

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

In re:

Zosano Pharma Corporation,¹

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

**PLAN SUPPLEMENT TO THE CHAPTER 11 PLAN OF LIQUIDATION
OF ZOSANO PHARMA CORPORATION**

The above-captioned debtor and debtor-in-possession (the “**Debtor**”) submits this plan supplement (the “**Plan Supplement**”) in support of, and in accordance with, the *Chapter 11 Plan of Liquidation of Zosano Pharma Corporation* [Docket No. 232] (as the same may be further amended, supplemented or modified from time to time, the “**Plan**”).² The documents contained in this Plan Supplement are integral to and part of the Plan and, if the Plan is approved, shall be approved in the Confirmation Order.

This Plan Supplement includes the following documents, each as may be amended, modified, or supplemented from time to time by the Debtor in accordance with the Plan:

- **Exhibit A**: Disclosures relating to the Liquidating Trustee,
- **Exhibit B**: Liquidating Trust Agreement,
- **Exhibit C**: Proposed Confirmation Order.

The documents contained in this Plan Supplement are in substantially final form, but remain subject to continuing negotiations among the Debtor and other interested parties with respect thereto. The Debtor reserves all rights to amend, modify or supplement the Plan Supplement, and any of the documents and designations contained therein, at any time before the

¹ The business address and the last four (4) digits of the Debtor’s federal tax identification number is Zosano Pharma Corporation, 34790 Ardentech Court, Fremont, California 94555 (8360).

² Capitalized terms used herein but otherwise undefined shall have the meaning ascribed to such terms in the Plan.



Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE that copies of the Plan and the Plan Supplement are available on the claims agent's website at <http://www.kcellc.net/zosanopharma>, as well as by contacting the undersigned counsel.

Dated: November 3, 2022

GREENBERG TRAURIG, LLP

/s/ Dennis A. Meloro

Dennis A. Meloro (DE Bar No. 4435)
1007 North Orange Street, Suite 1200
Wilmington, Delaware 19801
Telephone: (302) 661-7000
Facsimile: (302) 661-7360
Email: melorod@gtlaw.com

-and-

John D. Elrod (Admitted *pro hac vice*)
Terminus 200
3333 Piedmont Road NE, Suite 2500
Atlanta, Georgia 30305
Telephone: (678) 553-2100
Facsimile: (678) 553-2212
Email: elrodj@gtlaw.com

*Counsel for the Debtor
and Debtor-in-Possession*

Exhibit A

DISCLOSURES RELATING TO LIQUIDATING TRUSTEE

The Liquidating Trustee shall be SierraConstellation Partners, LLC.

The Liquidating Trustee's compensation shall be as follows: for each month following the entry of the Confirmation Order, the Liquidating Trustee shall receive, in addition to its reasonable expenses, the following fixed monthly compensation:

- Months 1 to 6: \$25,000 per month;
- Months 7 to 12: \$15,000 per month;
- Months 13 to 24: \$10,000 per month;
- For each month thereafter until the closing of the case: \$5,000 per month.

Exhibit B

FORM OF LIQUIDATING TRUST AGREEMENT

LIQUIDATING TRUST AGREEMENT AND DECLARATION OF TRUST

This liquidating trust agreement and declaration of trust (the “Agreement” or “Trust Agreement”), dated as of December ___, 2022, is made by and between Zosano Pharma Corporation, as a debtor and debtor in possession (the “Debtor”) in its chapter 11 bankruptcy case (the “Chapter 11 Case”) pending in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) and SierraConstellation Partners, LLC (the “Trustee,” and together with the Debtor, each, a “Party” and collectively, the “Parties”).

RECITALS

1. On June 1, 2022, the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code. The Chapter 11 Case is styled and numbered *In re Zosano Pharma Corporation*, Case No. 22-10506 (JKS).

2. On October 10, 2022, the Debtor filed the *Chapter 11 Plan of Liquidation for Zosano Pharma Corporation* [Dkt. No. 232] (as may be amended, supplemented or modified from time to time, the “Plan”).¹

3. On November [], 2022, the Bankruptcy Court entered the *Order (I) Confirming Chapter 11 Plan of Liquidation for Zosano Pharma Corporation and (II) Granting Related Relief* [Dkt. No. ___] (the “Confirmation Order”) confirming the Plan, which became effective on December [], 2022 (the “Effective Date”).

4. The Plan provides for the establishment of the Liquidating Trust (the “Trust”) on the Effective Date.

5. The Confirmation Order provides for the appointment of the Trustee as the Liquidating Trustee of the Trust, and the Plan and this Agreement provide for the appointment as necessary of any successor Liquidating Trustee of the Trust.

6. The Trust is established for the benefit of the Holders of: Allowed Class 3 Claims (the “Primary Beneficiaries”), which will be issued Liquidating Trust Primary Recovery Units and Allowed Class 4 Claims (the “Secondary Beneficiaries”), which will be issued Liquidating Trust Secondary Recovery Units. The Primary and Secondary Beneficiaries (each a “Beneficiary” and collectively, “Beneficiaries”) are entitled to receive certain distributions under Article III of the Plan. For the avoidance of doubt, as of the Effective Date of the Plan and in accordance therewith, (A) a Primary Beneficiary is entitled to a distribution from the Trust only after payment in full of all Allowed Administrative Claims, Professional Fee Claims, Priority Tax Claims, Secured Claims, and Other Priority Claims in accordance with the Plan, and (B) each Secondary Beneficiary has a subordinated beneficial interest in the Trust that is contingent on payment in full of the Primary Beneficiaries.

¹ All capitalized terms used in this Agreement but not otherwise defined herein shall have the meanings set forth in the Plan.

7. The Trust is established for the primary purpose of liquidating the Liquidating Trust Assets and all other property held from time to time by the Trust under this Agreement and any proceeds thereof and earnings thereon (collectively, the “Trust Assets”), maximizing recoveries for the benefit of the Beneficiaries, and making distributions in accordance with the Plan, Confirmation Order and this Agreement, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purposes of the Trust.

8. Pursuant to the Plan, the Debtor, the Trust, Trustee, and Beneficiaries are required to treat the transfer of assets to the Trust in accordance with the terms of the Plan as a transfer to the Beneficiaries, followed by a transfer by such Beneficiaries to the Trust, and the Beneficiaries will be treated as the grantors and owners thereof.

9. The Liquidating Trust shall be established for the purpose of liquidating the Liquidating Trust Assets, maximizing recoveries for the benefit of the Liquidating Trust Beneficiaries, and making distributions in accordance with this Plan to the Liquidating Trust Beneficiaries, with no objective to continue or engage in the conduct of a trade or business in accordance with Treas. Reg. § 301.7701-4(d). The Liquidating Trust is intended to qualify as a “grantor trust” for 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.

10. Pursuant to the Plan, the Trust is intended to qualify as a “grantor trust” for federal income tax purposes and, to the extent permitted by applicable law, for state and local income tax purposes, with the Beneficiaries treated as grantors and owners of the Trust.

11. The Trust is further intended to be exempt from the requirements of, pursuant to section 1145 of the Bankruptcy Code, the Securities Act of 1933, as amended, and any applicable state and local laws requiring registration of securities.

NOW, THEREFORE, in accordance with the Plan and the Confirmation Order, and in consideration of the promises, and the mutual covenants and agreements of the Parties contained in the Plan and herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and affirmed, the Parties agree and declare as follows:

DECLARATION OF TRUST

The Parties enter into this Agreement to effectuate the creation of the Trust and the distribution of the Trust Assets to the Beneficiaries pursuant to, and to the extent set forth in, the Plan and the Confirmation Order, it being understood that the Trust Assets shall first be used to pay in full all Allowed Administrative Claims, Professional Fee Claims, Priority Tax Claims, Secured Claims, and Other Priority Claims in accordance with the Plan;

Pursuant to Article IV. B of the Plan and Section 2.3 of this Agreement, on the Effective Date, pursuant to sections 1141(b) and 1141(c) of the Bankruptcy Code, the Trust Assets shall vest in the Trust free and clear of all Claims, Liens, encumbrances, charges, and other interests except as otherwise expressly provided in the Plan; and

The Trust Assets are to be held by the Trust and applied on behalf of the Trust by the Trustee on the terms and conditions set forth herein, for the benefit of the Beneficiaries and for no other party; provided, that the Trust Assets shall first be used to pay in full all Allowed Administrative Claims, Professional Fee Claims, Priority Tax Claims, Secured Claims, and Other Priority Claims in accordance with the Plan.

ARTICLE I

RECITALS, PLAN DEFINITIONS, OTHER

DEFINITIONS, INTERPRETATION, AND CONSTRUCTION

1.1 Recitals. The Recitals are incorporated into and made terms of this Agreement.

1.2 Definitions. For purposes of this Agreement, unless otherwise defined herein, the terms of this Agreement shall have the meanings set forth in the Plan.

1.2.1 “Trust Claim(s)” shall mean Claims as defined in the Plan.

1.2.2 “Trust Distributee(s)” shall mean the holder of an Allowed Trust Claim that is entitled to a distribution from the Trust in accordance with the Plan and this Agreement.

1.2.3 “Trust Interest(s)” shall mean, collectively, the Liquidating Trust Primary Recovery Units and the Liquidating Trust Secondary Recovery Units.

1.3 Interpretation; Headings. All references herein to specific provisions of the Plan or Confirmation Order are without exclusion or limitation of other applicable provisions of the Plan or Confirmation Order. Words denoting the singular number shall include the plural number and vice versa, and words denoting one gender shall include the other gender. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the provisions of this Agreement.

1.4 Construction of Agreement. This Agreement shall not be construed to impair or limit in any way the rights of any Person under the Plan.

1.5 Conflict Between Plan Documents. In the event of any inconsistency between the Plan and the Confirmation Order, as applicable, on the one hand, and this Agreement, on the other hand, the Plan or the Confirmation Order, as applicable, shall control and take precedence.

ARTICLE II

ESTABLISHMENT OF TRUST

2.1 Effectiveness of Agreement; Name of Trust. This Agreement shall become effective on the Effective Date. The Trust shall be officially known as the “Zosano Pharma Corporation Liquidating Trust.”

2.2 Purpose of Trust. The Parties, pursuant to the Plan and in accordance with Bankruptcy Code, hereby create the Trust for the primary purpose of liquidating its assets and the Trust Assets, paying and satisfying the obligations, fees and expenses of the Trust, indemnifying the Trustee as provided for herein, maximizing recoveries for the benefit of the Beneficiaries, and making distributions in accordance with the Plan, Confirmation Order and this Agreement, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purposes of the Trust.

2.3 Transfer of Trust Assets.

2.3.1 Transfer of Trust Assets. Pursuant to section 1141 of the Bankruptcy Code and the Plan, the Debtor and its Estate hereby grant, release, assign, transfer, convey and deliver, on behalf of the Beneficiaries, the Trust Assets to the Trust, as of the Effective Date, free and clear of Claims, Liens, interests, encumbrances, and contractually imposed restrictions except as otherwise provided in the Plan, in trust for the benefit of the Beneficiaries to be administered and applied as specified in this Agreement, the Plan and Confirmation Order.

2.3.2 Prior to the Effective Date, the Debtor shall as and when reasonably requested by the Trustee, execute and deliver or cause to be executed and delivered all such documents (in recordable form where necessary or appropriate) and the Debtor shall take or cause to be taken such further action as the Trustee may reasonably deem necessary or appropriate, to vest or perfect in the Trust or confirm to the Trustee title to and possession of the Trust Assets. The Trustee shall have no duty to arrange for any of the transfers contemplated under this Agreement or by the Plan or to ensure their compliance with the terms of the Plan and the Confirmation Order, and shall be conclusively entitled to rely on the legality and validity of such transfers.

2.3.3 Title to Trust Assets. Pursuant to the Plan, all of the Debtor's and its Estate's right, title, and interest in and to the Trust Assets, including all such assets held or controlled by third parties, are automatically vested in the Trust on the Effective Date, free and clear of Claims, Liens, interests, encumbrances, and contractually imposed restrictions except as otherwise expressly provided in the Plan, and such transfer is on behalf of the Beneficiaries to establish the Trust. The Trust shall be authorized to obtain possession or control of, liquidate, and collect all of the Trust Assets in the possession or control of third parties, consistent with the provisions of the Plan and Confirmation Order. To the extent any law or regulation prohibits the transfer of ownership of any of the Trust Assets from the Debtor and its Estate to the Trust and such law is not superseded by the Bankruptcy Code, the Trust's interest shall be a lien upon and security interest in such Trust Assets, in trust, nevertheless, for the sole use and purposes set forth in Section 2.2 of this Agreement, and this Agreement shall be deemed a security agreement granting such interest thereon without need to file financing statements or mortgages. By executing this Agreement, the Trustee on behalf of the Trust hereby accepts all of such property as Trust Assets, to be held in trust for the Beneficiaries, subject to the terms of this Agreement, the Plan and Confirmation Order.

