payments Trust Agreement” means the agreement, filed with the Plan Supplement and executed as of the Effective Date, that establishes and governs the Contingent Payments Trust.

32. “Contingent Payments Trust Assets” means the Debtor’s right to receive the Contingent Payments.

33. “Contingent Payments Trustee” means the person or entity selected by the Majority Consenting Noteholders and appointed by the Debtor (which, for the avoidance of doubt, may be the same person or entity as the Liquidating Trustee and the Contingent Payments Holding Trustee), prior to the Confirmation Date and approved by the Bankruptcy Court pursuant to the Confirmation Order to (a) be the trustee of the Contingent Payments Trust; and (b) to take such other actions as may be authorized by this Plan, the Confirmation Order, and the Contingent Payments Trust Agreement, along with any successor thereto.

34. “Contingent Payments Holding Trustee” means the person or entity selected by the Majority Consenting Noteholders and appointed by the Debtor (which, for the avoidance of doubt, may be the same person or entity as the Liquidating Trustee and the Contingent Payments Trustee),

prior to the Confirmation Date and approved by the Bankruptcy Court pursuant to the Confirmation Order to (a) be the trustee of the Contingent Payments Holding Trust, which shall in turn act as the sole holder of the Contingent Payments Trust Interest in accordance with the terms of this Plan, the Confirmation Order, and the Contingent Payments Holding Trust Agreement; and (b) to take such other actions as may be authorized by this Plan, the Confirmation Order, and the Contingent Payments Holding Trust Agreement, along with any successor thereto.

35. “Contingent Payments Trust Interest” means the Interest in the Contingent Payments Trust, which shall be held by the Contingent Payments Holding Trust in accordance with the terms of the Contingent Payments Trust Agreement.

36. “Convertible Noteholder(s)” means the Holder(s) of the Convertible Notes.

37. “Convertible Notes” means those certain 3.50% convertible senior notes due 2027 issued in the aggregate principal amount of \$200.0 million pursuant to an indenture, dated as of May 22, 2020, by and between Tricida, as issuer, and U.S. Bank National Association, as trustee.

38. “Cure” means all amounts, including an amount of \$0.00, required to cure any monetary defaults under any Executory Contract or Unexpired Lease (or such lesser amount as may be agreed upon by the parties under an Executory Contract or Unexpired Lease) that is to be assumed or assumed and assigned by the Debtor.

39. “D&O Policies” means, collectively, the Debtor’s director and officer liability insurance policies along with any other applicable directors and officers liability insurance policies, including primary insurance, excess insurance, or tail insurance policies.

40. “De Minimis Unsecured Claim(s)” means an Allowed General Unsecured Claim in an amount of \$7,500 or less.

41. “Debtor” means Tricida, Inc., as debtor and debtor in possession.

42. “Debtor Releases” means the releases set forth in Article IX.A herein.

43. “Disbursing Agent” means the Debtor, the Liquidating Trustee, or the Entity(ies) selected by the Liquidating Trustee, as applicable, to make or to facilitate distributions pursuant to the Plan.

44. “Disclosure Statement” means the *Third Amended Disclosure Statement for the Chapter 11 Plan of Liquidation for Tricida, Inc.*, dated March 21, 2023 (as such may be amended, supplemented, or modified from time to time), including all exhibits and schedules thereto and references therein that relate to this Plan, that is prepared and distributed in accordance with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law.

45. “Disputed” means, with respect to any Claim or Interest, any Claim or Interest: (a) listed on the Schedules as unliquidated, disputed or contingent, unless a Proof of Claim has been Filed in a liquidated and non-contingent amount and no objection to such Proof of Claim has been filed; (b) included in a Proof of Claim as to which an objection or request for estimation has been filed, or as to which the Debtor, the Liquidating Trustee, or other parties in interest in

accordance with applicable law, retain the ability to interpose a timely objection or request for estimation in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Plan or the Confirmation Order; or (c) which is otherwise disputed by the Debtor or the Liquidating Trustee, (as applicable) in accordance with applicable law and for which the objection, request for estimation, or dispute has not been withdrawn or determined by a Final Order. To the extent that a Claim is held by a Holder that is or may be liable to the Debtor, the Estate, or the Liquidating Trustee on account of a Retained Cause of Action, such Claim shall be a Disputed Claim unless and until such Retained Cause of Action has been settled or withdrawn or has been determined by a Final Order. Claims that are Allowed by the Plan or that have been Allowed by a Final Order shall not be Disputed Claims.

46. “Disputed Claim Distribution” means, individually, each Holder of an Allowed Patheon Rejection Claim’s *pro rata* right of recovery, which shall be calculated as follows: (a) the Effective Date Cash Amount *multiplied* by (b) the percentage of the Allowed Patheon Rejection Claim as determined based on the aggregate amount of Allowed General Unsecured Claims, the Allowed Patheon Rejection Claim, and Noteholder Claims.

47. “Disputed Claims Reserve” means a reserve established and maintained by the Liquidating Trust for Holders of Disputed General Unsecured Claims and Patheon Rejection Claims to the extent such Claims are subsequently Allowed and entitled to distributions from the Liquidating Trust. The amount of the Disputed Claims Reserve shall be determined by the Bankruptcy Court.

48. “Distribution Record Date” means the date for determining which Holders of Claims are eligible to receive distributions under the Plan, which date shall be the Effective Date or such other date as designated in a Final Order of the Bankruptcy Court.

49. “DOF Election” has the meaning set forth in Article IV.C.6(g) herein.

50. “Effective Date” means the date that is the first Business Day after the entry of the Confirmation Order on which (a) no stay of the Confirmation Order is in effect; (b) all conditions precedent to the occurrence of the Effective Date, as set forth in Article VIII.A herein, have been satisfied or waived in accordance with the Plan; and (c) the Debtor declares the Plan effective. Any action to be taken on the Effective date may be taken on or as soon as reasonably practicable thereafter.

51. “Effective Date Cash Amount” means the Debtor’s aggregate amount of Cash on hand as of the Effective Date, to be determined following (a) payment of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Secured Claims, and Allowed Other Priority Claims; (b) payment of the Allowed *De Minimis* Unsecured Claims according to the treatment set forth in Article III.B.6 herein and subject to the aggregate recovery cap of \$60,0000; and (c) funding of the Professional Fee Reserve and the Wind-Down Budget.

52. “Entity” means any “entity,” as defined in section 101(15) of the Bankruptcy Code.

53. “Equipment Purchase Agreement” means the Asset Purchase Agreement, dated February 21, 2023, by and between Tricida, Inc., as seller, and Liquidity Services Operations LLC, as purchaser.

54. “Estate” means the bankruptcy estate of the Debtor created pursuant to section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

55. “Exculpated Party” or “Exculpated Parties” means, in each case in its capacity as such, (a) the Debtor; (b) the Debtor’s directors and officers during the Chapter 11 Case; (c) each of the respective current professionals, advisors, accountants, attorneys, investment bankers, consultants, employees, agents, and other representatives of the Debtor; (d) the Retained Professionals; and (e) each of the Retained Professionals’ current professionals, advisors, accountants, attorneys, investment bankers, consultants, employees, agents, and other representatives.

56. “Executory Contract(s)” means a contract to which the Debtor is a party and subject to assumption or rejection under section 365 of the Bankruptcy Code.

57. “FDA” means the United States Food and Drug Administration.

58. “File” or “Filed” means file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case, or in the case of a Proof of Claim, the Notice and Claims Agent.

59. “Final Order” means an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter that has not been reversed, stayed, modified, or amended, and as to which the time to appeal, seek reconsideration under Rule 59(b) or 59(e) of the Federal Rules of Civil Procedure, seek a new trial, reargument, or rehearing and, where applicable, petition for certiorari has expired and no appeal, motion for reconsideration under Rule 59(b) or 59(e) of the Federal Rules of Civil Procedure, motion for a new trial, reargument or rehearing or petition for certiorari has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought, or as to which any motion for reconsideration that has been filed pursuant to Rule 59(b) or 59(e) of the Federal Rules of Civil Procedure or any motion for a new trial, reargument, or rehearing shall have been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice; *provided* that the possibility that a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure or Bankruptcy Rule 9024, or any analogous rule, may be filed relating to such order or judgment shall not cause such order or judgment not to be a Final Order.

60. “General Unsecured Claim(s)” means any Claim other than a(n): (a) Administrative Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Other Secured Claim; (e) Other Priority Claim; (f) Noteholder Claim; (g) Patheon Rejection Claim; (h) *De Minimis* Unsecured Claim; or (i) Section 510(b) Claim.

61. “Governmental Unit(s)” means a “governmental unit,” as defined in section 101(27) of the Bankruptcy Code.

62. “GUC Effective Date Distribution” means, individually, each Holder of an Allowed General Unsecured Claim’s *pro rata* right of recovery, which shall be calculated as follows: (a) the Effective Date Cash Amount *multiplied* by (b) the percentage of the Allowed General Unsecured Claim as determined based on the aggregate amount of Allowed General Unsecured Claims,

Noteholder Claims, and the Patheon Rejection Claim (in such amount as determined by the Bankruptcy Court in setting a Disputed Claims Reserve).

63. “Holder(s)” means a Person or Entity, as applicable, holding a Claim against, or an Interest in, the Debtor, as the context requires.

64. “Impaired” means “impaired” within the meaning of section 1124 of the Bankruptcy Code.

65. “Insurance Policies” means all insurance policies that have been issued at any time to or provide coverage to the Debtor and all agreements, documents, or instruments relating thereto.

66. “Interest(s)” means equity security (as defined in section 101(16) of the Bankruptcy Code) of the Debtor, including all shares, common stock, preferred stock, or other instrument evidencing any fixed or contingent ownership interest in the Debtor, whether or not transferable, and any option, warrant, or other right, contractual or otherwise, to acquire any such interest in the Debtor, whether fully vested or vesting in the future, including without limitation, equity or equity-based incentives, grants, or other instruments issued, granted, or promised to be granted to current or former employees, directors, officers, or contractors of the Debtor, to acquire any such interest in the Debtor that existed immediately before the Petition Date.

67. “Interim Compensation Order” means the *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses from Professionals* [Docket No. 152] entered on February 6, 2023.

68. “IP Purchase Agreement” means the Asset Purchase Agreement, dated February 21, 2023, by and between Tricida, Inc., as seller, and Renibus Therapeutics, Inc., as purchaser.

69. “IRS Form” means IRS Form W-9, W-8BEN, any acceptable substitute, or any other tax information form that the Disbursing Agent may require from a Holder of a Claim for a distribution under the Plan.

70. “Law” means any federal, state, local, or foreign law (including common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the Bankruptcy Court).

71. “Lead Plaintiff” has the meaning set forth in Article IX.E herein.

72. “Lien” means a “lien,” as defined in section 101(37) of the Bankruptcy Code.

73. “Liquidating Trust” means the liquidating trust established on the Effective Date pursuant to Article IV herein and the Liquidating Trust Agreement.

74. “Liquidating Trust Agreement” means the agreement, filed with the Plan Supplement and executed as of the Effective Date, that establishes and governs the Liquidating Trust.

75. “Liquidating Trust Assets” means (a) the remaining Cash of the Debtor or the Estate after (i) paying the Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Secured Claims, Allowed Other Priority Claims, and Allowed *De Minimis* Unsecured Claims as set forth in Article III.B herein; (ii) adequately funding the Professional Fee Reserve and the Wind-Down Budget; and (iii) making the Noteholder Effective Date Distribution and the GUC Effective Date Distribution; and (b) any other assets, Retained Causes of Action or Causes of Action specifically transferred to the Liquidating Trust pursuant to the Liquidating Trust Agreement.

76. “Liquidating Trust Beneficiaries” means all Holders of a Noteholder Claim, an Allowed Patheon Rejection Claim, or an Allowed General Unsecured Claim.

77. “Liquidating Trust Waterfall” means the distribution waterfall set forth in Article IV.C.3 herein.

78. “Liquidating Trustee” means the trustee selected by the Majority Consenting Noteholders and appointed by the Debtor and identified in the Plan Supplement (which, for the avoidance of doubt, may be the same person or entity as the Contingent Payments Trustee and the Contingent Payments Holding Trustee) to act as trustee of and administer the Liquidating Trust and take such other actions as may be authorized under the Liquidating Trust Agreement, along with any successor thereto.

79. “Majority Consenting Noteholders” means, as of the relevant date, Consenting Noteholders holding a majority in face value of the aggregate holdings of the Convertible Notes of all Consenting Noteholders.

80. “Noteholder Claim(s)” means a Claim held by a Convertible Noteholder.

81. “Noteholder Effective Date Distribution” means, individually, each Holder of a Noteholder Claim’s *pro rata* right of recovery, which shall be calculated as follows: (a) the Effective Date Cash Amount *multiplied* by (b) the percentage of the Noteholder Claim as determined based on the aggregate amount of Allowed General Unsecured Claims, the Noteholder Claims, and the Patheon Rejection Claim (in such amounts as determined by the Bankruptcy Court in setting a Disputed Claims Reserve).

82. “Notice and Claims Agent” means Kurtzman Carson Consultants, LLC in its capacity as noticing, claims, and solicitation agent for the Debtor.

83. “OCP” means an ordinary course professional whose retention and compensation has been authorized by the Bankruptcy Court by entry of an OCP Order.

84. “OCP Order” means the *Order (I) Authorizing the Debtor to Retain and Compensate Professionals Utilized in the Ordinary Course of Business and (II) Granting Related Relief* [Docket No. 151] entered on February 6, 2023.

85. “Opt-Out Claims” has the meaning set forth in Article IX.E herein.

86. “Other Priority Claim(s)” means any Claim, other than an Administrative Claim or a Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

87. “Other Secured Claim(s)” means any Claim against a Debtor where, pursuant to section 506 of the Bankruptcy Code, the Claim is (a) secured by a valid, perfected, and enforceable Lien that is not subject to avoidance under applicable bankruptcy or non-bankruptcy law, in or upon any right, title, or interest of the Debtor in and to property of the Estate, to the extent of the value of the Holder’s interest in such property as of the relevant determination date. The term “Other Secured Claim” includes any Claim that is (a) subject to an offset right under applicable law as of the Petition Date; and (b) secured against the Debtor pursuant to sections 506(a) and 553 of the Bankruptcy Code.

88. “Pardi Litigation” has the meaning set forth in Article IX.E herein.

89. “Patheon Agreements” means the (a) Manufacturing and Commercial Supply Agreement, dated October 4, 2019, by and among Patheon, as supplier, and the Debtor, as purchaser, as such may have been modified, amended, restated, or amended and restated from time to time; (b) the Master Development / Validation Services and Clinical / Launch Supply Agreement, dated May 8, 2018, by and among Tricida and Patheon, as such may have been modified, amended, restated, or amended and restated from time to time; and (c) any other ancillary or supplemental agreements relating to clauses (a) through (b).

90. “Patheon Rejection Claim” means the Disputed Claim of Patheon Austria GmbH & Co KG, a subsidiary of Thermo Fisher Scientific, Inc., against the Debtor arising out of the termination or Debtor’s rejection of the Patheon Agreements.

91. “Person” means a “person” as defined in section 101(41) of the Bankruptcy Code.

92. “Petition Date” means January 11, 2023, which is the date on which the Debtor Filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing the Chapter 11 Case.

93. “Plan” means this plan of liquidation under chapter 11 of the Bankruptcy Code, either in its present form or as it may be altered, amended, modified, or supplemented from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules, or the terms hereof, as the case may be, and the Plan Supplement, which is incorporated herein by reference, including all exhibits and schedules hereto and thereto.

94. “Plan Supplement” means a supplemental appendix to the Plan consisting of documents and forms of documents, agreements, schedules, and exhibits to the Plan, in form and substance reasonably acceptable to the Majority Consenting Noteholders, which shall be Filed by the Debtor no later than seven (7) days before the Voting Deadline to accept or reject the Plan or such later date that may be approved by the Bankruptcy Court on notice to parties in interest. The Plan Supplement shall include, among other things, (a) the identity and compensation of the Liquidating Trustee; (b) the Liquidating Trust Agreement; (c) to the extent known, the identity of any insider that will be employed or retained by the Liquidating Trustee, and the nature of any compensation for such insider; (d) the identity of the Contingent Payments Trustee; (e) the

Contingent Payments Trust Agreement; (f) to the extent known, the identity of any insider that will be employed or retained by the Contingent Payments Trustee; (g) the identity of the Contingent Payments Holding Trustee; (h) the Contingent Payments Holding Trust Agreement; (i) to the extent known, the identity of any insider that will be employed or retained by the Contingent Payments Holding Trustee; and (j) other documentation necessary to effectuate the Plan or that is contemplated by the Plan.

95. “Priority Tax Claim(s)” means a Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

96. “Product” means (a) the Compound and (b) any product or product candidate that is comprised of or contains the Compound.

97. “Professional Fee Claim(s)” means a Claim (a) by a Retained Professional seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred after the Petition Date and on or before the Effective Date under sections 328, 330, 331, or 503(b)(2) of the Bankruptcy Code, as applicable; or (b) by an OCP for compensation for services rendered or reimbursement of expenses incurred after the Petition Date and on or before the Effective Date pursuant to the OCP Order.