2.4 Capacity of Trust. Notwithstanding any state or federal law to the contrary or anything herein, the Trust shall itself have the capacity, in its own right and name, to act or refrain from acting, including the capacity to sue and be sued and to enter into contracts. The Trust may

alone be the named movant, respondent, party plaintiff or defendant, or the like in all adversary proceedings, contested matters, and other state or federal proceedings brought by or against it, and may settle and compromise all such matters in its own name.

2.5 Acceptance by Trustee. The Trustee accepts its appointment as Liquidating Trustee of the Trust.

ARTICLE III

PAYMENT OF ADMINISTRATIVE CLAIMS, PROFESSIONAL FEE CLAIMS, PRIORITY TAX CLAIMS, SECURED CLAIMS, AND OTHER PRIORITY CLAIMS

3.1 Administrative Claims (other than Professional Fee Claims). Prior to any distribution to a Beneficiary or to Holders of Priority Tax Claims, Other Priority Claims, and Secured Claims (if any), the Trustee shall pay in full, or set a reserve for the payment in full, of all Allowed Administrative Claims.

3.2 Professional Fee Claims and Professional Fee Escrow Account.

3.2.1 Prior to any distribution to a Beneficiary or to Holders of Priority Tax Claims, Other Priority Claims, and Secured Claims (if any), the Trustee shall pay in full, or set a reserve for the payment in full, of all Allowed Professional Fee Claims of Retained Professionals and of OCPs.

3.2.2 Without limiting the foregoing, and notwithstanding anything to the contrary herein, the Trustee shall maintain the Professional Fee Escrow Account for the benefit of Retained Professionals as is currently being maintained by Debtor (i.e., in a separate bank account and on a per-Retained Professional basis). On or before the Effective Date, the Debtor shall provide the Trustee with an open register of how much money is escrowed for each Retained Professional; provided, further, that the Liquidating Trustee is permitted to open a new bank account to transfer funds from the Debtor's Professional Fee Escrow Account, at which point such new account shall be deemed the Professional Fee Escrow Account and the funds therein shall be used pursuant to the terms of the Plan. The Professional Fee Escrow Account and amounts funded therein for a Retained Professional are and shall continue to be maintained in trust solely for each Retained Professional separately on a per-Retained Professional basis. Notwithstanding anything to the contrary in this Agreement, the funds in the Professional Fee Escrow Account shall not be considered property of the Debtor, its Estate, or the Trust; provided, however, the Trust shall have a reversionary interest in any Cash remaining in the Professional Fee Escrow Account after payment in full of all Professional Fee Claims Allowed by the Bankruptcy Court at any time without any further notice, action, or order of the Bankruptcy Court. Unless otherwise agreed to (1) by the Debtor and the Retained Professional prior to the Effective Date or (2) by the Trustee and the Retained Professional after the Effective Date, the amount of Professional Fee Claims owing to such Retained Professional shall be paid in Cash by the Liquidating Trustee as soon as reasonably practicable after its Professional Fee Claims are Allowed by order of the Bankruptcy Court, first from the Professional Fee Escrow Account and second, if any Allowed Professional Fee Claim remains outstanding, from the Trust Assets. For the avoidance of doubt, the amount escrowed for each Retained Professional on the Effective Date is not a cap on such Retained Professional's Professional Fee Claim.

3.3 Priority Tax Claims. Prior to any distribution to a Beneficiary, the Trustee shall pay in full, or set a reserve for the payment in full, of all Allowed Priority Tax Claims.

3.4 Other Priority Claims. Prior to any distribution to a Beneficiary, the Trustee shall pay in full, or set a reserve for the payment in full, of all Allowed Other Priority Claims.

3.5 Secured Claims. Prior to any distribution to a Beneficiary, the Trustee shall pay in full, or set a reserve for the payment in full, of for the payment of all Allowed Secured Claims. Notwithstanding anything to the contrary herein, any requirement for the payment in full, or reserving funds for the payment in full, of Allowed Secured Claims, shall only apply if the Trustee elects to provide the Holder of an Allowed Secured Claim with Cash on account of the Allowed Secured Claim, and shall not apply if the Trustee elects to provide the Holder with the collateral securing such Holder's Allowed Secured Claim, in each case, in accordance with the Plan.

ARTICLE IV

ADMINISTRATION OF TRUST

4.1 Rights, Powers, and Privileges of Trustee Generally. Except as otherwise provided in this Agreement, the Plan, or the Confirmation Order, as of the date that the Trust Assets are transferred to the Trust, the Trustee on behalf of the Trust may control and exercise authority over the Trust Assets, over the acquisition, management and disposition thereof, and over the management and conduct of the affairs of the Trust. In administering the Trust Assets, the Trustee shall endeavor not to unduly prolong the Trust's duration, with due regard that undue haste in the administration of the Trust Assets may fail to maximize value for the benefit of the Beneficiaries and otherwise be imprudent and not in the best interests of the Beneficiaries.

4.1.1 Power to Contract. In furtherance of the purpose of the Trust, and except as otherwise specifically restricted in the Plan, Confirmation Order, or this Agreement, the Trustee shall have the right and power on behalf of the Trust, and also may cause the Trust, to enter into any covenants or agreements binding the Trust, and to execute, acknowledge and deliver any and all instruments that are necessary or deemed by the Trustee to be consistent with and advisable in furthering the purpose of the Trust.

4.1.2 Ultimate Right to Act Based on Advice of Counsel or Other Professionals. Nothing in this Agreement shall be deemed to prevent the Trustee from taking or refraining to take any action on behalf of the Trust that, based upon the advice of counsel or other professionals, the Trustee determines it is obligated to take or to refrain from taking in the performance of any duty that the Trustee may owe the Beneficiaries or any other Person under the Plan, Confirmation Order, or this Agreement.

4.2 Powers of Trustee. Without limiting the generality of the above Section 4.1, in addition to the powers granted in the Plan, the Trustee shall have the power to take the following actions on behalf of the Trust and any powers reasonably incidental thereto that the Trustee, in its reasonable discretion, deems necessary or appropriate to fulfill the purpose of the Trust, unless otherwise specifically limited or restricted by the Plan or this Agreement:

4.2.1 To act on behalf of the Trust, including the right to effectuate all actions and execute all agreements, instruments and other documents, and exercise all rights and privileges previously held by the Debtor, necessary or convenient to implement the provisions of the Plan and this Trust Agreement;

4.2.2 With respect to any Trust Assets, to exercise in a manner not inconsistent with the Plan all power and authority that may be or could have been exercised, commence or continue all proceedings that may be or could have been commenced or continued and take all actions that may be or could have been taken by any officer, director or shareholder of the Debtor with like effect as if authorized, exercised and taken by unanimous action of such officers, directors and shareholders, including, without limitation, the dissolution of each Debtor;

4.2.3 To manage, monitor and enforce all of the Debtor's and the Estate's rights, and interests under the Plan, the Confirmation Order, the Trust Agreement, any other agreements of the Debtor, and any other Orders of the Bankruptcy Court;

4.2.4 To authorize and make through the Disbursing Agent (as necessary), distribution to holders of Allowed Claims provided for or contemplated under the Plan or Trust Agreement, including, without limitation, Section 3 of the Trust Agreement;

4.2.5 Except to the extent set forth in the Plan, to object to any Trust Claims regardless of whether such Claim was Disputed on the Effective Date, to compromise or settle any Trust Claim regardless of whether such Claim was Disputed on the Effective Date, prior to objection without supervision or approval of the Bankruptcy Court, free of any restriction of the Bankruptcy Code, the Bankruptcy Rules, and the guidelines and requirements of the U.S. Trustee, other than those restrictions expressly imposed by the Plan, the Confirmation Order or the Trust Agreement;

4.2.6 To make decisions, without further Bankruptcy Court approval, regarding the retention or engagement of professionals, employees and consultants by the Trust and the Trustee and to pay the fees and charges incurred by the Trustee on the Trust's behalf on or after the Effective Date for fees and expenses of professionals (including those retained by the Trustee), disbursements, expenses or related support services relating to the Trust;

4.2.7 To (a) file, if necessary, any and all tax and information returns required with respect to the Trust as a grantor trust pursuant to Treas. Reg. 1.671-4(a) or otherwise, (b) make tax elections by and on behalf of the Trust, and (c) pay taxes, if any, payable by the Trust;

4.2.8 To take all other actions not inconsistent with the provisions of the Plan that the Trustee deems reasonably necessary or desirable with respect to administering the Plan;

4.2.9 To implement and/or enforce all provisions of the Plan, including entering into any agreement or executing any document required by or consistent with the Plan, the Confirmation Order or the Trust Agreement;

4.2.10 To abandon in any commercially reasonable manner, including abandonment or donation to a charitable organization of its choice, any Trust Assets in the reasonable business judgment of the Trustee;

4.2.11 Except as otherwise set forth herein, to prosecute and/or settle any Causes of Action, with or without approval of the Bankruptcy Court, and exercise, participate in or initiate any proceeding before the Bankruptcy Court or any other court of appropriate jurisdiction and participate as a party or otherwise in any administrative, arbitral or other nonjudicial proceeding and pursue to settlement or judgment such Causes of Action;

4.2.12 To purchase or create and carry all insurance policies and pay all insurance premiums and costs the Trustee deems necessary or advisable;

4.2.13 To collect and liquidate and/or distribute all Trust Assets pursuant to the Plan, the Confirmation Order and the Trust Agreement;

4.2.14 To calculate and make all distributions on behalf of the Trust to holders of Allowed Claims and allowed interests provided for in, or contemplated by, the Plan and this Agreement, including, without limitation, all Allowed Administrative Claims, Professional Fee Claims, Priority Tax Claims, Secured Claims, and Other Priority Claims;

4.2.15 To establish, adjust and maintain any reserves for Disputed Trust Claims administered by the Trust;

4.2.16 To hold any legal title to any and all of the Trust Assets;

4.2.17 If any of the Trust Assets are situated in any state or other jurisdiction in which the Trustee is not qualified to act as trustee, to nominate and appoint a Person duly qualified to act as trustee in such state or jurisdiction in accordance with Section 9.9 of this Agreement;

4.2.18 To retain any and all Insurance Policies of the Debtor providing coverage with respect to Causes of Action;

4.2.19 In reliance upon the Debtor's Schedules and the Claims Register maintained in the Chapter 11 Case, maintain a register evidencing the beneficial interest herein held by each Beneficiary and, in accordance with Section 4.8 of this Agreement, such register may be the official Claims register maintained in the Chapter 11 Case to the extent of any Trust Claim is reflected thereon;

4.2.20 Exercise such other powers as may be vested in or assumed by the Trustee pursuant to the Plan, the Trust Agreement, the Confirmation Order, other orders of the Bankruptcy Court, or as may be necessary and proper to carry out the provisions of the Plan. Solely with respect to any Trust Asset, the Trustee shall stand in the same position as the Debtor with respect to any claim the Debtor may have to an attorney-client privilege, the work-product doctrine, or any other privilege, and the Trustee shall succeed to all of the Debtor's rights to preserve, assert or waive any such privilege; and

4.2.21 To dissolve the Debtor and file an application for entry by the Bankruptcy Court of a final decree closing the Chapter 11 Case.

4.3 Authority. No Person dealing with the Trust shall be obligated to inquire into the Trustee's authority in connection with the receipt, preservation, management, or disposition of Trust Assets.

4.4 Abandonment. If, in the Trustee's reasonable judgment, any non-cash Trust Assets cannot be sold in a commercially reasonable manner (if applicable) or the Trustee believes in good faith that such property has inconsequential value to the Trust or its Beneficiaries, the Trustee shall have the right to cause the Trust to abandon or otherwise dispose of such property, without further authority or approval of the Bankruptcy Court, including by donation of such property to a charitable organization.

4.5 Responsibility for Administration of Trust Claims. From and after the Effective Date, the Trust shall be responsible for, among other things, administering and paying distributions provided for under the Plan to Trust Distributees. Except as expressly provided otherwise in the Plan, and except to the extent the applicable Trust Claims have been previously Allowed prior to the Effective Date, the Trust shall control and effectuate the Trust Claims reconciliation process, including to compromise or settle any Trust Claim without any further notice to or action, order or approval by the Bankruptcy Court, or to object to or seek to subordinate any Trust Claim. The Trust shall be entitled to assert all of the Debtor's and the Estate's rights, without limitation, under section 558 of the Bankruptcy Code. The Trust may also seek estimation of any Trust Claims under and subject to section 502(c) of the Bankruptcy Code.

4.6 Agents and Professionals. The Trustee may, but shall not be required to, consult with and retain attorneys, financial advisors, accountants, appraisers, and other professionals the Trustee believes have qualifications necessary to assist in the administration of the Trust, including professionals previously retained in the Chapter 11 Case. For the avoidance of doubt, and without limitation of applicable law, nothing in this Agreement shall limit the Trustee from engaging counsel or other professionals to do work for the Trust. The Trustee may pay the reasonable salaries, fees and expenses of such Persons in the ordinary course of business and without the necessity of submission of any applications or motions for approval to the Bankruptcy Court or need for further order of the Bankruptcy Court.

4.7 Safekeeping and Investment of Trust Assets. All Trust Assets received by the Trustee shall, until liquidated, if necessary, and distributed or paid over time as provided herein and in the Plan, be held in trust for the benefit of the Beneficiaries, but need not be segregated in separate accounts from other Trust Assets (except for the Professional Fee Escrow Account), unless and to the extent required by law or the Plan. The Trustee shall not be under any obligation to invest Trust Assets. Neither the Trust nor the Trustee shall have any liability for interest or producing income on any Cash received by them and held for distribution or payment to the Beneficiaries, except as such interest shall actually be received by the Trust or Trustee, which shall be distributed consistent with the Plan. Except as otherwise provided by the Plan, the powers of the Trustee to invest any Cash held by the Trust, other than those powers reasonably necessary to maintain the value of the assets and to further the Trust's liquidating purpose, shall be limited

to powers to invest in demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary liquid investments, such as treasury bills and short-term money market funds; provided, however, that the scope of permissible investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treas. Reg. § 3.01.7701-4(d), may be permitted to hold pursuant to the Treasury Regulations, or any modification of the IRS guidelines, whether set forth in IRS rulings, IRS pronouncements, or otherwise. Notwithstanding the foregoing, the Trustee shall not be prohibited from engaging in any trade or business on its own account, provided that such activity does not interfere or conflict with the Trustee's administration of the Trust.

4.8 Maintenance and Disposition of Trust and Debtor Records. The Trustee shall maintain accurate records of the administration of Trust Assets, including receipts and disbursements and other activity of the Trust. The Trust may, but has no obligation to, engage a claims agent (including, but not limited to, the Notice and Claims Agent) to continue to maintain and update the Claims Register maintained in the Chapter 11 Case throughout the administration of the Trust. In any case, to the extent of any Trust Claims reflected thereon, the Claims Register may serve as the Trustee's register of beneficial interests held by Beneficiaries. The books and records maintained by the Trustee and any records of the Debtor transferred to the Trust may be disposed of by the Trustee at the later of (i) such time as the Trustee determines that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Trust or its Beneficiaries and (ii) upon the termination and completion of the winding down of the Trust.

4.9 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, except for any acts or omissions to act that are the result of gross negligence or willful misconduct, as set forth more fully in the Liquidating Trust Agreement.

4.10 Reporting Requirements and Payment of Statutory Fees.

4.10.1 The Trustee shall provide the U.S. Trustee and the Bankruptcy Court the information and reports they may reasonably request concerning Trust administration.

4.10.2 The Trustee shall file with the Bankruptcy Court and submit to the U.S. Trustee regular post-confirmation quarterly disbursement reports, on or before the twentieth (20th) day of each of January, April, July, and October, as appropriate, until the Chapter 11 Case are closed, converted, or dismissed, whichever happens earlier.

4.10.3 The Trustee shall file with the Bankruptcy Court and submit to the U.S. Trustee the final monthly operating reports for the Debtor.

4.10.4 The Trustee shall pay all Statutory Fees from the Trust Assets as such fees become due and payable.

4.11 No Bond Required; Procurement of Insurance. Notwithstanding any state or other applicable law to the contrary, the Trustee (including any successor Trustee) shall be exempt from giving any bond or other security in any jurisdiction and shall serve hereunder without bond. The Trustee is hereby authorized, but not required to obtain all reasonable insurance coverage for itself, its agents, representatives, employees or independent contractors, including, without limitation, coverage with respect to the liabilities, duties and obligations of the Trustee and its agents, representatives, employees or independent contractors under this Agreement. The cost of any such insurance coverage shall be an expense of the Trust and paid out of Trust Assets.

ARTICLE V

DISTRIBUTIONS

5.1 Distribution and Reserve of Trust Assets. Following the transfer of Trust Assets to the Trust, the Trustee shall make continuing efforts on behalf of the Trust to collect, liquidate, and distribute all Trust Assets to Trust Distributees (subject to any reserves administered by the Trust) as well as to Holders of Allowed Administrative Claims, Professional Fee Claims, Priority Tax Claims, Secured Claims, and Other Priority Claims in accordance with the Plan.

5.1.1 Distributions to Beneficiaries. Subject to the Articles 5.1.2., 7.9.2. and 9.8, and after payment in full of all Allowed Administrative Claims, Professional Fee Claims, Priority Tax Claims, Secured Claims, and Other Priority Claims in accordance with the Plan, the Trustee shall cause the Trust to distribute, at least annually, the Trust's net Cash income and net Cash proceeds from the liquidation of the Trust Assets to the Beneficiaries, as set forth in the distribution priorities in this Section 5.1.1, except the Trust may retain an amount of net income and other Trust Assets reasonably necessary to maintain the value of the Trust Assets or to meet expenses, claims and contingent liabilities of the Trust and Trustee; provided that the Trustee shall have no obligation to make a distribution on account of an Allowed Claim if the amount to be distributed to the holder of such Claim is less than \$100.00, which shall be treated as a minimum Distribution under Article VI.K of the Plan; provided further that when the Trustee makes a distribution to the Beneficiaries, the Trustee shall make distributions from Trust Assets in accordance with the following distribution priority:

- (a) first, pro rata to Primary Beneficiaries; and
- (b) second, and only after payment in full of the Primary Beneficiaries, pro rata to Secondary Beneficiaries.

5.1.2 Reserves; Pooling of Reserved Funds. Before any distribution can be made, the Trustee may, in its reasonable discretion, establish, supplement, and maintain reserves in an amount sufficient to meet any and all reasonable expenses and liabilities of the Trust, including, but not limited to, reasonable attorneys' fees and expenses and the fees and expenses of other professionals. In accordance with Section 4.2.15 of this Agreement, the Trust may also maintain, as necessary, a reserve for Disputed Trust Claims. For the avoidance of doubt, the Trustee may withhold any distribution pending the Trust's determination of whether to object to a Trust Claim. Except for the Professional Fee Escrow Account, the Trustee need not maintain the Trust's reserves in segregated bank accounts and may pool funds in the reserves with each

other and other funds of the Trust; provided, however, the Trust shall treat all such reserved funds as being held in a segregated manner in its books and records.

5.2 Safekeeping and Investment of Liquidating Trust Assets. All moneys and other assets received by the Trustee shall, until distributed or paid over as provided herein and in the Plan, be held in trust for the benefit of the Beneficiaries, but (except as provided in the Plan or this Agreement) need not be segregated in separate accounts from other Liquidating Trust Assets, unless and to the extent required by law or the Plan. Neither the Trust nor the Trustee shall have any liability for interest or producing income on any moneys received by them and held for distribution or payment to the Beneficiaries, except as such interest shall actually be received by the Trust or Trustee, which shall be distributed as provided in the Plan. Except as otherwise provided by the Plan, the powers of the Trustee to invest any moneys held by the Trust, other than those powers reasonably necessary to maintain the value of the assets and to further the Trust's liquidating purpose, and only to the extent that the Trustee is directed to invest moneys other than in short-term money market funds, shall be limited to powers to invest in demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary liquid investments, such as treasury bills; provided, however, that the scope of permissible investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treas. Reg. § 3.01.7701-4(d), may be permitted to hold pursuant to the Treasury Regulations, or any modification of the IRS guidelines, whether set forth in IRS rulings, IRS pronouncements, or otherwise. For the avoidance of doubt, the provisions of any state law obligating or creating a duty on a trustee to invest trust assets shall not apply to this Agreement. Notwithstanding the foregoing, the Trustee shall not be prohibited from engaging in any trade or business on its own account, provided that such activity does not interfere or conflict with the Trustee's administration of the Trust.

5.2.1 Distributions Net of Reserves and Costs. Distributions to Beneficiaries shall be made net of reserves in accordance with the Plan and this Agreement, and also net of the actual and reasonable out-of-pocket costs of making the distributions to Beneficiaries.

5.3 Right to Rely on Professionals. Without limitation of the generality of Section 7.6 of this Agreement, nothing in this Agreement shall be deemed to prevent the Trustee from taking or refraining to take any action on behalf of the Trust that, based upon the advice of counsel or other professionals, the Trustee determines it is obligated to take or to refrain from taking in the performance of any duty that the Trustee may owe the Beneficiaries or any other Person under the Plan, Confirmation Order, or this Agreement.

5.4 Method and Timing of Distributions. Distributions to Trust Distributees shall be made from the Trust in accordance with the terms of the Plan (in particular, Article VI) and this Agreement, including, without limitation, Article III and Section 5.1.1. The Trust may engage a Disbursing Agent or other Person to help make distributions. For the avoidance of doubt, Beneficiaries will only be entitled to a distribution from the Trust after payment in full of any Allowed Administrative Claims, Professional Fee Claims, Priority Tax Claims, Secured Claims, and Other Priority Claims in accordance with the Plan.

5.5 Withholding from Distributions. The Trustee, in its discretion, may cause the Trust to withhold from amounts distributable from the Trust to any Trust Distributee any and all

amounts as may be sufficient to pay the maximum amount of any tax or other charge that has been or might be assessed or imposed by any law, regulation, rule, ruling, directive, or other governmental requirement on such Trust Distributee or the Trust with respect to the amount to be distributed to such Trust Distributee. The Trustee shall determine such maximum amount to be withheld by the Trust in its sole, reasonable discretion and shall cause the Trust to distribute to the Trust Distributee any excess amount withheld.

5.6 Tax Identification Numbers. As more fully set forth in Article VI.G the Plan, the Trustee may require any Trust Distributee to furnish an executed IRS Form, and may condition any distribution upon receipt of such executed IRS Form. If a Trust Distributee does not timely provide the Trustee with an executed IRS Form, then their Allowed Claim shall be deemed disallowed and expunged, and any Claim in respect thereof shall be discharged and barred from assertion against the Trustee, the Trust or the Trust Assets.

5.7 Unclaimed and Undeliverable Distributions. If any distribution to a Trust Distributee is returned to the Trustee as undeliverable or is otherwise unclaimed, no further distributions to such Trust Distributee shall be made unless and until Trust Distributee claims the distributions by timely notifying the Trustee in writing of any information necessary, including such Trust Distributee's then-current address, to make the distribution in accordance with the Plan. If a Trust Distributee timely provides the Trustee the necessary information under Article VI.H of the Plan, all missed distributions shall be made as soon as is practicable, without interest. Undeliverable or unclaimed distributions shall be administered in accordance with Article VI.H of the Plan.

5.7.1 No Responsibility to Attempt to Locate Beneficiaries. The Trustee may, in its sole discretion, attempt to determine a Trust Distributee's current address or otherwise locate a Trust Distributee, but nothing in this Agreement or the Plan shall require the Trustee to do so.

5.7.2 Inapplicability of Unclaimed Property or Escheat Laws. Unclaimed property held by the Trust shall not be subject to the unclaimed property or escheat laws of any state.

5.8 Voided Checks; Request for Reissuance. Distribution checks issued to Trust Distributees shall be null and void if not negotiated within 90 days after the date of issuance thereof. Distributions in respect of voided checks shall be treated as unclaimed distributions and administered under Article VI.H of the Plan and Section 5.5 of this Agreement. Requests for reissuance of any check shall be made in writing directly to the Trustee by the Trust Distributee that was originally issued such check. All such requests shall be made promptly and in time for the check to be reissued and cashed before the funds for the checks become unrestricted Trust Assets, provided that such timing can be satisfied by the Trustee using commercially reasonable efforts.