98. “Professional Fee Reserve” means the reserve established and funded by the Debtor prior to the Effective Date to satisfy the unpaid Professional Fee Claims of the Retained Professionals and the Consenting Noteholder Fees and Expenses.

99. “Professional Fee Reserve Amount” means the amount set forth in Article II.B.4 herein.

100. “Proof of Claim” means a proof of Claim Filed against the Debtor in the Chapter 11 Case.

101. “Proposed Class” has the meaning set forth in Article IX.E herein.

102. “Purchase Agreements” means, collectively, the Equipment Purchase Agreement and the IP Purchase Agreement.

103. “Purchasers” means, collectively, (a) Liquidity Services Operations LLC, as purchaser under the Equipment Purchase Agreement, and (b) Renibus Therapeutics, Inc., as purchaser under the IP Purchase Agreement.

104. “Related Party” means each of, and in each case in its capacity as such, current and former directors, managers, officers, committee members, members of any governing body, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, Affiliates, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, attorneys (including any other attorneys or professionals retained by any current or former director or manager in his or her capacity as director or manager of an Entity),

accountants, investment bankers, consultants, representatives, and other professionals and advisors and any such Person's or Entity's respective heirs, executors, estates, and nominees.

105. "Release Opt-Out" means the item set forth in the ballot form distributed to each Holder of a Claim entitled to vote to accept or reject the Plan pursuant to which such Holder may opt out of the releases set forth in the Plan.

106. "Released Party" means each of, and in each case in its capacity as such: (a) the Debtor; (b) the Consenting Noteholder Releasing Parties; and (c) each Related Party of the Debtor or the Consenting Noteholder Releasing Parties, including, for the avoidance of doubt, any professional retained by the Debtor or the Consenting Noteholders in connection with this Chapter 11 Case. Notwithstanding the foregoing, the definition of "Released Party" shall not be deemed to include any shareholder solely to the extent acting in such person's capacity as a shareholder.

107. "Releasing Parties" means, collectively, and in each case, in their respective capacities as such, (a) the Consenting Noteholder Releasing Parties; (b) all Holders of Claims deemed hereunder to have accepted the Plan that have not filed an objection to the release contained in Article IX herein prior to the Voting Deadline; (c) all Holders of a Claim or Interest that (i) vote to accept or reject the Plan and do not timely submit a Release Opt-Out, or (ii) do not vote to accept or reject the Plan and either do not timely submit a Release Opt-Out or do not file an objection to the releases contained in Article IX herein prior to the Voting Deadline; (d) to the maximum extent permitted by Law; each current and former Affiliate of each Person or Entity in clauses (a) through (c); and (e) to the maximum extent permitted by Law, each Related Party of each Entity in clauses (a) through (c).

108. "Retained Causes of Action" means the Causes of Action of the Debtor listed on the Schedule of Retained Causes of Action.

109. "Retained Professional(s)" means a Person or Entity employed in the Chapter 11 Case pursuant to a Final Order in accordance with sections 327, 328, and/or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective Date pursuant to sections 327, 328, 329, 330, or 331 of the Bankruptcy Code.

110. "RSA" means the Restructuring Support Agreement (as such may be amended, supplemented, or modified from time to time in accordance with the provisions therein), dated as of January 11, 2023, by and between the Debtor and the Consenting Noteholders.

111. "Sale" means the transaction between and among the Debtor and the Purchasers, pursuant to which the Debtor sold substantially all of its assets to the Purchasers pursuant to sections 363 and 365 of the Bankruptcy Code, as set forth in the Sale Order and the Purchase Agreements.

112. "Sale Motion" means the *Debtor's Motion for Entry of (I) an Order (A) Approving Certain Bidding Procedures and the Form and Manner of Notice Thereof, (B) Scheduling an Auction and a Hearing on the Approval of the Sale of all or Substantially All of the Debtor's Assets, (C) Establishing Certain Assumption and Assignment Procedures and Approving the Manner and Notice Thereof, and (D) Granting Related Relief; and (II) An Order (A) Authorizing and Approving the Debtor's Entry into an Asset Purchase Agreement, (B) Authorizing the Sale of all or*

*Substantially All of the Debtor's Assets Free and Clear of all Encumbrances, (C) Approving the Assumption and Assignment of the Assumed Contracts, and (D) Granting Related Relief* [Docket No. 11].

113. “Sale Documents” means, collectively, the Purchase Agreements and all agreements, documents, and instruments related thereto, including the Sale Order.

114. “Sale Order” means an order entered by the Bankruptcy Court authorizing the sale of all or substantially all of the Debtor’s assets to the Purchasers pursuant to sections 363 and 365 of the Bankruptcy Code and in accordance with the Purchase Agreements.

115. “Schedule of Retained Causes of Action” means the schedule attached hereto as Exhibit A, which is a schedule of certain Causes of Action of the Debtor that are not released, subject to exculpation, waived, or transferred pursuant to the Plan or otherwise.

116. “Schedules” means, collectively, the schedule of assets and liabilities, schedule of Executory Contracts and Unexpired Leases, and statement of financial affairs Filed by the Debtor pursuant to section 521 of the Bankruptcy Code, the Bankruptcy Rules, and the official bankruptcy forms, as the same may be amended, modified, or supplemented from time to time.

117. “Section 510(b) Claim(s)” means any Claim subordinated by order of the Bankruptcy Court pursuant to section 510(b) of the Bankruptcy Code or otherwise.

118. “Severance Payment Claim” means the claim for avoidance of certain severance payments made to employees of the Debtor subject to the reduction in force, as set forth in the Schedule of Retained Causes of Action.

119. “Statutory Fees” means all fees due and payable pursuant to section 1930 of Title 28 of the United States Code, together with the statutory rate of interest set forth in section 3717 of Title 31 of the United States Code, to the extent applicable.

120. “Term Sheet” means the term sheet to the RSA.

121. “Trust Election Date” means September 1, 2024.

122. “Trustee” means U.S. Bank Trust Company, National Association in its role as trustee under the Notes, including any successors thereto.

123. “U.S. Trustee” means the Office of the United States Trustee for the District of Delaware.

124. “Unexpired Lease(s)” means a lease to which the Debtor is a party and subject to assumption or rejection under section 365 of the Bankruptcy Code.

125. “Unimpaired” means, with respect to a Claim or Class of Claims, not “impaired” within the meaning of sections 1123(a)(4) and 1124 of the Bankruptcy Code.

126. “Voting Deadline” means the date and time by which all ballots to accept or reject the Plan must be received to be counted.

127. “Wind-Down Budget” means the budget for all reasonable activities and expenses to be incurred in winding down the Chapter 11 Case and administering the Liquidating Trust, the Contingent Payments Holding Trust, and the Contingent Payments Trust. The Wind-Down Budget shall include line item estimates for, among other things, the post-Effective Date professional fees and expenses of the Retained Professionals, the Consenting Noteholder Fees and Expenses, and the Statutory Fees, and will be financed by funds placed, by the Debtor on the Effective Date (in an amount agreed upon by the Debtor and the Majority Consenting Noteholders), into accounts held by each of the Liquidating Trust, the Contingent Payments Holding Trust, and the Contingent Payments Trust.

## **B. Rules of Interpretation**

For the purposes of the Plan, and except as otherwise provided herein, the following rules of interpretation shall apply: (1) 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; (2) unless otherwise provided in the Plan, any reference in the Plan to a contract, instrument, release, or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (3) any reference in the 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 pursuant to the Plan or Confirmation Order; (4) any reference to an Entity as a Holder of a Claim or Interest includes that Entity’s successors and assigns; (5) all references in the Plan to “Articles” and “Exhibits” are references to the articles and exhibits of or to the Plan unless otherwise noted; (6) the words “herein,” “hereunder,” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (7) the words “includes” or “including” are not limiting; (8) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (9) unless otherwise specified, references in the Plan to “D.I.” refer to entries on the Chapter 11 Case’s docket; (10) subject to the provisions of any contract, certificate of incorporation, by-laws, or similar constituent document, instrument, release, or other agreement or document entered into or delivered in connection with the Plan, the rights and obligations arising under the Plan will be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and the Bankruptcy Rules, and, to the extent applicable, the laws of the State of Delaware; (11) the rules of construction set forth in section 102 of the Bankruptcy Code will apply; and (12) all references in the Plan to monetary figures refer to currency of the United States of America, unless otherwise expressly provided.

## **C. Computation of Time**

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) will apply. Any references to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter unless otherwise specified herein.

**D. Controlling Document**

In the event of an inconsistency between the Plan and the Disclosure Statement, the Plan and the Plan Supplement, or the Plan and the RSA, the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall control.

**ARTICLE II.**

**ADMINISTRATIVE CLAIMS, PRIORITY TAX CLAIMS, AND STATUTORY FEES**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims (including Professional Fee Claims) and Priority Tax Claims have not been classified and, thus, are excluded from the Classes of Claims and Interests set forth in Article III herein.

**A. Administrative Claims**

Unless otherwise agreed to by the Holder of an Allowed Administrative Claim and the Debtor or the Liquidating Trustee (as applicable), each Holder of an Allowed Administrative Claim (other than Holders of Professional Fee Claims and Claims for Statutory Fees) will receive in full and final satisfaction of its Allowed Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim in accordance with the following: (1) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date (or, if not then due, when such Allowed Administrative Claim becomes due or as soon as reasonably practicable thereafter); (2) if such Administrative Claim is not Allowed as of the Effective Date, no later than thirty (30) days after the date on which an order allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; or (3) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court.

Except for Professional Fee Claims, and notwithstanding any prior Filing or Proof of Claim, Proofs of Claim seeking the allowance and payment of Administrative Claims must be Filed and served on the Debtor or the Liquidating Trustee (as applicable) and their counsel, no later than the Administrative Claims Bar Date pursuant to the procedures specified in the Confirmation Order and the notice of the occurrence of the Effective Date. The burden of proof for the allowance of Administrative Claims remains on the Holder of the Administrative Claim.

Objection to such Proofs of Claim must be Filed and served on the requesting party within one hundred twenty (120) days after the Effective Date. After notice and a hearing, the Allowed amounts, if any, of Administrative Claims shall be determined by, and satisfied in accordance with, a Final Order.

**Except as otherwise provided in Articles II.B or II.D herein, Holders of Administrative Claims that do not File and serve a Proof of Claim or application for payment of administrative expense requesting the allowance of an Administrative Claim by the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting Administrative Claims against the Debtor, the Estate, the Liquidating Trust, the Liquidating Trustee, or their assets and properties, and any Administrative Claims shall be deemed disallowed as of the Effective Date unless otherwise ordered by the Court.**

**B. Professional Fee Claims**

1. Final Fee Applications

All requests for payment of Professional Fee Claims by Retained Professionals (other than OCPs) for services rendered and reimbursement of expenses incurred prior to the Effective Date must be Filed no later than forty-five (45) days after the Effective Date. Objections to Professional Fee Claims must be Filed and served no later than fourteen (14) days after the Filing of the Professional Fee Claim. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims of Retained Professionals (other than OCPs) after notice and a hearing in accordance with the procedures established by the Bankruptcy Court. Unless otherwise agreed to by the Debtor and the Retained Professional, the Liquidating Trustee shall pay Professional Fee Claims that are Allowed by Final Order following the Effective Date in Cash from the Professional Fee Reserve.

2. Administrative Claims of OCPs

All requests for payment of Professional Fee Claims of OCPs shall be made pursuant to the OCP Order. To the extent any Professional Fee Claims of the OCPs have not been Allowed pursuant to the OCP Order on or before the Effective Date, the amount of Professional Fee Claims owing to the OCPs shall be paid in Cash to such OCPs by the Debtor or the Liquidating Trustee (as applicable) from the Professional Fee Reserve as soon as reasonably practicable after such Professional Fee Claims are Allowed pursuant to the OCP Order.

3. Post-Effective Date Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Effective Date, the Liquidating Trustee or the Contingent Payments Trustee (as applicable) shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to the Chapter 11 Case that are incurred after the Effective Date, subject to the Wind-Down Budget. Upon the Effective Date, any requirement that Retained Professionals comply with sections 327 through 331 of the Bankruptcy Code or the OCP Order in seeking retention or compensation for services rendered after such date shall terminate, and the Liquidating Trustee or the Contingent Payments Trustee (as applicable) may employ and pay any retained professionals in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Code, subject to the Wind-Down Budget.

4. Professional Fee Reserve Amount

Unless otherwise agreed to prior to the Effective Date by the Debtor and the Retained Professional or the Consenting Noteholder Professional (as applicable), to receive payment for unbilled fees and expenses incurred through the Effective Date, the Retained Professionals and the Consenting Noteholder Professionals shall estimate their Accrued Professional Compensation Claims prior to and as of the Effective Date, and shall deliver such estimate to the Debtor and its counsel no later than three (3) Business Days prior to the Effective Date; *provided* that such estimate shall not be considered an admission with respect to the fees and expenses of such Retained Professional or Consenting Noteholder Professional. If a Retained Professional or

Consenting Noteholder Professional does not provide an estimate, the Debtor may estimate the unbilled fees and expenses of such Retained Professional or Consenting Noteholder Professional (as applicable). The total amount so estimated hereunder as of the Effective Date shall comprise the “Professional Fee Reserve Amount.”

#### 5. Professional Fee Reserve

On or before the Effective Date, the Debtor shall fund the Professional Fee Reserve with Cash equal to the Professional Fee Reserve Amount. The Liquidating Trustee is charged with administering the Professional Fee Reserve after the Effective Date and is permitted to open a new bank account to effectuate this purpose.

The Professional Fee Reserve and amounts funded therein are and shall continue to be maintained in trust solely for each Retained Professional or Consenting Noteholder Professional (as applicable) separately on a per-Retained Professional or Consenting Noteholder Professional basis. Such funds shall not be considered property of the Debtor, its Estate, or the Liquidating Trust; *provided, however*, the Liquidating Trust shall have a reversionary interest in any Cash remaining in the Professional Fee Reserve after payment in full of all Allowed Professional Fee Claims and all Consenting Noteholder Fees and Expenses without any further notice, action, or order of the Bankruptcy Court. Unless otherwise agreed to by the Debtor and the Retained Professional or Consenting Noteholder Professional (as applicable), the amount owing to the Retained Professional or Consenting Noteholder Professional (as applicable) shall be paid in Cash to such Retained Professional or Consenting Noteholder Professional (as applicable) by the Liquidating Trustee from the Professional Fee Reserve (i) with respect to the Professional Fee Claims, as soon as reasonably practicable after such claims are Allowed by order of the Bankruptcy Court; or (ii) with respect to the Consenting Noteholder Fees and Expenses, as soon as reasonably practicable after the applicable Consenting Noteholder Professional submits an invoice to the Liquidating Trustee.

#### C. Priority Tax Claims

On the Effective Date, or as soon as reasonably practicable thereafter, except to the extent a Holder of an Allowed Priority Tax Claim and the Debtor agree to less favorable treatment for such Holder, in full and final satisfaction of the Allowed Priority Tax Claim, each Holder thereof will be paid in full in Cash or otherwise receive treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.

#### D. U.S. Trustee Statutory Fees

All U.S. Trustee Statutory Fees due and payable prior to the Effective Date shall be paid by the Debtor on the Effective Date. After the Effective Date, any and all Statutory Fees shall be paid to the U.S. Trustee by the Liquidating Trustee when due and payable. The Debtor and the Liquidating Trustee (as applicable) shall remain obligated to pay the U.S. Trustee Statutory Fees until the earliest of the Debtor’s case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code. Neither the U.S. Trustee nor any other Governmental Unit is required to File a request for an Administrative Claim for Statutory Fees.

**E. Consenting Noteholder Fees and Expenses**

The Consenting Noteholder Fees and Expenses constitute Allowed Administrative Claims with priority over all administrative expenses of the kind specified in sections 503(b) and 507 of the Bankruptcy Code except for Professional Fee Claims, and shall be paid in full in Cash no later than the Effective Date. The Consenting Noteholder Fees and Expenses shall not be discharged, modified, or otherwise affected by the Plan. The Consenting Noteholder Fees and Expenses shall not be subject to disgorgement, setoff, disallowance, impairment, challenge, contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance, or other claim, cause of action, or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law, or otherwise.

**ARTICLE III.****CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS****A. Classification of Claims and Interests**

Except for the Claims addressed in Article II herein, all Claims and Interests are classified in the Classes set forth below in accordance with sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Class to the extent that any portion of the Claim or Interest qualifies within the description of such other Class. A Claim also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim is an Allowed Claim in that Class and has not been otherwise paid, released, or satisfied at any time.

The classification of Claims against and Interests in the Debtor pursuant to the Plan is as follows:

<b>Class</b>	<b>Claim or Interest</b>	<b>Status</b>	<b>Voting Rights</b>
1	Other Secured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
3	Noteholder Claims	Impaired	Entitled to Vote
4	Patheon Rejection Claim	Impaired	Entitled to Vote
5	General Unsecured Claims	Impaired	Entitled to Vote
6	<i>De Minimis</i> Unsecured Claims	Impaired	Entitled to Vote
7	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
8	Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

**B. Treatment of Claims and Interests**

1. Class 1 – Other Secured Claims

(a) *Classification:* Class 1 consists of all Other Secured Claims against the Debtor.