5.9 Conflicting Claims. If any conflicting claims or demands are made or asserted with respect to an Allowed Trust Claim under this Agreement, or if there is any disagreement between the assignees, transferees, heirs, representatives or legatees succeeding to all or a part of such an Allowed Trust Claim resulting in adverse claims or demands being made in connection with such

Allowed Trust Claim, then, in any of such events, the Trustee shall be entitled, in its sole discretion, to refuse to comply with any such conflicting claims or demands.

5.9.1 The Trustee may elect to cause the Trust to make no payment or distribution with respect to the beneficial interest subject to the conflicting claims or demand, or any part thereof, and to refer such conflicting claims or demands to the Bankruptcy Court, which shall have continuing jurisdiction over resolution of such conflicting claims or demands as provided for in Article X of the Plan. Neither the Trust nor the Trustee shall be or become liable to any of such parties for their refusal to comply with any such conflicting claims or demands, nor shall the Trust or Trustee be liable for interest on any funds which may be so withheld.

5.9.2 The Trustee shall be entitled to refuse to act until either (i) the rights of the adverse claimants have been adjudicated by a Final Order of the Bankruptcy Court; or (ii) all differences have been resolved by a valid written agreement among all such parties to the satisfaction of the Trustee, which agreement shall include a complete release of the Trust and Trustee. Until the Trustee receives written notice that one of the conditions of the preceding sentence is met, the Trustee may deem and treat Trust Distributee identified as the owner of that interest in the books and records maintained by the Trustee as the absolute owner under this Agreement of Allowed Trust Claim. The Trustee may deem and treat such Trust Distributee as the absolute owner for purposes of receiving distributions and any payments on account thereof for federal and state income tax purposes, and for all other purposes whatsoever.

5.9.3 In acting or refraining from acting under and in accordance with this Section 5.7 of the Agreement, the Trust and Trustee shall be fully protected and incur no liability to any purported claimant or any other Person pursuant to Article VII of this Agreement.

ARTICLE VI

BENEFICIARIES

6.1 Interest Beneficial Only. The ownership of a beneficial interest in the Trust shall not entitle any Beneficiary to any title in or to the Trust Assets or to any right to call for a partition or division of such assets or to require an accounting.

6.2 Ownership of Beneficial Interests Hereunder. Each Beneficiary shall own a beneficial interest herein which shall, subject to Section 5.1 of this Agreement and the Plan, be entitled to a distribution in the amounts, and at the times, set forth in the Plan and this Agreement.

6.3 Evidence of Beneficial Interest. Ownership of a beneficial interest in the Trust Assets shall not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever, except as maintained on the books and records of the Trust by the Trustee.

6.4 No Right to Accounting. Neither the Beneficiaries nor their successors, assigns, creditors, nor any other Person shall have any right to an accounting by the Trustee, and the Trustee shall not be obligated to provide any accounting to any Person. Nothing in this Agreement is intended to require the Trustee at any time or for any purpose to file any accounting

or seek approval of any court with respect to the administration of the Trust or as a condition for making any advance, payment, or distribution out of proceeds of Trust Assets.

6.5 No Standing. Except as expressly provided in this Agreement, a Beneficiary shall not have standing to direct or to seek to direct the Trust or Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any Person upon or with respect to the Trust Assets.

6.6 Requirement of Undertaking. The Trustee may request the Bankruptcy Court to require, in any suit for the enforcement of any right or remedy under this Agreement, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, including reasonable attorneys' fees, against any party litigant in such suit; provided, however, the provisions of this Section 6.6 shall not apply to any suit by the Trustee.

6.7 Limitation on Transferability. It is understood and agreed that the beneficial interests herein shall be non-transferable and non-assignable during the term of this Agreement except by operation of law, provided, however, each Beneficiary shall have the right to transfer some or all of its Trust Interests one (1) time each calendar year and shall give the Trustee prompt written notice thereof (each, a "Permitted Transfer"). The Trustee shall not have any obligation to recognize any transfer of a Trust Interest occurring after the Effective Date other than a Permitted Transfer, and only holders of Trust Interests of record as of the Effective Date, and transferees of a Permitted Transfer, shall be entitled to be recognized for all purposes hereunder. An assignment by operation of law shall not be effective until appropriate notification and proof thereof is submitted to the Trustee along with the identity and address of the proper Person to succeed the Beneficiary's interest, and the Trustee may continue to cause the Trust to pay all amounts to or for the benefit of the assigning Beneficiaries until receipt of proper notification and proof of assignment by operation of law. The Trustee may fully rely upon on any such proof and shall have no duty to investigate.

6.8 Exemption from Registration. The rights of the Beneficiaries arising under this Agreement may be deemed "securities" under applicable law. However, such rights have not been defined as "securities" under the Plan because (i) the parties hereto intend that such rights shall not be securities and (ii) if the rights arising under this Agreement in favor of the Beneficiaries are deemed to be "securities," the exemption from registration under section 1145 of the Bankruptcy Code is intended to be applicable to such securities. No party to this Agreement shall make a contrary or different contention.

6.9 Delivery of Distributions. Subject to the terms of this Agreement, the Trustee shall cause the Trust to make distributions to Beneficiaries in the manner provided in the Plan and in this Agreement.

ARTICLE VII

THIRD PARTY RIGHTS AND LIMITATION OF LIABILITY

7.1 Parties Dealing with the Trustee. In the absence of actual knowledge to the contrary, any Person dealing with the Trust or the Trustee shall be entitled to rely on the authority of the Trustee or any of the Trustee's agents to act in connection with the Trust Assets. There is no obligation of any Person dealing with the Trustee to inquire into the validity or expediency or propriety of any transaction by the Trustee or any agent of the Trustee.

7.2 Limitation of Trustee's Liability. In exercising the rights granted herein, the Trustee shall exercise the Trustee's best judgment, to the end that the affairs of the Trust shall be properly managed and the interests of all of the Beneficiaries safeguarded. However, notwithstanding anything herein to the contrary, neither the Trustee nor its firms, companies, affiliates, partners, officers, directors, members, employees, professionals, advisors, attorneys, financial advisors, investment bankers, disbursing agents, or agents, and any of such Person's successors and assigns (collectively, the "Trustee Parties") shall incur any responsibility or liability, and no Holder of a Claim or Interest or any other party in interest shall have, or otherwise pursue, any claim or Cause of Action against the Trustee or the Trustee Parties, by reason of or relating to any error of law or fact or of any matter or thing done or suffered or omitted to be done under or in connection with this Agreement, whether sounding in tort, contract, or otherwise, except for fraud, gross negligence, or willful misconduct that is found by a Final Order (not subject to further appeal or review) to be the direct and primary cause of loss, liability, damage, or expense suffered by the Trust.

7.3 No Liability for Acts of Other Persons. None of the Persons identified in the immediately preceding Section 7.2 of this Agreement shall be liable for the act or omission of any other Person identified in that Section.

7.4 No Liability for Acts of Predecessors. No successor Trustee shall be in any way responsible for the acts or omissions of any Trustee in office prior to the date on which such successor becomes the Trustee, unless a successor Trustee expressly assumes such responsibility.

7.5 No Liability for Good Faith Error of Judgment. The Trustee shall not be liable for any error of judgment made in good faith, unless it shall be finally determined by a Final Order that the Trustee was grossly negligent in ascertaining the pertinent facts before exercising such judgment.

7.6 Reliance by Trustee on Documents and Advice of Counsel or Other Persons. Except as otherwise provided herein, the Trustee may rely in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order or other paper or document believed by the Trustee to be genuine and to have been signed or presented by the proper party or parties. The Trustee also may engage and consult with its legal counsel and other agents and advisors, and may rely upon the advice of such counsel, agents, or advisors for any action taken, omitted, or suffered by the Trustee.

7.7 No Liability for Acts Approved by Bankruptcy Court. The Trustee shall have the right at any time to seek instructions from the Bankruptcy Court concerning the administration or disposition of the Trust Assets and Trust Claims required to be administered by the Trust. The Trust and Trustee shall not be liable for any act or omission that has been approved by the Bankruptcy Court, and all such actions or omissions shall conclusively be deemed not to constitute fraud, gross negligence, or willful misconduct.

7.8 No Personal Obligation for Trust Liabilities. Persons dealing with the Trustee shall have recourse only to the Trust Assets to satisfy any liability incurred by the Trustee to any such Person in carrying out the terms of this Agreement, and the Trustee shall have no personal, individual obligation to satisfy any such liability.

7.9 Indemnification. The Trustee and its consultants, agents, attorneys, accountants, financial advisors, beneficiaries, estates, employees, officers, directors, principals, professionals, and other representatives, each in their representative capacity as such, and any of such parties' successors and assigns (collectively, the "Indemnified Parties" and each, an "Indemnified Party") shall, to the fullest extent permitted by applicable law, be defended, held harmless, and indemnified by the Trust from time to time and receive reimbursement from and against any and all loss, liability, expense (including reasonable counsel fees), or damage of any kind, type or nature, whether sounding in tort, contract, or otherwise, that the Indemnified Parties may incur or sustain in connection with the exercise or performance of any of the Trust's or Trustee's powers and duties under this Agreement or in rendering services by the Indemnified Party to the Trust or Trustee (the "Indemnified Conduct"), including, without limitation, the reasonable costs of counsel or others in investigating, preparing, defending, or settling any action or claim (whether or not litigation has been initiated against the Indemnified Party) or in enforcing this Agreement (including its indemnification provisions), except if such loss, liability, expense, or damage is finally determined by a Final Order (not subject to further appeal or review) to result directly and primarily from the fraud, gross negligence, or willful misconduct of the Indemnified Party asserting this provision.

7.9.1 Expense of Trust; Limitation on Source of Payment of Indemnification. All indemnification liabilities of the Trust under this Section 7.9 shall be expenses of the Trust. The amounts necessary for such indemnification and reimbursement shall be paid by the Trust after reserving for all actual and anticipated expenses and liabilities of the Trust. The Trustee shall not be personally liable for the payment of any Trust expense or claim or other liability of the Trust, and no Person shall look to the Trustee or other Indemnified Parties personally for the payment of any such expense or liability.

7.9.2 Procedure for Current Payment of Indemnified Expenses; Undertaking to Repay. The Trust shall reasonably promptly pay an Indemnified Party all amounts subject to indemnification under this Section 7.9 on submission of invoices for such amounts by the Indemnified Party. The Trustee shall approve the indemnification of any Indemnified Party and thereafter shall approve any monthly bills of such Indemnified Party for indemnification. All invoices for indemnification shall be subject to the approval of the Trustee. By accepting any indemnification payment, the Indemnified Party undertakes to repay such amount promptly if it is determined that the Indemnified Party is not entitled to be indemnified under this Agreement. The Bankruptcy Court shall hear and finally determine any dispute arising out of this Section 7.9.

7.10 No Implied Obligations. The Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be read into this Agreement against the Trustee.

7.11 Confirmation of Survival of Provisions. Without limitation in any way of any provision of this Agreement, the provisions of this Article VII shall survive the death, dissolution, liquidation, resignation, replacement, or removal, as may be applicable, of the Trustee, or the termination of the Trust or this Agreement, and shall inure to the benefit of the Trustee's and the Indemnified Parties' heirs and assigns.

ARTICLE VIII

TAX MATTERS

8.1 Tax Treatment of Trust. Pursuant to and in accordance with the Plan, for all federal income tax purposes, the Debtor, the Beneficiaries, the Trustee and the Trust shall treat the Trust as a liquidating trust within the meaning of Treasury Income Tax Regulation Section 301.7701-4(d) and IRS Revenue Procedure 94-45 and transfer of the Trust Assets to the Trust shall be treated as a transfer of the Trust Assets by the Debtor to the Beneficiaries in satisfaction of their Allowed Trust Claims, followed by a transfer of the Trust Assets by the Beneficiaries to the Trust in exchange for their pro rata beneficial interests in the Trust. The Beneficiaries shall be treated as the grantors and owners of the Trust for federal income tax purposes.

8.2 Annual Reporting and Filing Requirements. Pursuant to and in accordance with the terms of the Plan and this Agreement, the Trustee shall file tax returns for the Trust as a grantor trust pursuant to Treasury Income Tax Regulation Section 1.671-4(a).

8.3 Tax Treatment of Reserves for Disputed Trust Claims. The Trustee may timely elect to treat any Trust Assets allocable to Disputed Trust Claims as a "disputed ownership fund" ("DOF") governed by Treasury Regulation Section 1.468B-9. If an election is made to report any reserve for disputed claims as a DOF, the Trust shall comply with all federal and state tax reporting and tax compliance requirements of the DOF, including but not limited to the filing of a separate federal tax return for the DOF and the payment of federal and/or state income tax due.

8.4 Valuation of Trust Assets. After the Effective Date, but in no event later than the due date for timely filing of the Trust's first federal income tax return (taking into account applicable tax filing extensions), the Trustee shall (a) determine the fair market value of the Trust Assets as of the Effective Date, based on the Trustee's good faith determination and (b) establish appropriate means to apprise the Beneficiaries of such valuation. The valuation shall be used consistently by all parties (including, without limitation, the Debtor, the Trust, the Trustee, and the Beneficiaries) for all federal income tax purposes.

ARTICLE IX

SELECTION, REMOVAL, REPLACEMENT AND COMPENSATION OF TRUSTEE

9.1 Initial Trustee. The Trustee shall be appointed by the Debtor and is appointed effective as of the Effective Date. The initial trustee shall be the Trustee.

9.2 Term of Service. The Trustee shall serve until (a) the completion of the administration of the Trust Assets and the Trust, including the winding up of the Trust, in accordance with this Agreement and the Plan; (b) termination of the Trust in accordance with the terms of this Agreement and the Plan; or (c) the Trustee's resignation, death, incapacity or removal. In the event that the Trustee's appointment terminates by reason of death, dissolution, liquidation, resignation or removal, the Trustee shall be immediately compensated for all reasonable fees and expenses accrued but unpaid through the effective date of termination, whether or not previously invoiced. The provisions of Article VII of this Agreement shall survive the resignation or removal of any Trustee.

9.3 Removal of Trustee. Any Person serving as Trustee may be removed at any time for cause. Any party in interest, on notice and hearing before the Bankruptcy Court, may seek removal of the Trustee for cause. The Bankruptcy Court shall hear and finally determine any dispute arising out of this Section.

9.4 Resignation of Trustee. The Trustee may resign at any time on written notice to the U.S. Trustee and the Bankruptcy Court. The resignation shall be effective on the later of (i) the date specified in the notice of resignation and (ii) the date that is thirty (30) days after the date such notice is filed with the Bankruptcy Court and served on the U.S. Trustee. In the event of a resignation, the resigning Trustee shall render to the U.S. Trustee a full and complete accounting of monies and assets received, disbursed, and held during the term of office of that Trustee.

9.5 Appointment of Successor Trustee. Upon the resignation, death, incapacity, or removal of a Trustee, the Bankruptcy Court shall appoint a successor Trustee on its own motion. Any successor Trustee so appointed (a) shall consent to and accept its appointment as successor Trustee, which may be done by e-mail or through acquiescence in not objecting to a motion for approval of its appointment as successor Trustee and (b) shall not have any liability or responsibility for the acts or omissions of any of its predecessor(s). Any successor Trustee may be appointed to serve only on an interim basis.

9.6 Powers and Duties of Successor Trustee. A successor Trustee shall have all the rights, privileges, powers, and duties of its predecessor under this Agreement, the Plan, and Confirmation Order.

9.7 Trust Continuance. The resignation, death, incapacitation, dissolution, liquidation, or removal of the Trustee shall not terminate the Trust or revoke any existing agency created pursuant to this Agreement or invalidate any action theretofore taken by the Trustee.

9.8 Compensation of Trustee and Costs of Administration. The terms of the compensation of the Trustee are set forth on Exhibit A hereto. The Trustee shall receive fair and reasonable compensation for its services in accordance with the terms and conditions of the Plan and Exhibit A hereto. All costs, expenses, and obligations incurred by the Trustee (or professionals who may be employed by the Trustee in administering the Trust, in carrying out their other responsibilities under this Agreement, or in any manner connected, incidental, or related thereto) shall be paid or reserved for by the Trust from Trust Assets prior to any distribution to the Beneficiaries and without the necessity of submission of any application or motion to the Bankruptcy Court or any further order of the Bankruptcy Court. A successor Trustee shall also be entitled to reasonable and fair compensation in connection with its services, which compensation may be different from the terms provided herein, plus the reimbursement of reasonable and documented out-of-pocket expenses.

9.9 Appointment of Supplemental Trustee. If the Trustee has a conflict or any of the Trust Assets are situated in any state or other jurisdiction in which the Trustee is not qualified to act as trustee, the Trustee shall nominate and appoint a Person duly qualified to act as trustee (the "Supplemental Trustee") with respect to such conflict, or in such state or jurisdiction, and require from each such Supplemental Trustee such security as may be designated by the Trustee in its discretion. In the event the Trustee is unwilling or unable to appoint a disinterested Person to act as Supplemental Trustee to handle any such matter, the Bankruptcy Court, on notice and hearing, may do so. The Trustee or the Bankruptcy Court, as applicable, may confer upon such Supplemental Trustee any or all of the rights, powers, privileges and duties of the Trustee hereunder, subject to the conditions and limitations of this Agreement, except as modified or limited by the laws of the applicable state or other jurisdiction (in which case, the laws of the state or other jurisdiction in which such Supplemental Trustee is acting shall prevail to the extent necessary). To the extent the Supplemental Trustee is appointed by the Trustee, the Trustee shall require such Supplemental Trustee to be answerable to the Trustee for all monies, assets and other property that may be received in connection with the administration of all property. The Trustee or the Bankruptcy Court, as applicable, may remove such Supplemental Trustee, with or without cause, and appoint a successor Supplemental Trustee at any time by executing a written instrument declaring such Supplemental Trustee removed from office and specifying the effective date and time of removal.

ARTICLE X

DURATION OF TRUST

10.1 Duration. Once the Trust becomes effective upon the Effective Date of the Plan, the Trust and this Agreement shall remain and continue in full force and effect until the Trust is terminated.

10.2 Termination on Distribution of Trust Assets. Upon the distribution of all Trust Assets in accordance with the provisions of the Plan, the Confirmation Order, and this Agreement, the Trust shall terminate and the Trustee shall have no further responsibility in connection therewith except as may be required to effectuate such termination under relevant law.

10.3 Termination after Five Years. If the Trust has not been previously terminated pursuant to Section 10.2 hereof, on the fifth (5th) anniversary of the Effective Date, unless the Trust term has been extended in accordance with Article IV.D of the Plan, the Trustee shall distribute all of the Trust Assets to the Beneficiaries in accordance with the Plan and this Agreement, and immediately thereafter the Trust shall terminate and the Trustee shall have no further responsibility in connection therewith except to the limited extent set forth in Section 10.5 of this Agreement.

10.4 No Termination by Beneficiaries. The Trust may not be terminated at any time by the Beneficiaries.

10.5 Continuance of Trust for Winding Up; Discharge and Release of Trustee. After the termination of the Trust and solely for the purpose of liquidating and winding up the affairs of the Trust, the Trustee shall continue to act as such until its responsibilities have been fully performed. Except as otherwise specifically provided herein, upon the distribution of the Trust Assets including all excess reserves, the Trustee, the Trust's professionals and agents shall be deemed discharged and have no further duties or obligations hereunder. Upon a motion by the Trustee, the Bankruptcy Court may enter an order relieving the Trustee, its employees, professionals, and agents of any further duties, discharging and releasing the Trustee, its employees, professionals, agents from all liability related to the Trust, and releasing the Trustee's bond, if any.

ARTICLE XI

MISCELLANEOUS

11.1 Cumulative Rights and Remedies. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies under law or in equity.

11.2 Notices. All notices to be given to Beneficiaries may be given by ordinary mail, or may be delivered personally, to the Beneficiaries at the addresses appearing on the books and records kept by the Trustee. Any notice or other communication which may be or is required to be given, served, or sent to the Trustee shall be in writing and shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, or transmitted by hand delivery or facsimile (if receipt is confirmed) addressed as follows:

or to such other address as may from time to time be provided in written notice by the Trustee.

11.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to rules governing the conflict of laws.

11.4 Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns.

11.5 Particular Words. Reference in this Agreement to any Section or Article is, unless otherwise specified, to that such Section or Article under this Agreement. The words “hereof,” “herein,” and similar terms shall refer to this Agreement and not to any particular Section or Article of this Agreement.

11.6 Execution. All funds in the Trust shall be deemed *in custodia legis* until such times as the funds have actually been paid to or for the benefit of a Beneficiary, and no Beneficiary or any other Person can execute upon, garnish or attach the Trust Assets or the Trustee in any manner or compel payment from the Trust except by Final Order of the Bankruptcy Court. Payments will be solely governed by the Plan and this Agreement.

11.7 Amendment. This Agreement may be amended by order of the Bankruptcy Court; provided, however, such amendment may not be inconsistent with the Plan or the Confirmation Order.

11.8 No Waiver. No failure or delay of any party to exercise any right or remedy pursuant to this Agreement shall affect such right or remedy or constitute a waiver thereof.

11.9 No Relationship Created. Nothing contained herein shall be construed to constitute any relationship created by this Agreement as an association, partnership, or joint venture of any kind.

11.10 Severability. If any term, provision covenant or restriction contained in this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, the remainder of the terms, provisions, covenants and restrictions contained in this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

11.11 Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

11.12 Jurisdiction. The Bankruptcy Court shall have jurisdiction regarding the Debtor, Trust, Trustee, and Trust Assets, including, without limitation, the determination of all disputes arising out of or related to administration of the Trust. The Bankruptcy Court shall have continuing jurisdiction and venue to hear and finally determine all disputes and related matters among the Parties arising out of or related to this Agreement or the administration of the Trust. The Parties expressly consent to the Bankruptcy Court hearing and exercising such judicial power as is necessary to finally determine all such disputes and matters. If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Case, including the matters set forth in this Agreement, the provisions of this Agreement shall have no effect on and shall not control, limit or prohibit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter, and all applicable references in this Agreement to an order or decision of the Bankruptcy Court shall instead mean an order or decision of such other court of competent jurisdiction.

IN WITNESS WHEREOF, the Parties have or are deemed to have executed this Agreement as of the day and year written above.

Zosano Pharma Corporation.

By: _____

Name: _____

Title: _____

The Trustee

By: _____

Name: _____

Title: Trustee

Exhibit A

Terms of Compensation of Trustee

The Liquidating Trustee's compensation shall be as follows: for each month following the entry of the Confirmation Order, the Liquidating Trustee shall receive, in addition to its reasonable expenses, the following fixed monthly compensation:

- Months 1 to 6: \$25,000 per month;
- Months 7 to 12: \$15,000 per month;
- Months 13 to 24: \$10,000 per month;
- For each month thereafter until the closing of the case: \$5,000 per month.

Such compensation and expenses shall be paid solely from the Trust Assets.

Exhibit C

PROPOSED CONFIRMATION ORDER

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

In re:

Zosano Pharma Corporation,¹

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER CONFIRMING
THE CHAPTER 11 PLAN OF LIQUIDATION OF ZOSANO PHARMA
CORPORATION**

Upon consideration of the *Chapter 11 Plan of Liquidation of Zosano Pharma Corporation* [Docket No. 232] (as may be amended, modified or supplemented, the “**Plan**”), proposed by the above-captioned debtor and debtor in possession (the “**Debtor**”); and the Bankruptcy Court having approved and the Debtor having filed the *First Amended Disclosure Statement for the Chapter 11 Plan of Liquidation of Zosano Pharma Corporation* [Docket No. 231] (the “**Disclosure Statement**”); and the Debtor having filed the Plan Supplement on November 3, 2022 [Docket No. ____]; and upon consideration of the affidavits of service [Docket Nos. ____ and ____] (the “**Notice Affidavits**”) filed reflecting compliance with the notice and solicitation requirements of the *Order (I) Approving Adequacy of Disclosure Statement, (II) Approving Solicitation and Notice Procedures for Confirmation of the Debtor's Plan of Liquidation, (III) Approving Ballots and Notice Forms in Connection Therewith, (IV) Scheduling Certain Dates with Respect Thereto, and (V) Granting Related Relief* (the “**Disclosure Statement Order**”); and upon the *Notice Of Hearing To Consider Confirmation Of The Chapter 11 Plan Filed By The Debtor And Related Voting And Objection Deadlines* [Docket No. 238] (the “**Confirmation Hearing Notice**”); and upon consideration of the *Certification of Adam Gorman with Respect to the Tabulation of Votes*

¹ The business address and the last four (4) digits of the Debtor’s federal tax identification number is Zosano Pharma Corporation, 34790 Ardentech Court, Fremont, California 94555 (8360).

on the Chapter 11 Plan of Liquidation of Zosano Pharma Corporation [Docket No. ●], filed with the Bankruptcy Court on November ●, 2022 (the “**Voting Declaration**”); and upon consideration of the Declaration of Steven Lo in Support of Confirmation of the Chapter 11 Plan of Liquidation of Zosano Pharma Corporation [Docket No. ●], filed with the Bankruptcy Court on November ●, 2022 (the “**Lo Declaration**”); and upon consideration of the Memorandum of Law in Support of Confirmation of the Chapter 11 Plan of Liquidation of Zosano Pharma Corporation [Docket No. ____], filed with the Bankruptcy Court on November ●, 2022 (the “**Confirmation Memorandum**”); and any formal or informal objections to the Plan having been resolved and/or overruled by the Bankruptcy Court pursuant to this Confirmation Order; and a hearing to consider Confirmation having been held on November 18, 2022 (the “**Confirmation Hearing**”); and upon the evidence adduced and proffered and the arguments of counsel made at the Confirmation Hearing; and the Bankruptcy Court having reviewed all documents in connection with Confirmation and having heard all parties desiring to be heard; and upon the record of the Chapter 11 Case; and after due deliberation and consideration of all of the foregoing; and sufficient cause appearing therefor; the Bankruptcy Court hereby makes the following:

Findings of Fact and Conclusions of Law

A. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record of the Confirmation Hearing, constitute the Bankruptcy Court’s findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to these proceedings pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. **Capitalized Terms.** Capitalized terms used herein, but not defined herein, shall have the respective meanings attributed to such terms in the Plan and the Disclosure Statement, as applicable.