(b) *Treatment:* On the Effective Date, or as soon as reasonably practicable thereafter, except to the extent that a Holder of an Allowed Other Secured Claim and the Debtor agree to less favorable treatment for such Holder, in full and final satisfaction of the Allowed Other Secured Claim, each Holder thereof will receive: (i) payment in full in Cash; (ii) delivery of the collateral securing any such Claim and payment of any interest required under section 506(b) of the Bankruptcy Code; (iii) reinstatement of such Claim; or (iv) such other treatment rendering such Claim Unimpaired.

(c) *Voting:* Class 1 is Unimpaired, and Holders of Other Secured Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 1 Other Secured Claims are not entitled to vote to accept or reject the Plan.

2. Class 2 – Other Priority Claims

(a) *Classification:* Class 2 consists of all Other Priority Claims against the Debtor.

(b) *Treatment:* On the Effective Date, or as soon as reasonably practicable thereafter, except to the extent that a Holder of an Allowed Other Priority Claim and the Debtor agree to less favorable treatment for such Holder, in full and final satisfaction of the Allowed Other Priority Claim, each Holder thereof will receive: (i) payment in full in Cash; or (ii) such other treatment rendering such Claim Unimpaired.

(c) *Voting:* Class 2 is Unimpaired, and Holders of Other Priority Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 2 Other Priority Claims are not entitled to vote to accept or reject the Plan.

3. Class 3 – Noteholders Claims

(a) *Classification:* Class 3 consists of all Noteholder Claims against the Debtor.

(b) *Treatment:* On the Effective Date, the Noteholder Claims shall be deemed Allowed in the aggregate amount of \$201,088,888.89, and except to the extent that a Holder of a Noteholder Claim and the Debtor agree to less favorable treatment for such Holder, in full and final satisfaction of the Allowed Noteholder Claim, each Holder thereof will: (i) be paid in Cash on the Effective Date or as soon as reasonably practicable thereafter, its Noteholder Effective Date Distribution; (ii) receive its *pro rata* right to recovery from the Liquidating Trust

pursuant to the Liquidating Trust Waterfall; and (iii) receive its *pro rata* right to recovery from the Contingent Payments Holding Trust.

(c) *Voting:* Class 3 is Impaired, and Holders of Noteholder Claims are entitled to vote to accept or reject the Plan.

4. Class 4 – Patheon Rejection Claim

(a) *Classification:* Class 4 consists of the Patheon Rejection Claim.

(b) *Treatment:* Except to the extent that a Holder of a Patheon Rejection Claim and the Debtor agree to less favorable treatment for such Holder, in full and final satisfaction of the Allowed Patheon Rejection Claim, each Holder thereof will: (i) be paid in Cash from the Liquidating Trust pursuant to the Liquidating Trust Waterfall on the date any of its Patheon Rejection Claim is Allowed, or as soon as reasonably practicable thereafter, its Disputed Claim Distribution; (ii) receive its *pro rata* right to recovery from the Liquidating Trust pursuant to the Liquidating Trust Waterfall; and (iii) receive its *pro rata* right to recovery from the Contingent Payments Holding Trust.

(c) *Voting:* Class 4 is Impaired, and Holders of the Patheon Rejection Claim are entitled to vote to accept or reject the Plan.

5. Class 5 – General Unsecured Claims

(a) *Classification:* Class 5 consists of all General Unsecured Claims against the Debtor.

(b) *Treatment:* On the Effective Date, or as soon as reasonably practicable thereafter, except to the extent that a Holder of an Allowed General Unsecured Claim and the Debtor agree to less favorable treatment for such Holder, in full and final satisfaction of the Allowed General Unsecured Claim, each Holder thereof will: (i) be paid in Cash its GUC Effective Date Distribution; (ii) receive its *pro rata* right to recovery from the Liquidating Trust pursuant to the Liquidating Trust Waterfall; and (iii) receive its *pro rata* right to recovery from the Contingent Payments Holding Trust.

(c) *Voting:* Class 5 is Impaired, and Holders of the General Unsecured Claims are entitled to vote to accept or reject the Plan.

6. Class 6 – *De Minimis* Unsecured Claims

(a) *Classification:* Class 6 consists of all *De Minimis* Unsecured Claims against the Debtor.

(b) *Treatment:* On the Effective Date, or as soon as reasonably practicable thereafter, except to the extent that a Holder of an Allowed *De Minimis* Unsecured Claim and the Debtor agree to less favorable treatment for such Holder, in full and final satisfaction of the Allowed *De Minimis* Unsecured Claim, each Holder thereof will receive in Cash a recovery

of fifty percent (50%) of the Allowed amount of their Claim, subject to an aggregate recovery amount for such Allowed *De Minimis* Unsecured Claims of \$60,000.

(c) *Voting:* Class 6 is Impaired, and Holders of the *De Minimis* Unsecured Claims are entitled to vote to accept or reject the Plan.

7. Class 7 – Section 510(b) Claims

(a) *Classification:* Class 7 consists of all Section 510(b) Claims against the Debtor.

(b) *Treatment:* On the Effective Date, all Section 510(b) Claims shall be canceled, released, and extinguished, and will be of no further force or effect, and Holders of such Claims shall not receive any distributions under the Plan on account of such Claim.

(c) *Voting:* Class 7 is Impaired, and Holders of Section 510(b) Claims are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Class 7 Section 510(b) Claims are not entitled to vote to accept or reject the Plan.

8. Class 8 – Interests

(a) *Classification:* Class 8 consists of all Interests in the Debtor.

(b) *Treatment:* On the Effective Date, all Interests shall be canceled, released, and extinguished, and will be of no further force or effect, and Holders of such Interests shall not receive any distributions under the Plan on account of such Interest.

(c) *Voting:* Class 8 is Impaired, and Holders of Interests are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Class 8 Interests Claims are not entitled to vote to accept or reject the Plan.

**C. Special Provisions Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtor's or the Liquidating Trustee's rights with respect to any Claims, including all legal and equitable defenses to or setoffs or recoupments against any Claims.

**D. Elimination of Vacant Classes**

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from this Plan for purposes of voting to accept or reject this Plan and for purposes of determining acceptance or rejection of this Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

**E. Voting Classes; Presumed Acceptance by Non-Voting Classes**

If a Class contains Claims eligible to vote, and no Holders of Claims eligible to vote in such Class vote to accept or reject the Plan, the Holders of Claims in such Class shall be deemed to have accepted the Plan.

**F. Controversy Concerning Impairment**

If a controversy arises as to whether any Claim or any Class of Claims is Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Hearing.

**G. Subordination of Claims**

The allowance, classification, and treatment of all Allowed Claims and Interests and the respective distributions and treatments under the Plan shall take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, contract, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtor or the Liquidating Trustee (as applicable) reserves the right to re-classify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

**H. Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code**

The Debtor hereby requests confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any Class that is deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code. The Debtor reserves the right to request confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any voting Class that votes to reject the Plan.

**I. Reservation of Rights Regarding Claims**

Except as otherwise provided in the Plan or in other Final Orders of the Bankruptcy Court, nothing will affect the Debtor's or the Liquidating Trustee's respective rights and defenses, whether legal or equitable, with respect to any Claim, including, without limitation, all rights with respect to legal and equitable defenses to alleged rights of setoff or recoupment.

**J. Postpetition Interest on Claims**

Except as required by applicable bankruptcy law or otherwise expressly provided in the Plan, post-petition interest will not accrue or be payable on account of any Claim.

**K. Insurance**

Notwithstanding anything to the contrary in the Plan, if any Claim is subject to coverage under an Insurance Policy, payments on account of such Claim will first be made from proceeds of such Insurance Policy in accordance with the terms thereof, with the balance of such Claim, if

any, treated in accordance with the provisions of the Plan governing the Class applicable to such Claim.

**ARTICLE IV.  
MEANS FOR IMPLEMENTATION OF THE PLAN**

**A. Sources of Consideration for Plan Distributions**

Subject to the provisions of the Plan concerning the Professional Fee Reserve and the Wind-Down Budget, the Debtor, the Liquidating Trustee, the Contingent Payments Trustee, or the Contingent Payments Holding Trustee (as applicable) shall fund distributions under the Plan with Cash on hand on the Effective Date, all other Liquidating Trust Assets, the Contingent Payments Trust Interest, and all Contingent Payments Trust Assets.

**B. Vesting of Assets**

On the Effective Date, pursuant to sections 1141(b) and 1141(c) of the Bankruptcy Code, (1) the Liquidating Trust Assets shall vest in the Liquidating Trust free and clear of all Claims, Liens, encumbrances, charges, and other interests except as otherwise expressly provided in this Plan; (2) the Contingent Payments Trust Assets shall vest in the Contingent Payments Trust free and clear of all Claims, Liens, encumbrances, charges, and other interests except as otherwise expressly provided in this Plan; and (3) the Contingent Payments Trust Interest shall vest in the Contingent Payments Holding Trust free and clear of all Claims, Liens, encumbrances, charges, and other interests except as otherwise expressly provided in this Plan.

**C. Liquidating Trust**

1. Establishment of the Liquidating Trust

On the Effective Date, the Liquidating Trust will be established pursuant to the Liquidating Trust Agreement, which will be Filed with the Bankruptcy Court as part of the Plan Supplement. Upon establishment of the Liquidating Trust, all Liquidating Trust Assets shall be deemed transferred to the Liquidating Trust without any further action of the Debtor or any managers, employees, officers, directors, members, partners, shareholders, agents, advisors, or representatives of the Debtor.

2. Transfer of the Liquidating Trust Assets

Pursuant to section 1141 of the Bankruptcy Code, all property transferred to the Liquidating Trust shall be made free and clear of all Claims, Liens, encumbrances, charges, and other interests, except as may be otherwise provided in this Plan. Upon completion of the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Debtor will have no further interest in, or with respect to, the Liquidating Trust Assets or the Liquidating Trust. For all U.S. federal income tax purposes, and subject to the DOF Election described at Article IV.C.6(g) below, all parties (including, without limitation, the Debtor, the Liquidating Trustee, and the Liquidating Trust Beneficiaries) shall treat the transfer of the Liquidating Trust Assets to the Liquidating Trust in accordance with the terms herein as a transfer to the Liquidating Trust Beneficiaries, followed

by a transfer by such Liquidating Trust Beneficiaries to the Liquidating Trust, and the Liquidating Trust Beneficiaries will be treated as the grantors and owners thereof.

### 3. Liquidating Trust Waterfall

The Liquidating Trust Assets shall be distributed by the Liquidating Trust as follows and in the following order: (a) the Disputed Claim Distribution; (b) following the Disputed Claim Distribution, (i) each holder of a Noteholder Claim shall receive a true-up on its *pro rata* right of recovery, which shall be calculated as follows: (1) Effective Date Cash Amount *minus* the aggregate amount of the Noteholder Effective Date Distribution *minus* the aggregate amount of the GUC Effective Date Distribution *minus* the aggregate amount of the Disputed Claim Distribution *multiplied* by (2) the percentage of the Noteholder Claim as determined based on the aggregate amount of Allowed General Unsecured Claims and Noteholder Claims; and (ii) each holder of an Allowed General Unsecured Claim shall receive a true-up on its *pro rata* right of recovery, which shall be calculated as follows: (1) Effective Date Cash Amount *minus* the aggregate amount of the Noteholder Effective Date Distribution *minus* the aggregate amount of the GUC Effective Date Distribution *minus* the aggregate amount of the Disputed Claim Distribution *multiplied* by (2) the percentage of the Allowed General Unsecured Claim as determined based on the aggregate amount of Allowed General Unsecured Claims and Noteholder Claims; and (c) to the extent applicable, *pro rata* to each Holder of a Noteholder Claim, Allowed Patheon Rejection Claim, and Allowed General Unsecured Claim.

### 4. Liquidating Trust Agreement

On the Effective Date, the Debtor shall execute a Liquidating Trust Agreement in substantially the same form as set forth in the Plan Supplement. Any nonmaterial modifications to the Liquidating Trust Agreement made by the Debtor, with the consent of the Majority Consenting Noteholders, will be ratified. The Liquidating Trust Agreement will contain provisions permitting the amendment or modification of the Liquidating Trust Agreement necessary to implement the provisions of the Plan.

### 5. Purpose of the Liquidating Trust

The Liquidating Trust shall be established for the purpose of (a) receiving and holding the Liquidating Trust Assets; (b) administering, disputing, objecting to, compromising, or otherwise resolving all General Unsecured Claims; (c) making distributions to the Liquidating Trust Beneficiaries in accordance with the Liquidating Trust Waterfall; (d) maximizing recoveries for the benefit of the Liquidating Trust Beneficiaries; and (e) commencing and pursuing the Retained Causes of Action and managing and administering any proceeds thereof, with no objective to continue or engage in the conduct of a trade or business in accordance with Treas. Reg. § 301.7701-4(d). Subject to the DOF Election, the Liquidating Trust is intended to qualify as a “grantor trust” for U.S. federal income tax purposes and, to the extent permitted by applicable law, for state and local income tax purposes, with the Liquidating Trust Beneficiaries treated as grantors and owners of the Liquidating Trust. To the extent permitted by applicable law, all parties, including the Liquidating Trustee and any Liquidating Trust Beneficiaries, shall report consistently with the foregoing for all applicable tax reporting purposes.

6. Liquidating Trustee

(a) *Appointment of the Liquidating Trustee*

Upon the occurrence of the Effective Date, the Liquidating Trustee shall also be deemed appointed to serve as the trustee and administrator of the Liquidating Trust established pursuant to the Plan and the Liquidating Trust Agreement. The Liquidating Trustee, subject to the terms and conditions of the Plan, the Confirmation Order, and the Liquidating Trust Agreement, shall be authorized to execute, deliver, file, or record such documents, contracts, instruments, releases, and other agreements, and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Liquidating Trustee shall have and perform all of the duties, responsibilities, rights, and obligations set forth in the Plan and the Liquidating Trust Agreement, as applicable.

(b) *Liquidating Trustee as Representative of the Estate*

From and after the Effective Date, the Liquidating Trustee shall act as the exclusive representative of the Estate for all purposes other than as set forth in Article IV.D.2(b) and IV.D.3(b) below. Any successor Liquidating Trustee appointed pursuant to the Liquidating Trust Agreement shall be bound by and comply with the terms of this Plan, the Confirmation Order, and the Liquidating Trust Agreement.

(c) *Responsibilities and Authority of the Liquidating Trustee*

The responsibilities and authority of the Liquidating Trustee shall be as set forth in the Liquidating Trust Agreement, and shall include the following rights and responsibilities, which shall be the exclusive rights and responsibilities of the Liquidating Trustee: (i) preserving and liquidating the Liquidating Trust Assets; (ii) administering and paying taxes, including, among other things, (1) filing tax returns (to the extent not the obligation of any Purchaser), and (2) representing the interest and account of the Liquidating Trust before any taxing authority in all matters including, without limitation, any action, suit, proceeding, or audit; (iii) retaining and paying, without the need for retention or fee applications, professionals in connection with the Liquidating Trustee's performance of its duties under this Plan and the Liquidating Trust Agreement; (iv) distributing information statements as required for U.S. federal income tax and other applicable tax purposes; (v) Filing an application for entry by the Bankruptcy Court of a final decree closing the Chapter 11 Case; (vi) making distributions to Retained Professionals for Allowed Professional Fee Claims and to Consenting Noteholder Professionals for Consenting Noteholder Fees and Expenses, including from the Professional Fee Reserve; (vii) making distributions to the Liquidating Trust Beneficiaries in accordance with the Plan and Liquidating Trust Agreement; and (viii) such other responsibilities as may be vested in the Liquidating Trustee pursuant to this Plan, the Liquidating Trust Agreement, or an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of this Plan.

(d) *Powers of the Liquidating Trustee*

The powers of the Liquidating Trustee shall be as set forth in the Liquidating Trust Agreement, and shall include the following: (i) the power to invest funds of the Liquidating Trust,

and withdraw, make distributions, and pay taxes and other obligations owed by the Liquidating Trust from such funds in accordance with this Plan and the Liquidating Trust Agreement; (ii) the power to engage and compensate, without prior Bankruptcy Court order or approval, employees and professionals to assist the Liquidating Trustee with respect to its responsibilities; (iii) the power to pursue, prosecute, resolve, compromise, and settle any Retained Causes of Action, without notice to or approval from the Bankruptcy Court; (iv) the power to object to Claims, including, without limitation, the power to seek subordination or recharacterization of Claims by objection, motion, or adversary proceeding, as applicable; and (v) such other powers as may be vested in or assumed by the Liquidating Trustee pursuant to this Plan, the Liquidating Trust Agreement, or by an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of this Plan.

(e) *Compensation of the Liquidating Trustee*

The Liquidating Trustee shall be compensated as set forth in the Liquidating Trust Agreement. The Liquidating Trustee shall fully comply with the terms, conditions and rights set forth in this Plan, the Confirmation Order, and the Liquidating Trust Agreement. The Liquidating Trustee (and any Liquidating Trustee retained professionals) shall not be required to File a fee application to receive compensation.

(f) *Retention and Payment of Professionals*

The Liquidating Trustee shall have the right, without Court approval, to retain the services of attorneys, accountants, and other professionals and agents, to assist and advise the Liquidating Trustee in the performance of his, her, or its duties, and to compensate and reimburse expenses of such professionals in accordance with the Liquidating Trust Agreement.

(g) *DOF Election*

The Liquidating Trust Agreement shall require the Liquidating Trustee to elect to treat that portion of the Liquidating Trust Assets subject to the Disputed Claims as a disputed ownership fund described in Treasury Regulation Section 1.468B-9 (the “DOF Election”) unless, as of the Trust Election Date, either all of the Liquidating Trust Assets have been distributed to the Liquidating Trust Beneficiaries or the percentage of the Liquidating Trust Assets distributable to each of the Liquidating Trust Beneficiaries under the Liquidating Trust Waterfall has become fixed and determinable.

7. Termination of the Liquidating Trust

The Liquidating Trust shall be dissolved upon the earlier of (a) the distribution of all of the Liquidating Trust Assets to the Liquidating Trust Beneficiaries; and (b) the fifth anniversary of the creation of the Liquidating Trust; *provided* that, if warranted by the facts and circumstances involved in resolving or monetizing any Liquidating Trust Assets, upon application to, and if approved by, the Bankruptcy Court upon a finding that such extension is necessary or appropriate for purposes of resolving or monetizing such Liquidating Trust Assets and distributing the proceeds to Liquidating Trust Beneficiaries, the term of the Liquidating Trust may be extended by the Liquidating Trustee for a specified term. Notwithstanding the foregoing, unless otherwise ordered by the Bankruptcy Court, the Liquidating Trust shall be automatically terminated in the

event that a final decree is entered closing the Chapter 11 Case or the Chapter 11 Case is converted to a case under chapter 7 of the Bankruptcy Code or dismissed.

8. Exculpation Relating to the Liquidating Trust

No Holder of a Claim or Interest or any other party in interest will have, or otherwise pursue, any claim or Cause of Action against the Liquidating Trustee, the Liquidating Trust, or the consultants or professionals thereof (for each of the foregoing, solely in the performance of their duties) for making payments and distributions in accordance with the Plan and the Liquidating Trust Agreement or for fulfilling any functions incidental to implementing the provisions of the Plan or the Liquidating Trust Agreement, except for any acts or omissions that are the result of gross negligence or willful misconduct, as set forth more fully in the Liquidating Trust Agreement.

**D. Contingent Payments Holding Trust and Contingent Payments Trust**

1. Trust Agreements

On the Effective Date, the Debtor shall execute (a) a Contingent Payments Holding Trust Agreement and (b) a Contingent Payments Trust Agreement, each in substantially the same form as set forth in the Plan Supplement. The Contingent Payments Trust shall be treated as a grantor trust for tax purposes, with either the Holders of Allowed Class 3, 4, and 5 Claims or the Contingent Payments Holding Trust treated as the owner / grantor of the Contingent Payments Trust Interest as of the Effective Date, as described below in Article IV.E.1, and the Contingent Payments Trust Agreement shall provide as such. The Contingent Payments Holding Trust shall be treated either as a grantor trust or a complex trust, as described below in Article IV.E.1, and the Contingent Payments Holding Trust Agreement shall provide as such. To the extent permitted by applicable law, all parties, including the Contingent Payments Trust Trustee, the Contingent Payments Holding Trust Trustee, and any Liquidating Trust Beneficiaries, shall report consistently with the foregoing for all applicable tax reporting purposes. Any nonmaterial modifications to the Contingent Payments Holding Trust Agreement or to the Contingent Payments Trust Agreement made by the Debtor, with the consent of the Majority Consenting Noteholders, will be ratified. The Contingent Payments Holding Trust Agreement and the Contingent Payments Trust Agreement will contain provisions permitting the amendment or modification of such agreements necessary to implement the provisions of the Plan.

2. Contingent Payments Holding Trustee

(a) *Appointment of the Contingent Payments Holding Trustee*

Upon the occurrence of the Effective Date, the Contingent Payments Holding Trustee shall be deemed appointed to serve as the administrator of the Contingent Payments Holding Trust pursuant to the Plan and the Contingent Payments Holding Trust Agreement. The Contingent Payments Holding Trustee, subject to the terms and conditions of the Plan, the Confirmation Order, and the Contingent Payments Holding Trust Agreement, shall be authorized to execute, deliver, file, or record such documents, contracts, instruments, releases, and other agreements, and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Contingent Payments Holding Trustee shall have and perform all of

the duties, responsibilities, rights, and obligations set forth in the Plan and the Contingent Payments Holding Trust Agreement, as applicable.

(b) *Contingent Payments Holding Trustee as Representative of the Estate*

From and after the Effective Date, the Contingent Payments Holding Trustee shall act as representative of the Estate, pursuant to section 1123(b)(3) of the Bankruptcy Code, solely for the purpose of administering the Contingent Payments Holding Trust, which shall in turn act as the sole holder of the Contingent Payments Trust Interest, prior to its dissolution upon resolution of the Disputed Claims as set forth in Article IV.E below. Any successor Contingent Payments Holding Trustee appointed pursuant to the Contingent Payments Holding Trust Agreement shall be bound by and comply with the terms of this Plan, the Confirmation Order, and the Contingent Payments Holding Trust Agreement.

(c) *Responsibilities and Authority of the Contingent Payments Holding Trustee*

The responsibilities and authority of the Contingent Payments Holding Trustee shall be as set forth in the Contingent Payments Holding Trust Agreement, and shall include the following rights and responsibilities, which shall be the exclusive rights and responsibilities of the Contingent Payments Holding Trustee: (i) preserving and administering the assets of the Contingent Payments Holding Trust; (ii) administering and paying taxes, including, among other things, (1) filing tax returns, and (2) representing the interest and account of the Contingent Payments Holding Trust before any taxing authority in all matters including, without limitation, any action, suit, proceeding, or audit; (iii) retaining and paying, without the need for retention or fee applications, professionals in connection with the Contingent Payments Holding Trustee's performance of its duties under this Plan and the Contingent Payments Holding Trust Agreement; and (iv) such other responsibilities or powers as may be vested in or assumed by the Contingent Payments Holding Trustee pursuant to this Plan, the Contingent Payments Holding Trust Agreement, or by an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of this Plan.

(d) *Powers of the Contingent Payments Holding Trustee*

The powers of the Contingent Payments Holding Trustee shall be as set forth in the Contingent Payments Holding Trust Agreement, and shall include the following: (i) the power to invest funds of the Contingent Payments Holding Trust, if any, and pay taxes and other obligations owed by the Contingent Payments Holding Trust in accordance with this Plan and the Contingent Payments Holding Trust Agreement; (ii) the power to engage and compensate, without prior Bankruptcy Court order or approval, employees and professionals to assist the Contingent Payments Holding Trustee with respect to its responsibilities; and (iii) such other powers as may be vested in or assumed by the Contingent Payments Holding Trustee pursuant to this Plan, the Contingent Payments Holding Trust Agreement, or by an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of this Plan.

(e) *Compensation of the Contingent Payments Holding Trustee*

The Contingent Payments Holding Trustee shall be compensated as set forth in the Contingent Payments Holding Trust Agreement. The Contingent Payments Holding Trustee shall fully comply with the terms, conditions and rights set forth in this Plan, the Confirmation Order, and the Contingent Payments Holding Trust Agreement. The Contingent Payments Holding Trustee (and any Contingent Payments Holding Trustee retained professionals) shall not be required to File a fee application to receive compensation.

(f) *Retention and Payment of Professionals*

The Contingent Payments Holding Trustee shall have the right, without Court approval, to retain the services of attorneys, accountants, and other professionals and agents, to assist and advise the Contingent Payments Holding Trustee in the performance of his, her, or its duties, and to compensate and reimburse expenses of such professionals in accordance with the Contingent Payments Holding Trust Agreement.

3. Contingent Payments Trustee

(a) *Appointment of the Contingent Payments Trustee*

Upon the occurrence of the Effective Date, the Contingent Payments Trustee shall be deemed appointed to serve as the administrator of the Contingent Payments Trust pursuant to the Plan and the Contingent Payments Trust Agreement. The Contingent Payments Trustee, subject to the terms and conditions of the Plan, the Confirmation Order, and the Contingent Payments Trust Agreement, shall be authorized to execute, deliver, file, or record such documents, contracts, instruments, releases, and other agreements, and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Contingent Payments Trustee shall have and perform all of the duties, responsibilities, rights, and obligations set forth in the Plan and the Contingent Payments Trust Agreement, as applicable.

(b) *Contingent Payments Trustee as Representative of the Estate*

From and after the Effective Date, the Contingent Payments Trustee shall act as representative of the Estate, pursuant to section 1123(b)(3) of the Bankruptcy Code, solely for the purpose of administering the Contingent Payments Trust. Any successor Contingent Payments Trustee appointed pursuant to the Contingent Payments Trust Agreement shall be bound by and comply with the terms of this Plan, the Confirmation Order, and the Contingent Payments Trust Agreement.

(c) *Responsibilities and Authority of the Contingent Payments Trustee*

The responsibilities and authority of the Contingent Payments Trustee shall be as set forth in the Contingent Payments Trust Agreement, and shall include the following rights and responsibilities, which shall be the exclusive rights and responsibilities of the Contingent Payments Trustee: (i) preserving and administering the assets of the Contingent Payments Trust; (ii) administering and paying taxes, including, among other things (1) filing tax returns (to the extent not the obligation of any Purchaser) and (2) representing the interest and account of the

Contingent Payments Trust before any taxing authority in all matters, including, without limitation, any action, suit, proceeding, or audit; (iii) retaining and paying, without the need for retention or fee applications, professionals in connection with the Contingent Payments Trustee's performance of its duties under this Plan and the Contingent Payments Trust Agreement; (iv) the power to enforce the Sale Documents as against the Purchasers; and (v) such other powers as may be vested in or assumed by the Contingent Payments Trustee pursuant to this Plan, the Contingent Payments Trust Agreement, or by an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of this Plan.

(d) *Powers of the Contingent Payments Trustee*

The powers of the Contingent Payments Trustee shall be as set forth in the Contingent Payments Trust Agreement, and shall include the following: (i) the power to invest funds of the Contingent Payments Trust, if any, and pay taxes and other obligations owed by the Contingent Payments Trust in accordance with this Plan and the Contingent Payments Trust Agreement; (ii) the power to engage and compensate, without prior Bankruptcy Court order or approval, employees and professionals to assist the Contingent Payments Trustee with respect to its responsibilities; and (iii) such other powers as may be vested in or assumed by the Contingent Payments Trustee pursuant to this Plan, the Contingent Payments Trust Agreement, or by an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of this Plan.

(e) *Compensation of the Contingent Payments Trustee*

The Contingent Payments Trustee shall be compensated as set forth in the Contingent Payments Trust Agreement. The Contingent Payments Trustee shall fully comply with the terms, conditions and rights set forth in this Plan, the Confirmation Order, and the Contingent Payments Trust Agreement. The Contingent Payments Trustee (and any Contingent Payments Trustee retained professionals) shall not be required to File a fee application to receive compensation.

(f) *Retention and Payment of Professionals*

The Contingent Payments Trustee shall have the right, without Court approval, to retain the services of attorneys, accountants, and other professionals and agents, to assist and advise the Contingent Payments Trustee in the performance of his, her, or its duties, and to compensate and reimburse expenses of such professionals in accordance with the Contingent Payments Trust Agreement.

4. Exculpation Relating to the Contingent Payments Holding Trustee and the Contingent Payments Trustee

No Holder of a Claim or Interest or any other party in interest will have, or otherwise pursue, any claim or Cause of Action against the Contingent Payments Holding Trustee, the Contingent Payments Trustee, or the consultants or professionals thereof (for each of the foregoing, solely in the performance of their duties) for actions taken in accordance with the Plan, the Contingent Payments Holding Trust Agreement, or the Contingent Payments Trust Agreement, or for fulfilling any functions incidental to implementing the provisions of the Plan, the Contingent Payments Holding Trust Agreement or the Contingent Payments Trust Agreement, except for any

acts or omissions that are the result of gross negligence or willful misconduct, as set forth more fully in the Contingent Payments Holding Trust Agreement or the Contingent Payments Trust Agreement (as applicable).

**E. Trust Mechanics**

1. Treatment of Trusts for Tax Purposes

The U.S. federal income tax classification of the Liquidating Trust and Contingent Payments Holding Trust will be determined pursuant to subsections (a) or (b) below, as applicable.

(a) *Disputed Claims Resolved Before Trust Election Date*

If all Disputed Claims are resolved prior to the Trust Election Date, each of the Liquidating Trust and the Contingent Payments Holding Trust is intended to be classified as a liquidating trust described in Treasury Regulation Section 301.7701-4(d) that is treated as a “grantor trust” for U.S. federal income tax purposes, and the Liquidating Trust Agreement and the Contingent Payments Holding Trust Agreement, as applicable, shall provide as such, and the Contingent Payments Trust is intended to be classified as an investment trust described in Treasury Regulation Section 301.7701-4(c) that is also treated as a grantor trust for U.S. federal income tax purposes, and the Contingent Payments Trust Agreement shall provide as such. On the Effective Date, the Debtor will be deemed to have distributed to the Holders of Allowed Class 3, 4 and 5 Claims an undivided interest in the Liquidating Trust Assets and the Contingent Payments Trust Assets, and such Holders will be deemed to have contributed such Liquidating Trust Assets and Contingent Payments Trust Assets to the Liquidating Trust and to the Contingent Payments Holding Trust in exchange for beneficial interests in the Liquidating Trust and Contingent Payments Holding Trust, respectively.

To the extent permitted by applicable law, all parties, including the Liquidating Trustee, Contingent Payments Trust Trustee, the Contingent Payments Holding Trust Trustee, and any Liquidating Trust Beneficiaries, shall report consistently with the foregoing for all applicable tax reporting purposes.

(b) *Disputed Claims Unresolved by Trust Election Date*

If all Disputed Claims have not been resolved by the Trust Election Date, then (a) the Liquidating Trustee will elect to treat that portion of the Liquidating Trust Assets subject to the Disputed Claims as a “disputed ownership fund” as described in Treasury regulations section 1.468B-9. The Liquidating Trustee shall file all income tax returns with respect to any income attributable to the disputed ownership fund and shall pay the U.S. federal, state, and local income taxes attributable to such disputed ownership fund based on the items of income, deduction, credit, or loss allocable thereto. Any taxes imposed on the disputed ownership fund or its assets will be paid out of the assets of the disputed ownership fund (including any assets of the Liquidating Trust allocable to disputed claims) and any subsequent distributions in respect of the allowance or disallowance of such claims will be reduced accordingly. In the event, and to the extent, that any Cash in any disputed ownership fund is insufficient to pay the portion of any taxes attributable to taxable income arising from assets of the disputed ownership fund, assets of the disputed ownership fund (including those otherwise distributable) may be sold to pay such taxes. The

undisputed portion of the Liquidating Trust Assets will be treated as held in a grantor trust, with deemed distribution to and contribution from the Holders of Allowed Claims in Classes 3, 4, and 5 as described in the immediately preceding paragraph; (b) if all Disputed Claims have not been resolved by the Trust Election Date, the Contingent Payments Holding Trustee shall not file the election to be treated as a disputed ownership fund and shall instead file its tax return as a “complex trust” and all parties shall report accordingly; and (c) the Contingent Payments Trust shall report its income as an investment trust described in Treasury Regulation Section 301.7701-4(c) that is treated as a grantor trust for U.S. federal income tax purposes and as to which the Contingent Payments Holding Trust is the grantor.

The Contingent Payments Holding Trustee shall file all income tax returns with respect to any income attributable to the Contingent Payments Holdings Trust and shall pay the U.S. federal, state, and local income taxes attributable to such trust based on the items of income, deduction, credit, or loss allocable thereto.

To the extent permitted by applicable law, all parties, including the Liquidating Trustee, the Contingent Payments Holding Trustee, the Contingent Payments Trustee, and any Liquidating Trust Beneficiaries, shall report consistently with the foregoing for all applicable tax reporting purposes.

The Debtor will provide information to the Liquidating Trustee, the Contingent Payments Trustee and the Contingent Payments Holding Trustee as to its valuation determinations with respect to the Retained Causes of Action and the Contingent Payments on the Effective Date to facilitate consistent tax reporting by the Liquidating Trust, Contingent Payments Trust, and the Contingent Payments Holding Trust.

## 2. Status of Claims Notices

The Liquidating Trustee shall File a notice with the Bankruptcy Court when all Disputed Claims have been resolved, and if all Disputed Claims have not been resolved on or before Trust Election Date, shall File a general status notice so that Holders of such Claims shall have some indication as to the potential tax treatment of the Liquidating Trust and the Contingent Payments Holding Trust.