C. **Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Bankruptcy Court may enter a final order consistent with Article III of the United States Constitution, and the Debtor consents to entry of this Confirmation Order under the Local Rules and Article III of the United States Constitution. Venue of these proceedings and the Chapter 11 Case is proper in this district and in this Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

D. **Chapter 11 Petition.** On June 1, 2022 (the “*Petition Date*”), the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code (the “*Chapter 11 Case*”) in the United States Bankruptcy Court for the District of Delaware (the “*Bankruptcy Court*”). The Debtor is authorized to continue to operate its business and manage its property as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No official committee of unsecured creditors has been appointed in the Chapter 11 Case. *See* Docket No. 65. No request has been made for the appointment of a trustee or an examiner.

E. **Judicial Notice.** The Bankruptcy Court takes judicial notice of the docket in the Chapter 11 Case maintained by the Clerk of the Bankruptcy Court and/or its duly appointed agent, including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the

Bankruptcy Court during the Chapter 11 Case, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing.

F. **Plan Supplement.** Prior to the Confirmation Hearing, the Debtor filed the Plan Supplement. The Plan Supplement complies with the terms of the Plan, and the filing and notice of the Plan Supplement was appropriate and complied with the requirements of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, and no other or further notice is or shall be required. The Debtor is authorized to modify the Plan Supplement documents following entry of this Confirmation Order in a manner consistent with this Confirmation Order and the Plan.

G. **Mailing of Solicitation and Confirmation Materials.** As is evidenced by the Voting Declaration and the Notice Affidavits, the transmittal and service of the Plan, the Disclosure Statement, the Ballots, the Confirmation Hearing Notice and the notice of non-voting status (the “**Notice of Non-Voting Status**”) were adequate and sufficient under the circumstances, and all parties required to be given notice of the Plan and the Confirmation Hearing (including the deadline for filing and serving objections to Confirmation of the Plan) have been given due, proper, timely, and adequate notice thereof in accordance with the Disclosure Statement Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law, and such parties have had an opportunity to appear and be heard with respect thereto. Except as otherwise provided herein, no other or further notice of the Plan and the Confirmation Hearing is required.

H. **Voting.** Votes on the Plan were solicited after disclosure of adequate information as defined in section 1125 of the Bankruptcy Code. The procedures by which the Ballots for acceptance or rejection of the Plan were distributed and tabulated, including as set forth in the Voting Declaration, under the circumstances of the Chapter 11 Case were fair, properly conducted,

and complied with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, applicable non-bankruptcy law and the Disclosure Statement Order. As more fully set forth in the Voting Declaration, Class 3, the only voting class, voted to accept the Plan.

I. **Bankruptcy Rule 3016(a).** In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the proponent of the Plan.

J. **Burden of Proof.** The Debtor, as the proponent of the Plan, has met its burden of proving the satisfaction of the requirements for confirmation of the Plan set forth in section 1129 of the Bankruptcy Code by a preponderance of the evidence, which is the applicable standard. Further, each witness who testified on behalf of the Debtor at or in connection with (by declaration) the Confirmation Hearing was credible, reliable and qualified to testify as to the topic addressed in his or her testimony.

K. **Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)).** As set forth below, the Plan complies with all of the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

L. **Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)).** The classification of Claims and Interests under the Plan is proper under the Bankruptcy Code. In addition to Administrative Claims, Professional Fee Claims, and Priority Tax Claims, which need not be classified, the Plan designates five (5) Classes of Claims and Interests. The Claims or Interests placed in each Class are substantially similar to other Claims or Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Interests. Thus, the Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

M. **Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)).** Article II of the Plan specifies that Class 1 (Secured Claims) and Class 2 (Priority Non-Tax Claims) are Unimpaired under the Plan. Thus, section 1123(a)(2) of the Bankruptcy Code is satisfied.

N. **Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).** Article II of the Plan designates Class 3 (General Unsecured Claims), Class 4 (Subordinated Claims), and Class 5 (Interests) as Impaired and specifies the treatment of Claims and Interests in such Classes. Thus, section 1123(a)(3) of the Bankruptcy Code is satisfied.

O. **No Discrimination (11 U.S.C. § 1123(a)(4)).** The Plan provides for the same treatment by the Debtor for each Claim or Interest in each respective Class unless the Holder of a particular Claim or Interest has agreed to a less favorable treatment of such Claim or Interest. Thus, section 1123(a)(4) of the Bankruptcy Code is satisfied.

P. **Implementation of the Plan (11 U.S.C. § 1123(a)(5)).** The Plan, including, without limitation, the provisions of Article V thereof, and the Liquidating Trust Agreement, provide adequate and proper means for the Plan's implementation. Thus, section 1123(a)(5) of the Bankruptcy Code is satisfied.

Q. **Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).** The Plan does not provide for the issuance of any securities, including non-voting securities, and the Debtor is being dissolved on or after the Effective Date as provided for in the Plan. Therefore, section 1123(a)(6) of the Bankruptcy Code is satisfied.

R. **Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)).** Article IV.K of the Plan provides for the appointment of a Liquidating Trustee, who will serve as a fiduciary of the Debtor's Estate, and who shall be empowered to, among other things, (i) implement the terms of the Plan; (ii) object to, compromise, or settle any Claims; (iii) establish reserves; (iv) liquidate

Assets; (v) prosecute, compromise, resolve or withdraw any of the Causes of Action; and (vi) otherwise wind-down the Estate in accordance with this Confirmation Order, the Plan, and the Liquidating Trust Agreement. The Liquidating Trustee was selected by the Debtor. Successors, if any, shall be selected pursuant to the procedures set forth in the Liquidating Trust Agreement. The foregoing is consistent with the interest of holders of Claims and holders of Interests and with public policy and therefore, section 1123(a)(7) of the Bankruptcy Code is satisfied.

S. **Additional Plan Provisions (11 U.S.C. § 1123(b)).** The Plan's provisions are appropriate, in the best interests of the Debtor and its Estate, and consistent with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

T. **Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)).** The Debtor has exercised appropriate business judgment in determining to reject the Debtor's remaining executory contracts and unexpired leases as provided for in the Plan and this Confirmation Order, and any such rejections are justified and appropriate in the Chapter 11 Case.

U. **Compromises and Settlements Under and in Connection with the Plan (11 U.S.C. § 1123(b)(3)).** The settlements and compromises pursuant to and in connection with the Plan comply with and satisfy the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019. Accordingly, except as otherwise set forth in the Plan or herein, in consideration for the distributions and other benefits provided for under the Plan, including without limitation the release, exculpation, and injunction provisions, and the indemnification rights, the Plan shall constitute a good faith compromise and settlement of all Claims and controversies resolved pursuant to the Plan.

V. **Releases, Exculpations, and Injunctions (11 U.S.C. § 1123(b)).** Under the facts and circumstances of the Chapter 11 Case, the releases, exculpations, and injunctions provided for

in the Plan, as modified herein, are: (i) within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (ii) an appropriate exercise of the Debtor's business judgment; (iii) integral elements of the transactions incorporated into the Plan and inextricably bound with the other provisions of the Plan; (iv) in exchange for good and valuable consideration provided by the Released Parties; (v) in the best interests of the Debtor, the Estate, and all Holders of Claims and Interests that are Releasing Parties; (vi) fair, equitable, and reasonable; (vii) given and made after due notice and an opportunity to object and be heard with respect thereto, as the Disclosure Statement, the Confirmation Hearing Notice, the Voting Instructions, the Ballots, and the Notice of Non-Voting Status each unambiguously state that (a) the Plan contains certain release, exculpation, and injunction provisions and (b) affected parties may object to or opt out of the releases in Article IX.C of the Plan, and therefore such releases, including the releases in Article IX.C of the Plan, are consensual as they pertain to Holders of Claims; (viii) are consistent with sections 105, 524, 1123, 1129, and 1141 and other applicable provisions of the Bankruptcy Code and other applicable law; and (ix) a bar to any of the Releasing Parties asserting any released claim against any of the Released Parties as and to the extent provided for in the Plan and this Confirmation Order.

W. **Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)).** Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including, without limitation, sections 1122, 1123, 1124, 1125, and 1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order governing notice, disclosure, and solicitation in connection with the Plan, the Disclosure Statement, the Plan Supplement, and all other matters considered by the Bankruptcy Court in connection with Confirmation.

X. **Plan Proposed in Good Faith and Not by Means Forbidden by Law (11 U.S.C. § 1129(a)(3)).** The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Case, the Plan itself, and the process leading to its formulation. The Plan is the result of extensive arm's-length negotiations among the Debtor and key stakeholders in the Chapter 11 Case, and is supported by the Debtor's creditors and other parties in interest in the Chapter 11 Case.

Y. **Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).** The procedures set forth in the Plan for the Bankruptcy Court's approval of the fees, costs, and expenses to be paid in connection with the Chapter 11 Case, or in connection with the Plan and incident to the Chapter 11 Case, satisfy the objectives of, and are in compliance with, section 1129(a)(4) of the Bankruptcy Code.

Z. **Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)).** Article IV.D.2 of the Plan provides that, on the Effective Date, the Debtor's officers and managers shall be terminated automatically. The Debtor selected the Liquidating Trustee and the Liquidating Trustee's identity and affiliation are set forth in the Plan Supplement. Thus, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

AA. **No Rate Changes (11 U.S.C. § 1129(a)(6)).** The Plan does not provide for any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

BB. **Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).** The "best interests" test is satisfied as to all Impaired Classes under the Plan, as each Holder of a Claim or Interest in such

Impaired Classes will receive or retain property of a value, as of the Effective Date, that is not less than the amount that such Holder would so receive or retain if the Debtor was liquidated under chapter 7 of the Bankruptcy Code, as demonstrated by the Liquidation Analysis attached as Exhibit B to the Disclosure Statement.

CC. Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)). Class 1 (Secured Claims) and Class 2 (Priority Non-Tax Claims) are unimpaired under the Plan, and Class 3 (General Unsecured Claims) has voted to accept the Plan in accordance with the Bankruptcy Code, thereby satisfying section 1129(a)(8) as to those Classes. However, Class 4 (Subordinated Claims) and Class 5 (Interests) are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Accordingly, section 1129(a)(8) of the Bankruptcy Code has not and cannot be satisfied. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of section 1129(b) of the Bankruptcy Code, as set forth below.

DD. Treatment of Administrative, Professional Fee, Priority Tax Claims (11 U.S.C. § 1129(a)(9)). The treatment of Administrative Claims, Professional Fee Claims, and Priority Tax Claims pursuant to Article II of the Plan satisfies section 1129(a)(9) of the Bankruptcy Code.

EE. Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)). Class 3 (General Unsecured Claims) is the only Impaired Class of Claims entitled to vote and voted to accept the Plan, determined without including any acceptance of the Plan by any insider. Therefore, section 1129(a)(10) of the Bankruptcy Code is satisfied.

FF. Feasibility (11 U.S.C. § 1129(a)(11)). The Plan provides for the appointment of the Liquidating Trustee. Following the implementation of the Plan, the administration and distribution of the Debtor's Assets in accordance with the terms of the Plan, and the winding down of the Debtor's affairs, without the need for any further order or action of the Bankruptcy Court,

the Debtor will be dissolved and its affairs wound up. Thus, section 1129(a)(11) of the Bankruptcy Code is satisfied.