Upon the resolution of all Disputed Claims, (a) the Liquidating Trustee shall make a *pro rata* distribution of any remaining assets to the Liquidating Trust Beneficiaries in accordance with the Liquidating Trust Waterfall; and (b) the Contingent Payments Trustee shall distribute the Contingent Payments Trust Interest from the Contingent Payments Holding Trust *pro rata* to the Liquidating Trust Beneficiaries and, following such distribution, shall dissolve.

## F. Preservation of Causes of Action

Except as otherwise provided in Article IX herein or in any contract, instrument, release, or agreement entered into in connection with the Plan or the Sale, in accordance with section 1123(b) of the Bankruptcy Code, all Retained Causes of Action are preserved and transferred to the Liquidating Trust on the Effective Date.

The Debtor retained the Retained Causes of Action pursuant to a global settlement with the Consenting Noteholders encompassed within this Plan. The Debtor believes that the D&O Policies cover the Retained Causes of Action. Other than with respect to the Severance Payment Claim, recovery on the Retained Causes of Action shall be limited to available insurance, if any, provided under the D&O Policies, subject to the provisions of any such D&O Policies and applicable law. Other than with respect to the Severance Payment Claim, (i) no party shall have a right to recovery on the Retained Causes of Action outside or in excess of the available insurance under the D&O Policies, and (ii) no person or entity other than the Debtor's insurers under the D&O Policies shall be liable for any of the Retained Causes of Action.

## **G. Corporate Action**

### **1. Transfer of Assets and Assumption of Liabilities**

On the Effective Date, (a) the Debtor shall, in accordance with this Plan, cause the Liquidating Trust Assets to be transferred to the Liquidating Trust, the Contingent Payments Trust Assets to be transferred to the Contingent Payments Trust, and the Contingent Payments Trust Interest to be transferred to the Contingent Payments Holding Trust; and (b) the Liquidating Trust shall assume all obligations of the Debtor under this Plan other than (i) obligations relating solely to the Contingent Payments Trust Assets, which shall be assumed by the Contingent Payments Trustee; and (ii) obligations relating solely to the Contingent Payments Trust Interest, which shall be assumed by the Contingent Payments Holding Trustee.

### **2. Dissolution of the Debtor; Removal of Directors and Officers; Termination of Employees**

On the Effective Date, and upon the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Contingent Payment Trust Assets to the Contingent Payments Trust, and the Contingent Payments Trust Interest to the Contingent Payments Holding Trust, the Debtor shall be dissolved for all purposes unless the Liquidating Trustee determines that dissolution can have any adverse impact on the Liquidating Trust Assets, the Contingent Payments Trust Assets, or the Contingent Payments Trust Interest, or the Contingent Payments Holding Trustee determines that dissolution can have any adverse impact on the Contingent Payments Holding Trust; *provided, however*, that neither the Debtor nor any party released pursuant to Article IX herein shall be responsible for any liabilities that may arise as a result of non-dissolution of the Debtor; *provided further, however*, that nothing in the Plan shall be construed as relieving the Debtor or the Liquidating Trustee (as applicable) of their duties to pay Statutory Fees to the U.S. Trustee as required by the Bankruptcy Code and applicable law until such time as a final decree is entered in the Debtor's case or the case is dismissed or converted to a case under chapter 7 of the Bankruptcy Code. The Liquidating Trustee shall submit with the appropriate governmental agencies a copy of the Confirmation Order, which Confirmation Order shall suffice for purposes of obtaining a Certificate of Dissolution from the Delaware Secretary of State.

Without limiting the foregoing, on the Effective Date and upon the Debtor causing the Liquidating Trust Assets to be transferred to the Liquidating Trust, the Contingent Payment Trust Assets to the Contingent Payments Trust, and the Contingent Payments Trust Interest to the Contingent Payments Holding Trust, the Debtor shall have no further duties or responsibilities in

connection with implementation of this Plan, and the directors and officers of the Debtor shall be deemed to have resigned and the employees of the Debtor terminated. From and after the Effective Date, the Liquidating Trustee shall be authorized to act on behalf of the Estate, provided that the Liquidating Trustee shall have no duties other than as expressly set forth in this Plan and the Liquidating Trust Agreement (as applicable).

#### **H. Cancellation of Existing Securities and Agreements**

On the Effective Date, all agreements and other documents evidencing (1) any Claim or rights of any Holder of a Claim against the Debtor, including any notes evidencing such Claims; or (2) any Interest in the Debtor, including any options or warrants to purchase Interests, shall be cancelled. The Holders of, or parties to, such cancelled agreements and documents shall have no rights arising from or relating to such agreements and documents or the cancellation thereof, except as to the allowance and distribution on pre-Confirmation Claims as provided pursuant to this Plan.

#### **I. Plan Transactions**

On the Effective Date or as soon reasonably practicable thereafter, the Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, and the Contingent Payments Trustee may take any and all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate this Plan, including, but not limited to, (1) the execution and delivery of appropriate agreements or other documents of consolidation, conversion, disposition, transfer, or dissolution containing terms that are consistent with the terms of this Plan and that satisfy the requirements of applicable law; (2) the execution and delivery of any appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, duty, or obligation on terms consistent with this Plan; (3) the filing of appropriate documents with the appropriate governmental authorities pursuant to applicable law; and (4) any and all other actions that the Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, or the Contingent Payments Trustee determine are necessary or appropriate to effectuate the Plan.

#### **J. Effectuating Documents and Further Transactions**

Upon entry of the Confirmation Order, the Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, and the Contingent Payments Trustee shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, consents, certificates, resolutions, programs, and other agreements or documents, and take such acts and actions as may be reasonable, necessary, or appropriate to effectuate, implement, consummate, and/or further evidence the terms and conditions of this Plan and any transactions described in or contemplated by this Plan. The Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, and the Contingent Payments Trustee (as applicable), all Holders of Claims receiving distributions pursuant to this Plan, and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents, and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan.

**K. Section 1146 Exemption from Certain Taxes and Fees**

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation all such instruments or other documents governing or evidencing such transfers without the payment of any such tax, recordation fee, or governmental assessment. Such exemption specifically applies, without limitation, to the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Contingent Payments Trust Assets to the Contingent Payments Trust, and the Contingent Payments Trust Interest to the Contingent Payments Holding Trust.

**L. Sale Order**

Notwithstanding anything to the contrary herein, nothing in this Plan shall affect, impair or supersede the Sale Orders or Sale Documents, each of which remains in full force and effect and governs in the event of any inconsistency with the Plan.

**M. Authority to Act**

Prior to, on, or after the Effective Date (as appropriate), all matters expressly provided for under this Plan that would otherwise require approval of the stockholders, security holders, officers, directors, or other owners of the Debtor shall be deemed to have occurred and shall be in effect prior to, on, or after the Effective Date (as applicable) pursuant to the applicable law of the state in which the Debtor is formed, without any further vote, consent, approval, authorization, or other action by such stockholders, security holders, officers, directors, or other owners of the Debtor or notice to, order of, or hearing before, the Bankruptcy Court.

**N. No Revesting of Trust Assets**

No Liquidating Trust Asset will revest in the Debtor on or after the date such asset is transferred to the applicable Trust, but will vest upon such transfer in the applicable Trust to be administered by the applicable Trustee in accordance with the Plan and the applicable Trust Agreement.

**O. Settlement of Claims and Controversies**

Pursuant to Section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the distributions and other benefits provided under the Plan, the provisions of the Plan will constitute a good faith compromise and settlement of all claims or controversies relating to the rights that a Debtor may have with respect to any Allowed Claim or Allowed Interest or any distribution. The entry of the Confirmation Order will constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such claims or controversies and the Bankruptcy Court's finding that such compromise or settlement is in the best interests of the Debtor, its Estate and Claim and Interest Holders, and is fair, equitable and reasonable. Notwithstanding any other provision in the Plan, the settlements are approved among the parties

that have agreed to them (among any other party who has expressly entered into a written settlement), and the treatment of claims and interests is being afforded pursuant to Confirmation by satisfying the requirements of Section 1129.

**ARTICLE V.  
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND  
INSURANCE POLICIES**

**A. General Treatment**

On the Effective Date, except as otherwise provided herein (which exclusion includes the Insurance Policies), all Executory Contracts or Unexpired Leases not previously assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court, will be deemed rejected, in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code other than those Executory Contracts or Unexpired Leases that are the subject of a motion to assume that is pending on the Confirmation Date.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Sale Documents or this Plan, and payment of any cure amounts relating thereto, shall, upon satisfaction of the applicable requirements of section 365 of the Bankruptcy Code, result in the full, final, and complete release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults or provisions restricting the change in control of ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

**B. Rejection Damages Claims**

If the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan and Confirmation Order results in a Claim, then, unless otherwise ordered by the Court, such Claim shall be forever barred and shall not be enforceable against the Debtor, the Estate, the Liquidating Trustee, Liquidating Trust, or any of their respective assets and properties unless a Proof of Claim is Filed with the Notice and Claims Agent and served upon counsel to the Liquidating Trustee within thirty (30) days of the Effective Date.

The foregoing applies only to Claims arising from the rejection of an Executory Contract or Unexpired Lease under the Plan and Confirmation Order; any other Claims held by a party to a rejected Executory Contract or Unexpired Lease shall have been evidenced by a Proof of Claim Filed by the applicable Bar Date or shall be barred and unenforceable. Claims arising from the rejection of Executory Contracts or Unexpired Leases under the Plan and Confirmation Order shall be classified as General Unsecured Claims and shall, if Allowed, be treated in accordance with Article III.B.5 herein.

**Any Claims arising from the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan and Confirmation Order that are not timely Filed within thirty (30) days of the Effective Date will be automatically disallowed, forever barred from assertion, and shall not be enforceable against, as applicable, the Debtor, the Estate, the Liquidating Trustee, Liquidating Trust, or any of their respective assets and properties.**

**C. Reservation of Rights**

The inclusion of any contract or lease in the Schedules or in any Plan Supplement shall not constitute an admission by the Debtor that such contract or lease is in fact an Executory Contract or Unexpired Lease or that the Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtor or the Liquidating Trustee (as applicable) may elect within thirty (30) calendar days following entry of a Final Order resolving such dispute to alter the treatment of such contract or lease under the Plan by filing a notice of such election on the docket of the Chapter 11 Case.

**D. Preexisting Obligations to Debtor under Executory Contracts or Unexpired Leases**

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of preexisting obligations owed to the Debtor or Liquidating Trustee (as applicable) under such Executory Contracts or Unexpired Leases. In particular, notwithstanding any non-bankruptcy law to the contrary, the Debtor and the Liquidating Trustee (as applicable) expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties, indemnity or continued maintenance obligations.

**E. Insurance Preservation**

Nothing in the Plan, the Confirmation Order, or the Liquidating Trust Agreement, alters the rights and obligations of the Debtor (and its Estate) and the Debtor's insurers (and third-party claims administrators) under the Insurance Policies or modifies the coverage or benefits provided thereunder or the terms and conditions thereof or diminishes or impairs the enforceability of the Insurance Policies. All of the Debtor's rights and its Estate's rights under any Insurance Policy to which the Debtor and/or the Debtor's Estate may be beneficiaries shall vest with the Liquidating Trust for the benefit of the Liquidating Trust Beneficiaries and all of the beneficiaries of such policies. The Debtor shall be deemed to have assumed only the D&O Policies, and any Insurance Policy other than a D&O Policy shall be deemed terminated on the Effective Date.

**F. Modifications, Amendments, Supplements, Restatements, or Other Agreements**

Modifications, amendments, supplements, and restatements to a prepetition Executory Contract and/or Unexpired Lease that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease.

**ARTICLE VI.  
PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Distribution Record Date**

As of the close of business on the Distribution Record Date, the various transfer registers for each of the Classes of Claims or Interests as maintained by the Debtor, or its respective agents,

shall be deemed closed, and there shall be no further changes in the record holders of any of the Claims or Interests. The Disbursing Agent shall have no obligation to recognize any ownership transfer of the Claims or Interests occurring on or after the Distribution Record Date. The Disbursing Agent shall be entitled to recognize and deal for all purposes hereunder only with those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date, to the extent applicable.

Except as otherwise provided herein, the Disbursing Agent shall make distributions to Holders of Allowed Claims as of the Distribution Record Date at the address for each such Holder as indicated on the Debtor's records as of the date of any such distribution; *provided, however*, that the manner of such distributions shall be determined at the discretion of the Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, or the Contingent Payments Trustee (as applicable); *provided further, however*, that the address for each Holder of an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim Filed by that Holder.

**B. Withholdings**

The Liquidating Trustee, Contingent Payments Holding Trustee, or Contingent Payments Trustee (as applicable) shall (1) withhold, deduct, and pay over to the appropriate governmental authority any amount required to be withheld under tax laws with respect to any distribution pursuant to the Liquidating Trust Agreement, the Contingent Payments Holding Trust Agreement, or the Contingent Payments Trust Agreement (as applicable); and (2) comply with any reporting requirements imposed by any federal, state, local, or foreign taxing authority. The Liquidating Trustee, Contingent Payments Holding Trustee, or Contingent Payments Trustee (as applicable) may withhold all or the appropriate portion of any distribution due to any Liquidating Trust Beneficiary until such time as such Liquidating Trust Beneficiary provides the necessary information to comply with any withholding requirements of any governmental authority. Any tax withheld shall be treated as distributed and received by the applicable beneficiary for all purposes of the Liquidating Trust Agreement, Contingent Payments Holding Trust Agreement, Contingent Payments Trust Agreement, and Plan. If a beneficiary fails to provide the information necessary to comply with any withholding requirements of any governmental authority on or before the day that is one year after the Effective Date of the Plan, then such beneficiary's distribution may be treated as unclaimed property in accordance with the Liquidating Trust Agreement, the Contingent Payments Holding Trust Agreement, or the Contingent Payments Trust Agreement (as applicable).

**C. Date of Distributions**

Distributions made after the Effective Date to Holders of Allowed Claims shall be deemed to have been made on the Effective Date and no interest shall accrue or be payable with respect to such Claims or any distribution related thereto. In the event that any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on or as soon as reasonably practicable after the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

**D. Disbursing Agent**

Except as otherwise provided herein, all distributions under the Plan shall be made by the Disbursing Agent on or after the Effective Date. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties. If the Disbursing Agent is otherwise ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Liquidating Trust.

**E. Powers of Disbursing Agent**

The Disbursing Agent may (1) effect all actions and execute all agreements, instruments, and other documents necessary to carry out the provisions of this Plan; (2) make all distributions contemplated hereby; and (3) perform such other duties as may be required of the Disbursing Agent pursuant to this Plan.

**F. Surrender of Instruments**

As a condition precedent to receiving any distribution under this Plan, each holder of a certificated instrument or note must surrender such instrument or note held by it to the Disbursing Agent or its designee. Any holder of such instrument or note that fails to (1) surrender the instrument or note; or (2) execute and deliver an affidavit of loss or indemnity reasonably satisfactory to the Disbursing Agent and furnish a bond in form, substance, and amount reasonably satisfactory to the Disbursing Agent within six months of being entitled to such distribution shall be deemed to have forfeited all rights and claims and may not participate in any distribution hereunder.

**G. IRS Forms**

In connection with the Plan, to the extent applicable and not an obligation of the Purchasers under the Sale Documents, the Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, and the Contingent Payments Trustee (as applicable) shall comply with all tax withholding and reporting requirements imposed on it by any Governmental Unit, and all distributions made pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, and the Contingent Payments Trustee (as applicable) shall be authorized to take all actions necessary to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, and the Contingent Payments Trustee (as applicable) reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, Liens, and encumbrances.

As a condition precedent to receiving any distribution under this Plan, each Holder of an Allowed Claim that is entitled to a distribution under the Plan must provide the Liquidating Trustee an executed IRS Form. An Allowed Claim of a Holder that fails to provide an executed IRS Form

or provide any other required information to effectuate a distribution within sixty (60) days after service (by first class mail) of a formal request for the same by the Liquidating Trustee shall be deemed disallowed and expunged for purposes of distributions under the Plan.

#### **H. Delivery of Distributions**

Subject to applicable Bankruptcy Rules, all distributions to Holders of Allowed Claims shall be made by the Disbursing Agent, who shall transmit such distributions to the applicable Holders of Allowed Claims or their designees.

If any distribution to a Holder of an Allowed Claim (1) is returned as undeliverable for lack of a current address or otherwise; or (2) is not cashed or otherwise presented for collection by the Holder of the Allowed Claim within ninety (90) calendar days after the mailing of such distribution, the Liquidating Trustee shall be authorized to cancel such distribution check and file with the Bankruptcy Court the name and last known address of the Holder of undeliverable distribution or uncashed distribution, as applicable. If, after the passage of thirty (30) calendar days after such Filing, the payment or distribution on the Allowed Claim still cannot be made, then (1) the Holder of such Claim shall cease to be entitled to the undeliverable distribution or uncashed distribution, which will revert to the Liquidating Trust; and (2) the Allowed Claim of such Holder shall be deemed disallowed and expunged for purposes of further distributions under the Plan.

#### **I. Manner of Payment**

Any distributions to be made by or on behalf of the Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, or the Contingent Payments Trustee (as applicable) pursuant to this Plan shall be made by checks drawn on accounts maintained by the Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, or the Contingent Payments Trustee (as applicable) or by wire transfer if circumstances justify, at the option of the Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, or the Contingent Payments Trustee (as applicable).

#### **J. Foreign Currency Exchange Rate**

As of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in *The Wall Street Journal*, on the Petition Date.

#### **K. Setoffs and Recoupments**

The Debtor and the Liquidating Trustee, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable bankruptcy and/or nonbankruptcy law, without the approval of the Bankruptcy Court and upon no less than fourteen (14) calendar days' notice to the applicable Holder of a Claim, or as may be agreed to by the Holder of a Claim, may, but shall not be required to, set off against or recoup against any Allowed Claim and the distributions to be made pursuant to this Plan on account of such Allowed Claim (before any distribution is to be made on account of such Allowed Claim), any claims of any nature whatsoever that the Debtor or its Estate may have against the Holder of such Allowed Claim; *provided, however*, that neither the failure to effect such a setoff or recoupment nor the allowance of any Claim hereunder shall

constitute a waiver or release by the Debtor or the Liquidating Trustee of any such claim the Debtor or its Estate may have against the Holder of such Claim.

**L. Minimum Distributions**

No payment of Cash in an amount of less than one hundred U.S. dollars (\$100.00) shall be required to be made on account of any Allowed Claim. Such undistributed amount may instead be used in accordance with the Plan and the Liquidating Trust Agreement.

If the Cash available for the final distribution is less than the cost to distribute such funds, the Liquidating Trustee may donate such funds to the unaffiliated charity of its choice.

**M. Allocation of Distributions Between Principal and Interest**

To the extent that any Allowed Claim entitled to a distribution under this Plan includes both principal and accrued but unpaid prepetition interest, such distribution shall be allocated to the principal amount (as determined for U.S. federal income tax purposes) of the Claim first, and then to accrued but unpaid prepetition interest.

**N. Distributions Free and Clear**

Except as otherwise provided in this Plan, any distribution or transfer made under this Plan, including distributions to any Holder of an Allowed Claim, shall be free and clear of any Liens, Claims, encumbrances, charges, and other interests, and no other entity shall have any interest, whether legal, beneficial, or otherwise, in property distributed or transferred pursuant to this Plan.

**O. Claims Paid or Payable by Third Parties**

1. Claims Paid by Third Parties

If a Holder of a Claim receives a payment or other satisfaction of its Claim other than through the Debtor and/or the Liquidating Trustee (as applicable) on account of such Claim, such Claim shall be reduced by the amount of such payment or satisfaction without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, and if the Claim was paid or satisfied in full other than through the Debtor and/or the Liquidating Trustee (as applicable), then such Claim shall be disallowed and any recovery in excess of a single recovery in full shall be paid over to the Liquidating Trustee without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment or satisfaction from a party that is not the Debtor and/or the Liquidating Trustee (as applicable) on account of such Claim, such Holder shall, within fourteen (14) Business Days of receipt thereof, repay or return the distribution to the Debtor or Liquidating Trustee (as applicable), to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan.

2. Claims Payable by Third Parties

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtor's Insurance Policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such Insurance Policy. To the extent that one or more of the Debtor's insurers agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

3. Applicability of Insurance Policies

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable Insurance Policy. Except as set forth in Article IX herein, nothing in this Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtor or any Entity, including the Liquidating Trust, may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

**ARTICLE VII.**

**PROCEDURES FOR RESOLVING UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Allowance of Claims**

After the Effective Date, the Liquidating Trustee shall have and retain any and all rights and defenses that the Debtor had with respect to any Claim or Interest immediately prior to the Effective Date.

**B. Claims Administration Responsibilities**

Except as otherwise specifically provided in the Plan, after the Effective Date, the Liquidating Trustee shall have the authority to: (1) File, withdraw, or litigate to judgment, objections to Claims or Interests; (2) settle or compromise any Disputed Claim, including, for the avoidance of doubt, the Patheon Rejection Claim, without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

**C. Estimation of Claims**

Before or after the Effective Date, the Debtor or the Liquidating Trustee (as applicable) may (but are not required to) at any time request that the Bankruptcy Court estimate any Disputed Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection.

Notwithstanding any provision otherwise herein, a Claim that has been expunged or disallowed from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars (\$0.00) unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions), and the Debtor or the Liquidating Trustee (as applicable) may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim.

**D. Adjustment to Claims Without Objection**

Any Claim that has been paid, satisfied, or assumed by Purchasers in the Sale, or any Claim that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Debtor or the Liquidating Trustee (as applicable) without an objection to such Claim having to be Filed following notice filed on the docket in the Bankruptcy Court of such adjustment or expungement.

**E. Time to File Objections to Claims**

Except as otherwise provided herein, any objections to Claims shall be Filed on or before the Claims Objection Bar Date (as such date may be extended upon presentment of an order to the Bankruptcy Court by the Liquidating Trustee).

**F. Disallowance of Late Claims**

Except as provided herein or otherwise agreed to by the Debtor or the Liquidating Trustee (as applicable), any Holder of a Claim Filed, via Proof of Claim, after the Bar Date shall not receive any distributions on account of such Claims, unless on or before the Confirmation Hearing such late Claim has been deemed timely Filed by a Final Order.

**G. Disputed Claims**

All Claims held by Persons or Entities against whom or which the Debtor has commenced a proceeding asserting a Cause of Action under sections 542, 543, 544, 545, 547, 548, 549, or 550 of the Bankruptcy Code or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 548, 549 or 724(a) of the Bankruptcy Code shall be deemed Disputed Claims pursuant to section 502(d) of the Bankruptcy Code and Holders of such Claims shall not be entitled to vote to accept or reject this Plan. A Claim deemed Disputed pursuant to this Article VII.G shall continue to be Disputed for all purposes until the relevant proceeding against the Holder of such Claim has been settled or resolved by a Final Order and any sums due to the Debtor or the Liquidating Trustee from such Holder have been paid.

**H. Amendment to Claims**

Except as provided herein, on or after the Effective Date, without the prior authorization of the Bankruptcy Court or the Liquidating Trustee, a Claim may not be Filed or amended and any such new or amended Claim Filed shall be deemed disallowed in full and expunged without any further notice to or action, order or approval of the Bankruptcy Court.

**I. No Distributions Pending Allowance**

If an objection to a Claim, Proof of Claim, or portion thereof is Filed, no payment or distribution provided under the Plan shall be made on account of such Claim, Proof of Claim, or portion thereof unless and until the Disputed Claim becomes an Allowed Claim.

**J. Distributions After Allowance**

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Disbursing Agent shall provide to the Holder of such Claim the distribution (if any) to which such Holder is entitled under the Plan as of the Effective Date, without any interest, dividends, or accruals to be paid on account of such Claim. No interest shall accrue or be paid on any Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Claim.

**ARTICLE VIII.  
CONDITIONS PRECEDENT TO THE EFFECTIVE DATE**

**A. Conditions Precedent**

The occurrence of the Effective Date of this Plan is subject to each of the following conditions precedent.

1. The Bankruptcy Court shall have approved the Disclosure Statement as containing adequate information with respect to the Plan within the meaning of section 1125 of the Bankruptcy Code.
2. The Confirmation Order shall have been entered and shall be in full force and effect.
3. There shall have been no modification or stay of the Confirmation Order or entry of any other order prohibiting the transactions contemplated by this Plan from being consummated.
4. The Professional Fee Reserve shall have been fully funded pursuant to the terms of this Plan.
5. All Consenting Noteholder Fees and Expenses incurred and invoiced as of the Effective Date shall have been paid in full.
6. The RSA shall not have been terminated and shall remain in full force and effect and the Debtor and the Consenting Noteholders shall be in compliance therewith.
7. All actions, documents and agreements necessary to implement the Plan shall have been effected, executed and/or tendered for delivery. All conditions precedent to the effectiveness of such documents and agreements shall have been satisfied or waived pursuant to

the terms thereof (or will be satisfied and waived substantially concurrently with the occurrence of the Effective Date).

8. The Liquidating Trustee shall have been appointed and assumed its rights and responsibilities under the Plan and the Liquidating Trust Agreement, as applicable.

9. The Contingent Payments Holding Trustee shall have been appointed and assumed its rights and responsibilities under the Plan and the Contingent Payments Holding Trust Agreement, as applicable.

10. The Contingent Payments Trustee shall have been appointed and assumed its rights and responsibilities under the Plan and the Contingent Payments Trust Agreement, as applicable.

11. The Debtor shall have received all authorizations, consents, regulatory approvals, rulings, letters, no-action letters, opinions, or documents necessary to implement this Plan and any transaction contemplated hereby that are required by law, regulation, or order.

**B. Waiver of Conditions**

Unless otherwise specifically provided for in this Plan, the conditions set forth in Article VIII.A may be waived in whole or in part by the Debtor, with the consent of the Majority Consenting Noteholders, without notice to any other parties in interest or the Bankruptcy Court and without a hearing.

**C. Effect of Vacatur of the Confirmation Order**

If the Confirmation Order is vacated (1) the Plan will be null and void in all respects, including with respect to the release of Claims and distributions for Allowed Claims; and (2) nothing contained in the Plan will (a) constitute a waiver or release of any Claims by or against, or any Interest in, the Debtor or (b) prejudice in any manner the rights, including any claims or defenses, of the Parties or any other party in interest.

**D. Votes Solicited in Good Faith**

Upon entry of the Confirmation Order, the Debtor will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code.

**ARTICLE IX.  
RELEASE, INJUNCTION, AND RELATED PROVISIONS**

**A. Releases by the Debtor**

**As of the Effective Date, pursuant to section 1123(b) of the Bankruptcy Code and for good and valuable consideration, each Released Party is deemed released by the Debtor and its estate from any and all claims and Causes of Action, whether known or unknown, including any claims and Causes of Action that the Debtor or its estate would have been legally entitled to assert in its own right including any claims or Causes of Action that could**

be asserted derivatively or on behalf of the Debtor (or its estate), that such Entity would have been legally entitled to assert (whether individually or collectively), based on, or relating to, or in any manner arising from, in whole or in part, the Debtor (including the management, ownership, or operation thereof, or otherwise), any securities issued by the Debtor and the ownership thereof, the Debtor's in- or out-of-court restructuring efforts, any avoidance actions, the Chapter 11 Case, the formulation, preparation, dissemination, negotiation, or filing of the Term Sheet, the RSA, the Disclosure Statement, the Sale Motion, the Plan, the Plan Supplement, or any other transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Sale, the Plan, the Plan Supplement, the Chapter 11 Case, the filing of the Chapter 11 Case, the pursuit of the Confirmation Order, the pursuit of the Sale Order, the pursuit of consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence or omission taking place on or before the Effective Date; *provided, however*, that this provision shall not operate to waive or release any Claims or Causes of Action related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted actual intentional fraud, willful misconduct, or gross negligence of such Person. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (1) any post Effective Date obligations of any party or entity under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan; (2) any obligations under or in respect of the Sale Order; or (3) the Retained Causes of Action, recovery on account of which, other than with respect to the Severance Payment Claim, will be limited to the extent of available insurance proceeds, if any, provided under the D&O Policies in accordance with the terms thereof and subject to the provisions and limitations of any such D&O Policies and applicable law.

Each Person and Entity deemed to grant the Debtor releases shall be deemed to have granted such releases notwithstanding that such Person or Entity may hereafter discover facts in addition to, or different from, those which such Person or Entity now knows or believes to be true, and without regard to the subsequent discovery or existence of such different or additional facts, and such Person or Entity expressly waives any and all rights that such Person or Entity may have under any statute or common law principle, including, without limitation, section 1542 of the California Civil Code, to the extent such section is applicable, which would limit the effect of such releases to those claims or Causes of Action actually known or suspected to exist on the Effective Date. Section 1542 of the California Civil Code generally provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

**B. Releases by Holders of Claims and Interests**

As of the Effective Date, each Releasing Party is deemed to have released and discharged each Released Party from any and all claims and Causes of Action, whether

known or unknown, including any claims and Causes of Action that the Debtor or its estate would have been legally entitled to assert in its own right including any claims or Causes of Action that could be asserted derivatively or on behalf of the Debtor (or its estate), that such Entity would have been legally entitled to assert (whether individually or collectively), based on, relating to, or in any manner arising from, in whole or in part, the Debtor (including the management, ownership or operation thereof, or otherwise), any securities issued by the Debtor and the ownership thereof, the Debtor's in- or out-of-court restructuring efforts, any avoidance actions, the Chapter 11 Case, the formulation, preparation, dissemination, negotiation, or filing of the Term Sheet, the RSA, the Disclosure Statement, the Sale Motion, the Plan, the Plan Supplement, or any other transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Sale, the Plan, the Plan Supplement, the Chapter 11 Case, the filing of the Chapter 11 Case, the pursuit of the Confirmation Order, the pursuit of the Sale Order, the pursuit of consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence or omission taking place on or before the Effective Date; *provided, however*, that this provision shall not operate to waive or release any Claims or Causes of Action related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted actual intentional fraud, willful misconduct, or gross negligence of such Person; *provided further, however*, that notwithstanding anything to the contrary in the Disclosure Statement and Plan, this provision shall not apply with respect to any unimpaired Claim until such unimpaired Claim has been paid in full in the Allowed amount of such Claim determined in accordance with applicable law, or on terms agreed to between the Holder of such Claim and the Debtor or the Liquidating Trustee, as applicable, at which time this provision shall apply in all respects as to the applicable unimpaired claim. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (1) any post Effective Date obligations of any party or entity under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan; (2) any obligations under or in respect of the Sale Order; or (3) the Retained Causes of Action, recovery on account of which, other than with respect to the Severance Payment Claim, will be limited to the extent of available insurance proceeds, if any, provided under the D&O Policies in accordance with the terms thereof and subject to the provisions and limitations of any such D&O Policies and applicable law.

Each Person and Entity deemed to grant the releases described in this Section shall be deemed to have granted such releases notwithstanding that such Person or Entity may hereafter discover facts in addition to, or different from, those which such Person or Entity now knows or believes to be true, and without regard to the subsequent discovery or existence of such different or additional facts, and such Person or Entity expressly waives any and all rights that such Person or Entity may have under any statute or common law principle, including, without limitation, section 1542 of the California Civil Code, to the extent such section is applicable, which would limit the effect of such releases to those claims or Causes of Action actually known or suspected to exist on the Effective Date. Section 1542 of the California Civil Code generally provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF

**EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”**

**C. Exculpation**

**Except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur liability for, and each Exculpated Party is exculpated from any Cause of Action for any Claim related to any act or omission in connection with, relating to, or arising out of, the Chapter 11 Case, the formulation, preparation, dissemination, negotiation, or filing of the Debtor’s in-court restructuring efforts, the Term Sheet, the RSA, the Disclosure Statement, the Sale Motion, the Plan, the Plan Supplement, or any restructuring transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Sale, the Plan, the Plan Supplement, the Chapter 11 Case, the filing of the Chapter 11 Case, the pursuit of the Confirmation Order, the pursuit of the Sale Order, the pursuit of consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence or omission taking place between the Petition Date and the Effective Date, except for claims related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted actual intentional fraud, willful misconduct, or gross negligence of such Person, but in all respects such Entities shall be entitled to reasonably rely upon the written advice of counsel with respect to their duties and responsibilities pursuant to the Plan.**

**D. Injunction**

Except as otherwise provided in the Plan or the Confirmation Order, all Entities who have held, hold, or may hold claims, Interests, Causes of Action, or liabilities that: (1) are subject to compromise and settlement pursuant to the terms of the Plan; (2) have been released pursuant to the Plan; (3) were purchased and released by a purchaser in connection with the Sale; (4) are subject to exculpation pursuant to the Plan; or (5) are otherwise discharged, satisfied, stayed, released, or terminated pursuant to the terms of the Plan, are permanently enjoined and precluded, from and after the Effective Date, from commencing or continuing in any manner, any action or other proceeding, including on account of any claims, Interests, Causes of Action, or liabilities that have been compromised or settled against the Debtor or any Entity so released or exculpated (or the property or estate of any Entity, directly or indirectly, so released or exculpated) on account of, or in connection with or with respect to, any discharged, released, settled, compromised, or exculpated claims, Interests, Causes of Action, or liabilities, including being permanently enjoined and precluded, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtor, the Liquidating Trust, the Released Parties, or Exculpated Parties (as applicable): (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims or Interests; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such claims or Interests; (3) creating, perfecting, or enforcing any lien or encumbrance of any kind against such Entities or the property or the estate of such Entities on account of or in connection with or with respect to any such claims or Interests; (4) asserting any right of setoff or subrogation

of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such claims or Interests unless such Entity has timely asserted such setoff right in a document filed with the Bankruptcy Court explicitly preserving such setoff, and notwithstanding an indication of a Claim or Interest or otherwise that such Entity asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims or Interests released or settled pursuant to the Plan.

Upon the Bankruptcy Court's entry of the Confirmation Order, all Holders of Claims and Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of this Plan by the Debtor, the Liquidating Trustee, and their respective affiliates, employees, advisors, officers and directors, or agents.