GG. Payment of Fees (11 U.S.C. § 1129(a)(12)). All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to the Plan, thus satisfying section 1129(a)(12) of the Bankruptcy Code.

HH. Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(13)–(16)). Sections 1129(a)(13)–(16) of the Bankruptcy Code are inapplicable to Confirmation, as the Debtor: (i) does not provide “retiree benefits,” as defined in section 1114 of the Bankruptcy Code (§ 1129(a)(13)); (ii) has no domestic support obligations (§ 1129(a)(14)); (iii) is not an individual (§ 1129(a)(15)); and (iv) is not a nonprofit corporation (§ 1129(a)(16)).

II. No Unfair Discrimination; Fair and Equitable Treatment (11 U.S.C. § 1129(b)). The classification and treatment of Claims and Interests in Class 4 (Subordinated Claims) and Class 5 (Interests), which are deemed to have rejected the Plan, is proper pursuant to section 1122 of the Bankruptcy Code, does not discriminate unfairly, and is fair and equitable pursuant to section 1129(b)(1) of the Bankruptcy Code. There is no Class of Claims or Interests junior to the Holders of Claims in Class 4 or Interests in Class 5 that will receive or retain property under the Plan on account of their Claims or Interests. Accordingly, the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to each Class that is deemed to have rejected the Plan. Thus, the Plan satisfies section 1129(b) of the Bankruptcy Code with respect to Class 4 and Class 5.

JJ. Only One Plan (11 U.S.C. § 1129(c)). The Plan is the only chapter 11 plan currently proposed in the Chapter 11 Case, and section 1129(c) of the Bankruptcy Code is therefore satisfied.

KK. **Principal Purpose (11 U.S.C. § 1129(d)).** The principal purpose of the Plan is neither the avoidance of taxes, nor the avoidance of the application of section 5 of the Securities Act of 1933, and no governmental unit has objected to Confirmation on any such grounds. Accordingly, section 1129(d) of the Bankruptcy Code is inapplicable.

LL. **Satisfaction of Confirmation Requirements.** Based upon the foregoing, the Plan satisfies the requirements for Confirmation set forth in section 1129 of the Bankruptcy Code, and should be confirmed.

MM. **Good Faith Solicitation (11 U.S.C. § 1125(e)).** The Debtor and its officers, directors, employees, advisors, Professionals, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code, and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Order in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and they are entitled to the benefits and protections afforded by section 1125(e) of the Bankruptcy Code and the injunction and exculpation provisions set forth in Article XI of the Plan and in this Confirmation Order.

NN. **Retention of Jurisdiction.** The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article X of the Plan and section 1142 of the Bankruptcy Code.

Based upon the foregoing findings, and upon the record made before the Bankruptcy Court in connection with the Confirmation Hearing, and good and sufficient cause appearing therefor, it is hereby ORDERED, ADJUDGED AND DECREED THAT:

Confirmation of the Plan

1. The Plan, attached hereto as Exhibit A, as and to the extent modified by this Confirmation Order, is approved and confirmed pursuant to section 1129 of the Bankruptcy Code.

All ancillary Plan documents necessary for implementing the Plan, including those in the Plan Supplement, are approved. Any objections to the Plan not otherwise withdrawn, resolved, or otherwise disposed of are overruled and denied.

2. The terms of the Plan are incorporated by reference into (except to the extent modified by this Confirmation Order), and are an integral part of, this Confirmation Order.

Compromises and Settlements Under the Plan

3. Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, upon the Effective Date, all settlements and compromises set forth in the Plan are approved in all respects, and constitute good faith compromises and settlements.

Classification and Treatment

4. The Plan's classification scheme is approved. The classifications set forth on the Ballots: (i) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan; (ii) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims under the Plan for distribution purposes; (iii) may not be relied upon by any Holder as representing the actual classification of such Claim under the Plan for distribution purposes; and (iv) shall not be binding on the Debtor and the Liquidating Trustee except for Plan voting purposes.

Authorization to Implement the Plan

5. Pursuant to section 1142(b) of the Bankruptcy Code, section 303 of the Delaware General Corporation Law, and any comparable provisions of the business corporation or similar laws of the state of Delaware, the Debtor, and the Liquidating Trustee, as applicable, are authorized to take or cause to be taken all corporate actions necessary or appropriate to implement all provisions of, and to consummate, the Plan, and to execute, enter into or otherwise make effective

all documents arising in connection therewith, including, without limitation, the Liquidating Trust Agreement, prior to, on, and after the Effective Date.

6. On the Effective Date, the Liquidating Trustee is authorized to do all things and to execute and deliver all agreements, documents, instruments, notices and certificates as are contemplated by the Plan and the Liquidating Trust Agreement, and to take all necessary actions required in connection therewith, in the name of and on behalf of the Debtor.

7. The approvals and authorizations specifically set forth in this Confirmation Order are not intended to limit the authority of the Debtor or the Liquidating Trustee to take any and all actions necessary or appropriate to implement, effectuate and consummate any and all documents or transactions contemplated by the Plan or this Confirmation Order.

Enforceability of the Plan

8. Pursuant to sections 1123(a), 1141(a) and 1142 of the Bankruptcy Code, subject to the occurrence of the Effective Date, the Plan and all Plan-related documents shall be, and hereby are, valid, binding and enforceable.

Vesting of Assets

9. Except as otherwise provided in the Plan, on and after the Effective Date, all Assets of the Estate, including all claims, rights, Causes of Action and any property acquired by the Debtor under or in connection with the Plan, shall vest in the Debtor free and clear of all Claims, Liens, charges, other encumbrances, and Interests.

Preservation of Causes of Action

10. Except as expressly provided in the Plan or this Confirmation Order: (i) in accordance with section 1123(b)(3) of the Bankruptcy Code, the Debtor shall retain all Causes of Action and nothing contained in the Plan or this Confirmation Order shall be deemed to be a release, waiver or relinquishment of any such Causes of Action; and (ii) the Debtor or the

Liquidating Trustee, as applicable, shall have, retain, reserve and be entitled to assert all such Causes of Action as fully as if the Chapter 11 Case had not been commenced, and all of the Debtor's legal and equitable rights respecting any Claim that are not specifically waived or relinquished by the Plan, this Confirmation Order, or any Final Order (including settlement or other agreements authorized thereby) may be asserted after the Effective Date to the same extent as if the Chapter 11 Case had not been commenced.

Reservation of Causes of Action

11. Unless a Cause of Action against a Holder or other Person or Entity is expressly waived, relinquished, released, compromised or settled in the Plan, the Confirmation Order or any Final Order, the Debtor, the Liquidating Trustee, and the Estate expressly reserve such Cause of Action for later adjudication by the Liquidating Trustee, including, without limitation, Causes of Action of which the Debtor may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist. Therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata* collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise), laches or the like shall apply to such Causes of Action upon or after the entry of this Confirmation Order or Effective Date based on the Disclosure Statement, the Plan, or this Confirmation Order, except where such Causes of Action have been expressly waived, relinquished, released, compromised or settled in the Plan, this Confirmation Order, a Final Order of the Bankruptcy Court or, following the Effective Date, in a written agreement duly executed by the Liquidating Trustee, which agreement, by its terms, is not subject to Bankruptcy Court approval.

Wind-Up and Dissolution of the Debtor

12. On the Effective Date, the Liquidating Trustee shall be appointed to manage the

Debtor, in accordance with the Plan and the Liquidating Trust Agreement. Following the implementation of the Plan, the administration and distribution of the Debtor's Assets in accordance with the terms of the Plan, and the winding down of the Debtor's affairs, without the need for any further order or action of the Bankruptcy Court, the Debtor will be dissolved and its affairs will be wound up in accordance with Delaware law. The Liquidating Trustee is authorized to take all actions reasonably necessary to dissolve the Debtor, and neither the Liquidating Trustee nor the Debtor shall be required to pay any taxes or fees in order to cause such dissolution and termination of the Debtor's existence.

Cancellation of Interests

13. As of the Effective Date, all Interests of any kind shall be deemed cancelled, and the Holders thereof shall not receive or retain any property, interest in property or consideration under the Plan on account of such Interests.

Plan Distributions

14. The Liquidating Trustee or its designee, on behalf of the Debtor, shall serve as the Disbursing Agent under the Plan with respect to distributions to Holders of Allowed Claims (provided that the Liquidating Trustee may hire professionals or consultants to assist with making distributions). The Liquidating Trustee shall make all distributions required to be made to such Holders of Allowed Claims pursuant to the Plan, the Confirmation Order and the Liquidating Trust Agreement. The Liquidating Trustee shall not be required to give any bond or surety or other security for the performance of the Liquidating Trustee's duties as disbursing agent unless otherwise ordered by the Bankruptcy Court.

15. Except as otherwise provided by the Plan, this Confirmation Order or as ordered by the Bankruptcy Court, all distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on the initial distribution date by the Liquidating Trustee.

distributions on account of Claims that first become Allowed Claims after the Effective Date shall be made pursuant to the terms and conditions of the Plan and the Liquidating Trust Agreement. No distribution shall be made on account of, without limitation, any Allowed Claim or portion thereof that (i) has been satisfied after the Petition Date; (ii) is listed in the Schedules as contingent, unliquidated, disputed or in a zero amount, and for which a proof of claim has not been timely filed; or (iii) is evidenced by a proof of claim that has been amended by a subsequently filed proof of claim.

16. Except to the extent provided in section 506(b) of the Bankruptcy Code, the Plan, or this Confirmation Order, post-petition interest, penalties or fees shall not accrue or be paid on Allowed Claims, and no Holder of an Allowed Claim shall be entitled to interest accruing on any Allowed Claim from and after the Petition Date.

Implementation of the Plan and the Liquidating Trustee

17. The Liquidating Trust Agreement, substantially in the form filed with the Plan Supplement, is hereby approved. To the extent of any inconsistency between the Plan and Liquidating Trust Agreement, the terms of the Liquidating Trust Agreement shall govern.

18. The appointment of SierraConstellation Partners, LLC as the Liquidating Trustee is hereby approved. The Liquidating Trustee shall be compensated in the manner set forth in and consistent with the Plan and the Liquidating Trust Agreement. The Liquidating Trustee shall have all powers, rights, duties and protections afforded the Liquidating Trustee under the Plan, this Confirmation Order, and the Liquidating Trust Agreement.

19. No later than ten (10) Business Days after the end of the first calendar quarter of 2023 and the end of each calendar quarter thereafter until all distributions to Holders of Allowed Claims, all payments to professionals and consultants retained by the Liquidating Trustee, and all other payments by the Liquidating Trustee have been made and the Chapter 11 Case has been

closed, the Liquidating Trustee shall file with the Bankruptcy Court a report that contains the following information; (a) cash on hand at the beginning and end of the calendar quarter; (b) a list, by name, of all fees the Liquidating Trustee has paid during the calendar quarter (including to itself); (c) a list, by names and amounts, of all open claims at the beginning of the calendar quarter and, as to such claims: (i) the claims allowed by the Liquidating Trustee; (ii) the claims paid by the Liquidating Trustee; (iii) the claims disallowed by the Liquidating Trustee; and (iv) the claims settled by the Liquidating Trustee and, if any, for how much.

20. Holders of Claims against or Interests in the Debtor shall have ten (10) Business Days from the date each quarterly report is filed to file in the Bankruptcy Court an objection to any of the reported fees paid by the Liquidating Trustee during such calendar quarter. The Bankruptcy Court shall retain jurisdiction over any such objections.

Executory Contracts and Unexpired Leases

21. On the Effective Date, all executory contracts and unexpired leases of the Debtor that have not been assumed, assumed and assigned, or rejected, prior to the Effective Date, or are not subject to a motion to assume or reject Filed before the Effective Date, shall be deemed rejected pursuant to this Confirmation Order, as of the Effective Date, other than the Insurance Contracts. For the avoidance of doubt, any post-petition consulting or transition services agreements shall not be deemed rejected as of the Effective Date.

22. **Any Creditor asserting a executory contract or lease rejection damages claims (a “Rejection Claim”) shall File a proof of claim with the Debtor’s claims and noticing agent Kurtzman Carson Consultants LLC, in accordance with the Plan, within thirty (30) days of the Effective Date, and shall also serve such proof of claim upon the Liquidating Trustee.**

23. **Any Rejection Claims arising from the Plan that are not timely Filed pursuant to Section 6.1 of the Plan shall be forever disallowed and barred. If one or more Rejection**

Claims are timely filed, the Liquidating Trustee may file an objection to any Rejection Claim on or prior to the Claims Objection Bar Date.

Disputed Claims

24. Except as otherwise specifically provided in the Plan, this Confirmation Order and the Liquidating Trust Agreement, after the Effective Date, the Liquidating Trustee shall have the authority (i) to file, withdraw, or litigate to judgment objections to Claims; (ii) to settle, compromise, or Allow any Claim or Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; (iii) to amend the Schedules in accordance with the Bankruptcy Code; and (iv) to 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. Any agreement entered into by the Liquidating Trustee in accordance with the terms of the Plan and this Confirmation Order with respect to the Allowance of any Claim shall be conclusive evidence and a final determination of the Allowance of such Claim.

25. All objections to Claims (other than (i) Administrative Claims and (ii) Professional Fee Claims, which Professional Fee Claims shall be governed by Section 11.2 of the Plan) shall be Filed on or before the Claims Objection Bar Date, which date may be extended by the Bankruptcy Court upon a motion filed by the Liquidating Trustee on or before the Claims Objection Bar Date with notice only to those parties entitled to notice in the Chapter 11 Case pursuant to Bankruptcy Rule 2002 as of the filing of such motion. The Filing of a motion to extend the Claims Objection Bar Date shall automatically extend the Claims Objection Bar Date until a final order is entered by the Bankruptcy Court. In the event that such a motion to extend Claims Objection Bar Date is denied, the Claims Objection Bar Date shall be the later of the then-current Claims Objection Bar Date (as previously extended, if applicable) or thirty (30) days after entry of a Final Order denying the motion to extend the Claims Objection Bar Date.

Administrative Claims

26. All requests for payment of an Administrative Claim (other than a Section 503(b)(9) Claim and Professional Fee Claims) arising on or after June 1, 2022 must be Filed with the Bankruptcy Court and served on counsel to the Liquidating Trustee and counsel to the U.S. Trustee no later than thirty (30) days after the Effective Date. Notwithstanding anything to the contrary in the Plan, Holders of Administrative Claims may file proofs of claim rather than motions for the allowance of Administrative Claims provided, however, that Holders of Administrative Claims shall have the burden of proof under Section 503(b). In the event of an objection to allowance of an Administrative Claim, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim.

Professional Fee Claims

27. All final requests for payment of Professional Fee Claims pursuant to sections 327, 328, 330, 331, 503(b), or 1103 of the Bankruptcy Code must be made by application Filed with the Bankruptcy Court and served on counsel to the Liquidating Trustee and counsel to the U.S. Trustee no later than forty-five (45) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Objections to such applications must be Filed and served on counsel to the Liquidating Trustee and counsel to the U.S. Trustee and the requesting Professional on or before the date that is fourteen (14) days after the date on which the applicable application was served (or such longer period as may be allowed by Order of the Bankruptcy Court or by agreement with the requesting Professional).

28. All Professional Fee Claims shall be paid by the Estate to the extent approved by Order of the Bankruptcy Court within five (5) Business Days from entry of such Order. On or before the Effective Date, the Debtor shall establish the Professional Fee Reserve, which shall only be used to pay Professional Fee Claims, unless and until all Professional Fee Claims have been

paid in full, otherwise satisfied or withdrawn. The Professional Fee Reserve shall vest in the Estate and shall be maintained by the Liquidating Trustee in accordance with the Plan and the Liquidating Trust Agreement.

29. The Estate shall fund the Professional Fee Reserve on the Effective Date in an amount that is determined by the Debtor and that approximates, as of the Effective Date, the total projected amount of unpaid Professional Fee Claims. Any excess funds in the Professional Fee Reserve shall be released back to the Estate to be used for other purposes consistent with the Plan and the Liquidating Trust Agreement.

Release, Injunction, Exculpation and Related Provisions

30. The release, injunction, exculpation, and related provisions set forth in Article XI of the Plan are hereby approved and authorized in their entirety, and such provisions are effective and binding on all Persons and Entities as and to the extent provided for therein.

Payment of Statutory Fees

31. All fees payable pursuant to section 1930 of title 28 of the United States Code prior to the Effective Date shall be paid on or before the Effective Date. All such fees that arise after the Effective Date shall be paid by the Estate and the Liquidating Trustee in the ordinary course. The Liquidating Trustee shall have the obligation to pay quarterly fees to the Office of the United States Trustee pursuant to section 1930 of title 28 of the United States Code until the Chapter 11 Case is closed, dismissed or converted. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to section 1930 of title 28 of the United States Code.

Notice of Entry of Confirmation Order and Effective Date

32. Pursuant to Bankruptcy Rules 2002 and 3020(c), the Debtor shall serve a notice of entry of this Confirmation Order and the occurrence of the Effective Date, substantially in the form

attached hereto as Exhibit B (the “*Notice of Confirmation and Effective Date*”), no later than five (5) Business Days after the Effective Date, on all Holders of Claims against or Interests in the Debtor and all other Persons on whom the Confirmation Hearing Notice was served. The form of the Notice of Confirmation and Effective Date is hereby approved in all respects. The Notice of Confirmation and Effective Date shall constitute good and sufficient notice of the entry of this Confirmation Order and of the relief granted herein, including, without limitation, the rejection of executory contracts and unexpired leases as provided for in the Plan and this Confirmation Order, and any bar dates and deadlines established under the Plan and this Confirmation Order, and no other or further notice of the entry of this Confirmation Order, the occurrence of the Effective Date and any such bar dates and deadlines need be given.

Retention of Jurisdiction

33. Under sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of this Confirmation Order and occurrence of the Effective Date, and except as otherwise ordered by the Bankruptcy Court, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Case and the Plan to the fullest extent permitted by law, including, among other things, to take the actions specified in Article X of the Plan and to consider any objections filed in accordance with Section 20 of this Confirmation Order.

References to Plan Provisions

34. The failure specifically to include or to refer to any particular article, section, or provision of the Plan or any related document in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, and such article, section, or provision shall have the same validity, binding effect, and enforceability as every other article, section, or provision of the Plan, it being the intent of the Bankruptcy Court that the Plan (as and to the extent modified by this Confirmation Order) be confirmed in its entirety.

Rules Governing Conflicts Between Documents

35. In the event and to the extent that any provision of the Plan is inconsistent with the provisions of the Disclosure Statement and any other order in the Chapter 11 Case, or any other agreement to be executed by any Person pursuant to the Plan, the provisions of the Plan shall control and take precedence; *provided, however*, that this Confirmation Order shall control and take precedence in the event of any inconsistency between this Confirmation Order, any provision of the Plan, and any of the foregoing documents.

Extension of Injunctions and Stays

36. Unless otherwise provided in the Plan or in this Confirmation Order, all injunctions or stays provided for in the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code or otherwise, and extant on the Confirmation Date (including any injunctions or stays contained in or arising from the Plan or this Confirmation Order), shall remain in full force and effect.

Section 1146 Exemption

37. Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of any security under the Plan or the making or delivery of any instrument of transfer pursuant to, in implementation of, or as contemplated by the Plan, or the re-vesting, transfer or sale of any real or personal property of the Debtor pursuant to, in implementation of, or as contemplated by the Plan, shall not be taxed under any state or local law imposing a stamp tax, transfer tax or any similar tax or fee.

Resolution of Certain Confirmation Objections

38. [●]

Reservation of Rights

39. **Terminating Debtor Professionals.** On the Effective Date, the engagement of each Professional retained by the Debtor shall be terminated without further order of the

Bankruptcy Court; *provided, however*, such Professional shall be entitled to prosecute their respective Professional Fee Claim.

Headings

40. Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

No Stay of Confirmation Order

41. Notwithstanding Bankruptcy Rules 3020(e), 6004(h), and 7062 and any other Bankruptcy Rule to the contrary, to the extent applicable, there is no reason for delay in the implementation of this Confirmation Order and, thus, this Confirmation Order shall be effective and enforceable immediately upon entry.

EXHIBIT A

Plan

EXHIBIT B

Notice of Confirmation and Effective Date

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

Zosano Pharma Corporation,¹

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

**NOTICE OF (I) CONFIRMATION AND EFFECTIVE DATE OF THE
CHAPTER 11 PLAN OF LIQUIDATION OF ZOSANO PHARMA CORPORATION AND (II)
DEADLINE UNDER THE PLAN AND CONFIRMATION ORDER TO FILE PROFESSIONAL
FEE CLAIMS, ADMINISTRATIVE CLAIMS AND REJECTION CLAIMS**

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. **Entry of Confirmation Order.** On November __, 2022, the United States Bankruptcy Court for the District of Delaware (the “*Bankruptcy Court*”) entered an order [Docket No. __] (the “*Confirmation Order*”) confirming the *Chapter 11 Plan of Liquidation of Zosano Pharma Corporation*, attached as Exhibit A to the Confirmation Order (together with all exhibits thereto, and as may be amended, modified or supplemented, the “*Plan*”)² in the chapter 11 case of the above-captioned debtor and debtor in possession (collectively, the “*Debtor*”).

2. **Effective Date of the Plan.** The Effective Date of the Plan was December __, 2022.

3. **Deadline to File Professional Fee Claims.** As provided for in the Plan and Confirmation Order, *all final requests for payment of Professional Fee Claims pursuant to sections 327, 328, 330, 331, 503(b), or 1103 of the Bankruptcy Code must be made by application Filed with the Bankruptcy Court and served on counsel to the Liquidating Trustee and counsel to the U.S. Trustee no later than January __, 2023 (i.e., forty-five (45) days after the Effective Date), unless otherwise ordered by the Bankruptcy Court. Objections to such applications must be Filed and served on counsel to the Liquidating Trustee and counsel to the U.S. Trustee and the requesting Professional on or before the date that is fourteen (14) days after the date on which the applicable application was served (or such longer period as may be allowed by Order of the Bankruptcy Court or by agreement with the requesting Professional).*

4. **Administrative Claim Bar Date.** As provided for in the Plan and Confirmation Order, *all requests for payment of an Administrative Claim (other than a Section 503(b)(9) Claim) arising on or after June 1, 2022 must be Filed with the Bankruptcy Court and served on counsel to the Liquidating Trustee and counsel to the U.S. Trustee no later than December __, 2022 (i.e., thirty (30) days after the Effective Date).*

¹ The business address and the last four (4) digits of the Debtor’s federal tax identification number is Zosano Pharma Corporation, 34790 Ardentech Court, Fremont, California 94555 (8360).

² Unless otherwise defined in this notice, capitalized terms used in this notice shall have the meanings ascribed to them in the Plan.

5. **Deadline to File Rejection Claims.** As provided for in the Plan and Confirmation Order: *(i) on the Effective Date, all executory contracts and unexpired leases of the Debtor that have not been assumed, assumed and assigned, or rejected, prior to the Effective Date or are not subject to a motion to assume or reject Filed before the Effective Date, shall be deemed rejected pursuant to the Confirmation Order, as of the Effective Date, other than the Insurance Contracts; (ii) any Creditor asserting a Rejection Claim shall File a proof of claim with the Debtor's claims and noticing agent, Kurtzman Carson Consultants LLC, at the address below, no later than December ____, 2022 (i.e., thirty (30) days after the Effective Date) and shall also serve such proof of claim upon the Liquidating Trustee; and (iii) any Rejection Claims that are not timely Filed shall be forever disallowed and barred.*

Zosano Pharma Claims Processing Center
c/o KCC
222 N. Pacific Coast Highway, Suite 300
El Segundo, CA 90245

6. **Inquiries by Interested Parties.** Copies of the Confirmation Order (to which the Plan is attached as Exhibit A) may be examined free of charge at <http://www.kccllc.net/zosanopharma>. The Confirmation Order is also on file with the Bankruptcy Court and may be viewed by accessing the Bankruptcy Court's website at www.deb.uscourts.gov. To access documents on the Bankruptcy Court's website, you will need a PACER password and login, which can be obtained at www.pacer.psc.uscourts.gov.

Dated: November 3, 2022

GREENBERG TRAURIG, LLP

/s/ Dennis A. Meloro
Dennis A. Meloro (DE Bar No. 4435)
1007 North Orange Street, Suite 1200
Wilmington, Delaware 19801
Telephone: (302) 661-7000
Facsimile: (302) 661-7360
Email: melorod@gtlaw.com

-and-

John D. Elrod (Admitted *pro hac vice*)
Terminus 200
3333 Piedmont Road NE, Suite 2500
Atlanta, Georgia 30305
Telephone: (678) 553-2100
Facsimile: (678) 553-2212
Email: elrodj@gtlaw.com

*Counsel for the Debtor
and Debtor-in-Possession*