**E. Release Opt-Out for Lead Plaintiff**

Notwithstanding anything to the contrary set forth in this Plan, the solicitation materials (including but not limited to the Disclosure Statement, the non-voting status notice, and the Release Opt-Out), the Plan Supplement, or the Confirmation Order, Jeffrey M. Fiore ("Lead Plaintiff"), the court-appointed lead plaintiff in the securities class action captioned as *Michael Pardi v. Tricida, Inc. and Gerrit Klaerner, Case No. 4:21-cv-00076-HSG* (the "Pardi Litigation"), pending in the United States District Court for the Northern District of California, Oakland Division, together with each member of the putative class Lead Plaintiff represents (including as may be redefined or certified) in the Pardi Litigation (the "Proposed Class"), shall be deemed to have opted out of the third party release contained in Article IX.B herein with respect to claims asserted or to be asserted against any non-Debtor party in the Pardi Litigation (the "Opt-Out Claims"), and shall not be required to execute, complete, or deliver the Release Opt-Out forms by the Voting Deadline / opt-out deadline. The Confirmation Order shall (a) contain the provisions of this paragraph and (b) provide that Lead Plaintiff and the Proposed Class are not Releasing Parties with respect to the Opt-Out Claims.

**F. No Discharge**

Because the Debtor is liquidating, it is not entitled to a discharge of obligations pursuant to section 1141 of the Bankruptcy Code with regard to any Holders of Claims or Interests.

**G. Release of Liens**

Except as otherwise provided herein or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estate shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Debtor and its successors and assigns.

If any Holder of an Other Secured Claim or any agent for such Holder has filed or recorded publicly any Liens and/or security interests to secure such Holder's Other Secured Claim, as soon

as practicable on or after the Effective Date, such Holder (or the agent for such Holder) shall take any and all steps requested by the Liquidating Trustee that are necessary or desirable to record or effectuate the cancellation and/or extinguishment of such Liens and/or security interests, including the making of any applicable filings or recordings, and the Liquidating Trustee shall be entitled to make any such filings or recordings on such Holder's behalf.

## **ARTICLE X. RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, or related to, the Chapter 11 Case, the Sale, the Sale Documents, the Confirmation Order, and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to each of the following:

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims or Interests.

2. Resolve any cases, controversies, suits, or disputes that may arise in connection with Claims, including Claim objections, allowance, disallowance, subordination, estimation and distribution.

3. Decide and resolve all matters related to the granting and denying, in whole or in part of, any applications for allowance of compensation or reimbursement of expenses to Retained Professionals authorized pursuant to the Bankruptcy Code or the Plan.

4. Resolve any matters related to: (a) the assumption or assumption and assignment of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor may be liable and to hear, determine, and, if necessary, liquidate, any cure amount arising therefrom; and/or (b) any dispute regarding whether a contract or lease is or was executory or expired.

5. Adjudicate, decide or resolve any motions, adversary proceedings, contested, or litigated matters, and any other matters, and grant or deny any applications involving the Debtor that may be pending on the Effective Date.

6. Adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code.

7. Adjudicate, decide or resolve any motions, adversary proceedings, contested, or litigated matters, and any other matters relating to the Retained Causes of Action.

8. Enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan or the Disclosure Statement.

9. Resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the interpretation or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan.

10. Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with enforcement of the Plan.

11. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the releases, injunctions, and other provisions contained in the Plan and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions.

12. Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated.

13. Determine any other matters that may arise in connection with or related to the Sale Documents, the Disclosure Statement, the Plan, and the Confirmation Order.

14. Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan.

15. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by any Holder for amounts not timely repaid.

16. Adjudicate any and all disputes arising from or relating to distributions under the Plan.

17. Consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order.

18. Hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or the Confirmation Order.

19. Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code.

20. To recover all assets of the Debtor and property of the Debtor's Estate, wherever located.

21. To consider requests for extensions of the term of the Liquidating Trust as provided herein.

22. To hear and determine any Causes of Action that may be brought by the Liquidating Trustee.

23. To hear and determine any other rights, claims, or Causes of Action held by or accruing to the Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, or the

Contingent Payments Trustee pursuant to the Bankruptcy Code or any applicable state or federal statute or legal theory.

24. Enter an order or final decree concluding or closing the Chapter 11 Case.
25. Enforce all orders previously entered by the Bankruptcy Court.
26. Hear any other matter over which the Court has jurisdiction.

## **ARTICLE XI.**

### **MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

#### **A. Modification of the Plan**

Subject to the limitations contained in the Plan, the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules (1) to amend or modify the Plan prior to the entry of the Confirmation Order, including amendments or modifications to satisfy section 1129 of the Bankruptcy Code; and (2) after the entry of the Confirmation Order, the Debtor may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

In the event that the Sale is not consummated prior to the Effective Date, at the request of the Majority Consenting Noteholders, the Debtors and the Majority Consenting Noteholders shall use commercially reasonable efforts to modify the Plan to effectuate and structure the Plan in a tax efficient manner as determined by the Debtor and the Majority Consenting Noteholders.

#### **B. Other Amendments**

The Debtor may make appropriate non-material, technical adjustments and modifications to this Plan or the Plan Supplement prior to the Effective Date without further order or approval of the Bankruptcy Court.

#### **C. Effect of Confirmation on Modifications**

Entry of the Confirmation Order shall mean that all modifications or amendments to the Plan since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

#### **D. Revocation of Plan; Effect of Non-Occurrence of Conditions to the Effective Date**

Subject to the conditions to the Effective Date, the Debtor, reserves the right to revoke or withdraw the Plan prior to the entry of the Confirmation Order and to File subsequent plans of reorganization or liquidation. If the Debtor revokes or withdraws the Plan, or if entry of the Confirmation Order or the Effective Date does not occur, then (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan, assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement

executed pursuant hereto shall be deemed null and void; and (3) nothing contained in the Plan, the Confirmation Order, or the Disclosure Statement shall (a) constitute a waiver or release of any Claims, Interests, or Causes of Action, (b) prejudice in any manner the rights of the Debtor or any other Entity, or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtor or any other Entity.

**ARTICLE XII.  
MISCELLANEOUS PROVISIONS**

**A. Debtor's Operation from Confirmation Hearing Through Effective Date**

During the period from the Confirmation Hearing through and until the Effective Date, the Debtor shall continue to operate as a debtor in possession, subject to the oversight of the Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules, and all orders of the Bankruptcy Court that are then in full force and effect.

**B. Immediate Binding Effect**

Notwithstanding Bankruptcy Rules 3020(e) or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and the documents and instruments contained in the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the Debtor, the Liquidating Trustee, all Holders of Claims against and Interests in the Debtor (regardless of whether any such Holder has voted or failed to vote to accept or reject this Plan and regardless of whether any such Holder is entitled to receive any distribution under this Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan, any and all non-Debtor parties to Executory Contracts and Unexpired Leases, and all parties in interest.

**C. Additional Documents**

On or before the Effective Date, the Debtor may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, or the Contingent Payments Trustee (as applicable), all Holders of Claims or Interests receiving distributions pursuant to the Plan, and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may reasonably be necessary or advisable to effectuate the provisions and intent of the Plan or the Confirmation Order.

**D. Substantial Consummation**

On the Effective Date, this Plan shall be deemed to be substantially consummated (within the meaning set forth in section 1101 of the Bankruptcy Code) pursuant to section 1127(b) of the Bankruptcy Code.

**E. Reservation of Rights**

The Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order. None of the Filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by the Debtor with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of the Debtor with respect to the Holders of Claims or Interests prior to the Effective Date.

**F. Successors and Assigns**

The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, beneficiaries or guardian, if any, of each Entity.

**G. Determination of Tax Liabilities**

As of the Effective Date, the Liquidating Trustee will be responsible for preparing and filing any tax forms or returns on behalf of the Debtor's Estate and Liquidating Trust (to the extent not the responsibility of the Purchasers); *provided, however*, that the Liquidating Trustee shall not be responsible for preparing or filing any tax forms for Holders of Interests in the Debtor (which Interests shall be cancelled pursuant to this Plan), but shall provide such Holders with any information reasonably required to prepare such forms. As of the Effective Date, the Contingent Payments Holding Trustee will be responsible for preparing and filing any tax forms or returns on behalf of the Contingent Payments Holding Trust, and the Contingent Payments Trustee will be responsible for preparing and filing any tax forms or returns on behalf of the Contingent Payments Trust. The Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, and the Contingent Payments Trustee shall have the right to request an expedited determination of any tax liability pursuant to section 505 of the Bankruptcy Code, including on any unpaid liability of the Debtor's Estate, the Liquidating Trust, the Contingent Payments Holding Trust, or the Contingent Payments Trust for any tax incurred during the administration of the Chapter 11 Case.

**H. Dissolution of the Committee**

On the Effective Date, any duly appointed official committee of unsecured creditors will dissolve and the members thereof will be released and discharged from all duties and obligations arising from or related to the Chapter 11 Case; *provided, however*, that, after the Effective Date, the Committee will continue to exist solely with respect to (i) any applications for Professional Fee Claims or expense reimbursements for members of the Committee, including preparing same, objecting to same, defending same and attending any hearing with respect to same; (ii) any motions or other actions seeking enforcement or implementation of the provisions of the Plan or Confirmation Order; and (iii) any appeal pending as of the Effective Date or filed thereafter, the outcome of which could reasonably be expected to affect in any material way the treatment of the Holders of General Unsecured Claims, including, but not limited to, any cases, controversies, suits or disputes arising in connection with the consummation, interpretation, implementation or enforcement of the Plan or the Confirmation Order. Following the Effective Date, the Committee's Professionals shall be entitled to reasonable compensation for services rendered in connection with the matters identified in clauses (i) – (iii). Any such payments made in connection

therewith shall be made without any further notice to or action, order, or approval of the Bankruptcy Court.

### **I. Preservation of Books and Records**

Until the entry of a final order of judgment or settlement in the litigation captioned as *Michael Pardi v. Tricida, Inc. and Gerritt Klaerner, Case No. 4:21-cv-00076-HSG* (the “Pardi Litigation”) pending in the United States District Court for the Northern District of California, Oakland Division, the Debtor and the Purchaser and any other transferee of the Debtor’s books, records, documents, files, electronic data (in whatever format, including native format), or any tangible object potentially relevant to the Pardi Litigation, wherever stored (collectively, the “Potentially Relevant Books and Records”) shall preserve and maintain the Potentially Relevant Books and Records, and shall not destroy, abandon, transfer, or otherwise render unavailable such Potentially Relevant Books and Records without providing counsel to the plaintiff in the Pardi Litigation at least sixty days’ advance written notice and an opportunity to object and be heard by a court of competent jurisdiction. In the event the plaintiff in the Pardi Litigation timely objects to any such destruction, abandonment, or transfer, the Potentially Relevant Books and Records shall be preserved pending a final order of the Bankruptcy Court or other court of competent jurisdiction; *provided, however*, notwithstanding the foregoing the Debtor will retain true copies of any Potentially Relevant Books and Records transferred to the Purchaser, subject to the same conditions described in this paragraph, and the Debtor shall have primary responsibility for responding to and/or producing documents in response to any discovery requests in the Pardi Litigation, including any discovery seeking production of books and records transferred to the Purchaser.

### **J. Notices**

In order for all notices, requests, and demands to or upon the Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, or the Contingent Payments Trustee, as the case may be, to be effective such notices, requests and demands shall be in writing (including by electronic mail) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by email, when received, and served on or delivered to the following parties:

<b>Debtor</b>	<b>Counsel to the Debtor</b>
Tricida, Inc. 7000 Shoreline Court, Suite 201 South San Francisco, CA 94080 Attention: Bob McKague, Executive Vice President, General Counsel, & Chief Compliance Officer E-mail address: bmckague@tricida.com	Sidley Austin LLP 787 Seventh Avenue New York, New York 10019 Attention: Geoff Levin and Sam Newman Email: glevin@sidley.com, sam.newman@sidley.com -and- Young, Conaway Stargatt & Taylor, LLP Rodney Square 1000 North King Street Wilmington, Delaware 19801

	Attention: Sean M. Beach and Allison S. Mielke Email: sbeach@ycst.com amielke@ycst.com
<b>Liquidating Trustee</b>	<b>Counsel to the Liquidating Trustee</b>
To be included in the Plan Supplement	To be included in the Plan Supplement
<b>Contingent Payments Holding Trustee</b>	<b>Counsel to the Contingent Payments Holding Trustee</b>
To be included in the Plan Supplement	To be included in the Plan Supplement
<b>Contingent Payments Trustee</b>	<b>Counsel to the Contingent Payments Trustee</b>
To be included in the Plan Supplement	To be included in the Plan Supplement

After the Effective Date, Persons or Entities that wish to continue to receive documents pursuant to Bankruptcy Rule 2002 must File a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Liquidating Trustee is authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities that Filed such renewed requests.

**K. Term of Injunctions or Stays**

Except as otherwise provided in this Plan, to the maximum extent permitted by applicable law and subject to the Bankruptcy Court's post-confirmation jurisdiction to modify the injunctions and stays under this Plan (1) all injunctions with respect to or stays against an action against property of the Debtor or the Debtor's Estate arising under or entered during the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code, and in existence on the date the Confirmation Order is entered, shall remain in full force and effect until such property is no longer property of the Debtor or the Debtor's Estate; and (2) all other injunctions and stays arising under or entered during the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code shall remain in full force and effect until the earliest of (a) the date that the Chapter 11 Case is closed pursuant to a Final Order of the Bankruptcy Court, or (b) the date that the Chapter 11 Case is dismissed pursuant to a Final Order of the Bankruptcy Court. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect indefinitely.

**L. Entire Agreement**

On the Effective Date, the Plan and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

**M. Plan Supplement Exhibits**

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. Copies of such exhibits and documents shall be made available upon written request to Debtor's counsel or Liquidating Trustee's counsel (as

applicable) at the address above or by downloading such exhibits and documents free of charge from the Notice and Claims Agent's website.

Unless otherwise ordered by the Bankruptcy Court, to the extent any exhibit or document in the Plan Supplement is inconsistent with the terms of any part of the Plan that does not constitute the Plan Supplement, such part of the Plan that does not constitute the Plan Supplement shall control. The documents in the Plan Supplement are considered an integral part of the Plan and shall be deemed approved by the Bankruptcy Court pursuant to the Confirmation Order.

**N. Governing Law**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Delaware, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control), and corporate governance matters.

**O. Nonseverability of Plan Provision Upon Confirmation**

If any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation.

The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is the following: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the consent of the Debtor, the Liquidating Trustee, the Contingent Payments Holding Trustee, and the Contingent Payments Trustee (as applicable); and (3) nonseverable and mutually dependent.

**P. Closing of Chapter 11 Case**

After the full administration of the Chapter 11 Case, the Liquidating Trustee shall promptly File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022, a motion pursuant to Local Rule 3022-1(a), and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

*[Remainder of Page Intentionally Left Blank]*

Dated: March 21, 2023

Respectfully submitted,

/s/ Bob McKague  
By: Bob McKague  
Executive Vice President, General Counsel,  
and Chief Compliance Officer  
Tricida, Inc.

**EXHIBIT A**

**Tricida – Retained Causes of Action**

Other than with respect to the Severance Payment Claim (as defined below), recovery on the Retained Causes of Action shall be limited to available insurance, if any, provided under the D&O Policies, subject to the provisions of any such D&O Policies and applicable law. Other than with respect to the Severance Payment Claim, (i) no party shall have a right to recovery on the Retained Causes of Action outside or in excess of the available insurance under the D&O Policies, and (ii) no person or entity other than the Debtor's insurers under the D&O Policies shall be liable for any of the Retained Causes of Action.

1. Breach of duty of care against Company's officers for decision to reopen the Company's stock trading window.
2. Breach of duty of care by the Company's Board and officers regarding the design of the 301 Trials.
3. Breach of the duty of loyalty by a former Director in connection with trading activity by an affiliate of such director that contributed to the impairment of the Company's NOLs.
4. Breach of the duty of loyalty related to insider trading under *Brophy* against a former director of the Company.
5. Breach of the duty of care against Company's Board for authorizing the Bonus Retention Plan.
6. Breach of the duty of loyalty by the Company's Board approving the making of a payment under the Bonus Retention Plan to an officer of the Company who is also a member of the Board.
7. Claim for avoidance of certain Severance Payments made to RIF'ed employees of the Company (the "**Severance Payment Claim**").

**EXHIBIT B**

**Liquidation Analysis**

Tricida Inc.  
Liquidation Analysis  
\$ in 000's

Assumed conversion date 5/5/2023

	Item #	Chapter 11 Plan Confirmation Scenario						Chapter 7 Liquidation Scenario				
		Low Recovery Scenario			High Recovery Scenario			Book Value	Low Recovery Scenario		High Recovery Scenario	
		Estimated Value	% of Book Value	Estimated Value	% of Book Value	Estimated Value	% of Book Value		Estimated Value	% of Book Value		
<b>A Asset Proceeds</b>												
Cash	1	36,111	36,111	100.0%	36,111	100.0%	36,111	36,111	100.0%	36,111	100.0%	
Cash Proceeds from Sale of IP	2	250	250	100.0%	250	100.0%	250	250	100.0%	250	100.0%	
Cash Proceeds from Sale of Equipment	2	235	235	100.0%	235	100.0%	235	235	100.0%	235	100.0%	
Tax Refunds	3	1,300	1,300	100.0%	1,300	100.0%	1,300	1,300	100.0%	1,300	100.0%	
Prepaid Expenses and Other Current Asset	4	5,926	59	1.0%	148	2.5%	5,926	-	0.0%	59	1.0%	
Property and Equipment, Net	5	460	-	0.0%	-	0.0%	460	-	0.0%	-	0.0%	
<b>Total Asset Proceeds</b>		<b>44,282</b>	<b>37,955</b>	<b>85.7%</b>	<b>38,044</b>	<b>85.9%</b>	<b>44,282</b>	<b>37,896</b>	<b>85.6%</b>	<b>37,955</b>	<b>85.7%</b>	
<b>B Liquidation Fees and Costs</b>												
Operating Costs	6		205		205			485		485		
Professional, Legal, and Liquidator Fees	7		6,605		6,605			8,392		8,394		
<b>Total Liquidation Fees and Costs</b>			<b>6,810</b>		<b>6,810</b>			<b>8,877</b>		<b>8,877</b>		
<b>Net Estimate Proceeds Available for Administrative and Priority Claims</b>			<b>31,145</b>		<b>31,234</b>			<b>29,019</b>		<b>29,078</b>		

	Item #	Estimated Allowed Claim	Estimate Payable to Creditors	Recovery Estimate %	Estimate Payable to Creditors	Recovery Estimate %	Estimate Payable to Creditors	Recovery Estimate %	Estimate Payable to Creditors	Recovery Estimate %
		Claim	Creditors	Estimate %						
<b>C Administrative and Priority Claims</b>										
503(b)9 Claims	8	-	-	0.0%	-	0.0%	-	0.0%	-	0.0%
Accrued Payroll and PTO	9	-	-	0.0%	-	0.0%	-	0.0%	-	0.0%
Administrative Claims	10	800	800	100.0%	800	100.0%	800	100.0%	800	100.0%
Priority Unsecured Claims	11	50	50	100.0%	50	100.0%	50	100.0%	50	100.0%
<b>Total Administrative and Priority Claims</b>		<b>850</b>	<b>850</b>	<b>100.0%</b>	<b>850</b>	<b>100.0%</b>	<b>850</b>	<b>100.0%</b>	<b>850</b>	<b>100.0%</b>
<b>Net Estimate Proceeds Available for Unsecured Claims</b>			<b>30,295</b>		<b>30,384</b>		<b>28,169</b>		<b>28,228</b>	
<b>D Unsecured Claims</b>										
De Minimis Claims	12	120	60	50.0%	60	50.0%	9	7.7%	9	7.7%
Noteholder Claims	13	201,089	16,645	8.3%	16,694	8.3%	15,502	7.7%	15,535	7.7%
Patheon Rejection Claims	14	149,512	12,376	8.3%	12,412	8.3%	11,526	7.7%	11,550	7.7%
General Unsecured Claims	15	14,678	1,215	8.3%	1,218	8.3%	1,132	7.7%	1,134	7.7%
<b>Total Unsecured Claims</b>		<b>365,399</b>	<b>30,295</b>	<b>8.3%</b>	<b>30,384</b>	<b>8.3%</b>	<b>28,169</b>	<b>7.7%</b>	<b>28,228</b>	<b>7.7%</b>
<b>Net Estimate Proceeds Available for Equity</b>			<b>-</b>		<b>-</b>		<b>-</b>		<b>-</b>	

## COMPONENTS OF LIQUIDATION MODEL

### **A. Asset Proceeds**

#### **1. Cash Balance on Conversion Date.**

The Debtor's estimated cash balance as of the conversion date is \$36.1 million per the updated cash flow forecast. The cash balance does not include accrued but unpaid professional fees, including the United States Trustee fees and the plan trust reserve amounts which are expected to be disbursed following the effective date. Other changes to the estimated cash balance on conversion are the result of timing and case updates.

#### **2. Cash from Sale Proceeds**

Proceeds from the sale of company assets total \$485,000. At auction, the Debtor received winning bids of \$250,000 for its intellectual property and \$235,000 for certain equipment.

#### **3. Tax Refunds**

The Debtor has received an Employee Retention Credit refund, which is in the process of being deposited in its account.

#### **4. Prepaid Expenses and Other Current Assets**

Prepaid Expenses and Other Current Assets are shown at book value as of January 31, 2023, per Debtor company records. Estimated recoveries are estimates based on market data.

#### **5. Property and Equipment, Net**

Property and Equipment, Net are shown at book value as of January 31, 2023, per Debtor company records. No further proceeds are expected beyond the \$235,000 received for certain equipment at the auction.

### **B. Liquidation Fees and Costs**

#### **6. Operating Costs**

Operating Costs consist of estimated fees related to document storage, IT co-location, board fees and other wind down costs post-effective date. Ongoing operating costs under the chapter 11 scenario are expected to vary from the chapter 7 scenario due to duration of the plan trusts and other required activities.

#### **7. Professional, Legal, and Liquidator Fees**

Professional fees under the chapter 11 scenario consist of professionals advising the Debtor, the Committee, the Consenting Noteholders, and United States Trustee per the cash flow forecast

submitted under the Restructuring Support Agreement. Fees are expected to be remitted post the effective date. Fees under the chapter 7 scenario consist of estimated costs of professionals as set forth above, the estimated cost of professionals advising a chapter 7 trustee, as well as the chapter 7 trustee fees payable pursuant to sections 326 and 330 of the Bankruptcy Code.

**C. Administrative and Priority Claims**

**8. 503(b)(9) Claims**

The Debtor does not anticipate any 503(b)(9) claims being asserted against the estate.

**9. Accrued Payroll and PTO**

All accrued payroll and PTO balances are expected to be disbursed prior to the effective date, per the cash flow forecast submitted under the Restructuring Support Agreement.

**10. Administrative Claims**

Administrative claims estimated to consist of accrued rent, IT, and document storage costs not yet remitted prior to the effective date. Any unpaid professional fees not included in the Professional, Legal, and Liquidator Fees estimate set forth above would also be included in this class.

**11. Priority Unsecured Claims**

Priority unsecured claims consist of projected state tax payments accrued but not yet remitted prior to the effective date.

**D. Unsecured Claims**

**12. De Minimis Claims**

The plan contemplates paying any claimants with Allowed Claims of \$7,500 or less, or who otherwise elect to reduce their Allowed Claim to \$7,500 or less, 50% of their total Claim, up to an aggregate recovery amount for such Allowed *De Minimis* Unsecured Claims of \$60,000.

**13. Noteholder Claims**

The Noteholder Claims consist of the Allowed Noteholder Claims in the aggregate of \$201,088,888.89.

**14. Patheon Rejection Claim**

The Patheon Rejection Claim amount is based on their asserted claim, converted to United States Dollars.

### **15. General Unsecured Claims**

This class includes all general unsecured claims, less any claims opting into the De Minimis class.

**EXHIBIT C**

**Creditors' Committee's Schedule of Retained Causes of Action**

### **Committee Schedule of Retained Causes of Action**

The Committee believes the Plan should retain all Causes of Action as Retained Causes of Action, including Causes of Action against the Debtor, the Debtor's current and former employees, and the Debtor's current and former directors, managers, officers, committee members, members of any governing body, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, Affiliates, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, attorneys (including any other attorneys or professionals retained by any current or former director or manager in his or her capacity as director or manager of an Entity), accountants, investment bankers, consultants, representatives, and other professionals and advisors and any such Person's or Entity's respective heirs, executors, estates, and nominees.

The Debtor has reviewed these claims and Causes of Action and believes that any claims or Causes of Action being released under the Plan have de minimis value or are being released in exchange for adequate consideration pursuant to the Plan.

The Committee believes all claims and Causes of Action should be retained as Retained Causes of Action under the Plan and not Released under the Plan including, but not limited to the following:

- a) **Causes of Action Relating to Opening of Stock Trading Window After the Debtor's Failed Clinical Trial Made Public**
  - (i) Breaches of fiduciary duty, including duty of care, duty of loyalty and duty of oversight, and any aiding and abetting of such breach of fiduciary duty, by the Company's directors and officers with respect to Company's decision to reopen the Company's stock trading window on November 21, 2022. The Committee estimates the gross value of these duty of care and duty of loyalty claims to be no less than \$40 million.
  
- b) **Causes of Action Relating to Bonus Retention Plan and Payments, Including Payments After the Debtor's Failed Clinical Trial Made Public**
  - (ii) Breaches of fiduciary duty, including the duty of care and duty of loyalty, and any aiding and abetting of such breach of fiduciary duty, by the Company's directors for authorizing the Bonus Retention Plan which paid out approximately \$5.5 million to the Debtor's employees, including the payment of \$2.4 million to the Debtor's officers in December 2022. The Committee estimates the gross value of these claims to be no greater than \$5.5 million.
  
  - (iii) Waste and unjust enrichment relating to the making of, and receipt of, a payment under the Bonus Retention Plan to the Company's employees.

The Committee estimates the gross value of these claims to be no greater than \$5.5 million.

- (iv) Breaches of fiduciary duty, including the duty of care and the duty of loyalty, and any aiding and abetting of such breach of fiduciary duty, by the Company's Board in approving the making of a payment under the Bonus Retention Plan to the Company's Chief Executive Officer. The Committee estimates the gross value of these claims to be no greater than \$780,000.
- (v) Waste and unjust enrichment relating to making of a payment under the Bonus Retention Plan to the Company's Chief Executive Officer. The Committee estimates the gross value of these claims to be no greater than \$780,000.

c) **Design, Implementation, Oversight and Reporting of Veverimer Clinical Trials**

- (vi) Breaches of fiduciary duty, including duty of care, duty of loyalty and duty of oversight, and any aiding and abetting of such breach of fiduciary duty, against the Company's directors and officers, regarding the design, implementation, oversight and reporting of the Company's clinical trials involving the Veverimer drug being developed by the Company, including, but not limited to clinical trials TRCA-101, TCRA-303, TRCA-303E and VALOR-CKD (collectively the "Veverimer Trials"). The Committee has not assigned a value to these potential claims.
- (vii) Any other actionable claims relating to the Veverimer Trials.

d) **Impairment of Net Operating Losses**

- (viii) Breach of fiduciary duty, including the duty of care and duty of loyalty, against former director, Dr. David Bonita, in connection with his sale, if any, of the Company's stock, and any sale of the Company's stock by any parties he is affiliated with, including Orbimed Advisors LLC's, which caused or contributed to the impairment of the Company's net operating losses or other tax attributes (the "NOLs"). The Committee has yet to ascribe a value to these potential claims.
- (ix) Any other actionable claims relating to the impairment of the NOLs.

e) **Insider Trading**

- (x) Breaches of fiduciary duty, including the duty of care and the duty of loyalty, relating to insider trading under *Brophy v. Cities Service Co.*, 70 A.2d 5 (Del. Ch. 1949) against any of the Debtor's current or former directors and officers. The Committee has yet to ascribe a value to these potential claims.

- (xi) Breaches of fiduciary duty, including the duty of care and duty of loyalty, relating to insider trading under *Brophy v. Cities Service Co.*, 70 A.2d 5 (Del. Ch. 1949) against Orbimed Advisors, LLC (including its affiliated companies) or any other shareholder of the Company. The Committee has yet to ascribe a value to these potential claims.

f) **Bankruptcy Preference and Fraudulent Transfer Claims**

- (xii) Claims for avoidance and recovery of preferences under Chapter 5 of the Bankruptcy Code, including Bankruptcy Code section 547, against the Debtor's current or former directors and officers. The Committee estimates the gross value of the claims at \$8.0 million.
- (xiii) Claims for avoidance and recovery of certain Severance Payments made to RIF'ed employees of the Debtor. The Committee estimates the gross value of these claims at \$1.7 million.
- (xiv) Claims for avoidance and recovery of certain Cash Retention Awards paid to any Company's employees and personnel in connection with the Bonus Retention Plan. The Committee estimates the gross value of these claims at \$5.5 million.
- (xv) Claims for avoidance and recovery of certain Incentive Plan Payments made to the Company's current or former directors and officers. The Committee estimates the gross value of these claims at \$2.4 million.
- (xvi) Claims for avoidance and recovery of actual and constructive fraudulent transfers under applicable state law and Chapter 5 of the Bankruptcy Code, including Bankruptcy Code sections 544 and 548, regarding the Severance Payments, the Incentive Plan Payments and the Bonus Retention Awards. The Committee estimates the gross value of these claims at \$9.6 million.
- (xvii) Claims for avoidance and recovery of preferences under Chapter 5 of the Bankruptcy Code, including Bankruptcy Code section 547, against any of the parties identified as receiving payments within 90 days of the Petition Date as identified on the Debtor's statement of financial affairs (Doc. No. 111), expressly incorporated into the Disclosure Statement and Plan by reference. The Committee estimates the gross value of these claims at \$17.1 million.
- (xviii) Claims for avoidance and recovery of fraudulent transfers under applicable state law and Chapter 5 of the Bankruptcy Code, including Bankruptcy Code sections 544 and 548 against any party. The Committee has yet to ascribe a value to these potential claims.
- (xix) Claims relating to the overpayment, early payment or prepayment of any secured or unsecured loan or note obligation owed by the Debtor,

including but not limited to any principal, interest, or other amount paid by the Debtor under such secured or unsecured loan or note, within four (4) years of the Petition Date, including, but not limited to, any payment to Hercules Capital, Inc. or under the 3.5% Convertible Senior Notes. The Committee estimates the gross value of these claims at \$86.6 million.

- (xx) Claims or causes of action for gross negligence, bad faith and willful and wanton misconduct against the Debtor's present and former directors, officers, shareholders, any proposed Released Party, and any other responsible party, whether such claim or Cause of Action arose as a result of a breach of fiduciary duty, breach of contract, negligence, wrongful dividend, bonus payment, retention payment, incentive compensation payment, excessive compensation, or any other right or remedy at law. The Committee has yet to ascribe a value to these potential claims.
- (xxi) Claims Related to Insurance Policies. Any and all insurance contracts and insurance policies to which the Debtor is a party or pursuant to which the Debtor has any rights whatsoever, regardless of whether such contract or policy is specifically identified in the Plan, including, Causes of Action against insurance carriers, reinsurance carriers, insurance brokers, underwriters, occurrence carriers, or surety bond issuers relating to coverage, indemnity, contribution, reimbursement, or any other matters. The Committee has yet to ascribe a value to these potential claims.
- (xxii) Claims Related to Taxing Authorities. Any and all tax obligations to which the Debtor is a party or pursuant to which the Debtor has any rights whatsoever, including, without limitation, against or related to all entities that owe or that may in the future owe money related to tax refunds to the Debtor, regardless of whether such entity is specifically identified herein. The Committee estimates the gross value of these claims at \$6.1 million.
- (xxiii) Claims, Defenses, Cross-Claims, and Counter-Claims Related to Litigation and Possible Litigation. All Causes of Action against or related to all entities that are party to or that may in the future become party to litigation, arbitration, or any other type of adversarial proceeding or dispute resolution proceeding, whether formal or informal or judicial or non-judicial, regardless of whether such entity is specifically identified in the Plan.
- (xxiv) All Causes of Action against or related to all entities that owe or that may in the future owe money to the Debtor, regardless of whether such entity is expressly identified in the Plan. The Debtor expressly reserves all Causes of Action against or related to all entities who assert or may assert that the Debtor owe money to them. The claims and Causes of Action reserved include Causes of Action against vendors, suppliers of goods and services, or any other parties: (a) for overpayments, back charges, duplicate payments, improper holdbacks, deductions owing or improper deductions

taken, deposits, warranties, guarantees, indemnities, recoupment, or setoff; (b) for wrongful or improper termination, suspension of services or supply of goods, or failure to meet other contractual or regulatory obligations; (c) for failure to fully perform or to condition performance on additional requirements under contracts with any one or more of the Debtor before the assumption or rejection, if applicable, of such contracts; (d) for payments, deposits, holdbacks, reserves or other amounts owed by any creditor, utility, supplier, vendor, insurer, surety, factor, lender, bondholder, lessor or other party; (e) for any liens, including mechanics', artisans', materialmens', possessory or statutory liens held by the Debtor; (f) for counter-claims and defenses related to any contractual obligations; (g) for any turnover actions arising under Bankruptcy Code sections 542 or 543; and (h) for unfair competition, interference with contract or potential business advantage, breach of contract, infringement of intellectual property or any business tort claims.

- (xxv) Claims Related to Deposits, Adequate Assurance, and Other Collateral Postings. All Causes of Action based in whole or in part upon any and all postings of a security deposits, adequate assurance payment, or any other type of deposit, prepayment, or collateral, regardless of whether such posting of security deposit, adequate assurance payment, or any other type of deposit, prepayment or collateral is specifically identified herein. The Committee has yet to ascribe a value to these potential claims.
- (xxvi) Claims Related to Liens. All Causes of Action based in whole or in part upon any and all liens regardless of whether such lien is specifically identified herein.