

**PLEASE NOTE THAT A HOLDER OF A CLAIM WHO VOTES TO ACCEPT THE PLAN CONSENTS TO THE RELEASES CONTAINED IN ARTICLE IX OF THE PLAN, WHICH ARE ALSO SET FORTH HEREIN IN ARTICLE X. PLEASE CAREFULLY REVIEW SUCH RELEASES BEFORE DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN.**

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

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

Chapter 11

Case No. 23-10024 (JTD)

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

**YOUNG CONAWAY  
STARGATT & TAYLOR, LLP**

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

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

**SIDLEY AUSTIN LLP**

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

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

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

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



**DISCLOSURE STATEMENT DATED 18, 2023<sup>2</sup>**

**THIS IS NOT A SOLICITATION OF AN ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL THE BANKRUPTCY COURT HAS APPROVED THIS DISCLOSURE STATEMENT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT. THE INFORMATION IN THIS DISCLOSURE STATEMENT IS SUBJECT TO CHANGE**

\* \* \*

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

\* \* \*

The Debtor believes that the Chapter 11 Plan of Liquidation for Tricida, Inc. (the “Plan”) is in the best interests of creditors and other stakeholders. All claimants entitled to vote thereon are urged to vote in favor of the Plan. A summary of the voting instructions is set forth in Article I.F.2. More detailed instructions are included in the ballots distributed to the creditors entitled to vote on the Plan. To be counted, your ballot must be duly completed, executed and received by the Debtor’s voting agent by 4:00 p.m., prevailing Eastern Time, on March 30, 2023 (the “Voting Deadline”), unless extended.

\* \* \*

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

\* \* \*

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

\* \* \*

---

<sup>2</sup> Capitalized terms used herein and not otherwise defined has the meanings given to them in the *Chapter 11 Plan of Liquidation for Tricida, Inc.*, dated January 18, 2023.

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

\* \* \*

**The Plan Provides that Holders of Impaired Claims entitled to vote who do not submit a Ballot voting to accept or reject the Plan, who vote to accept the Plan, or who vote to reject the Plan but do not opt-out of the release provisions of the Plan are deemed to have granted the releases therein.**

\* \* \*

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

\* \* \*

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

\* \* \*

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

\* \* \*

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

undertake any obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise.

\* \* \*

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

**TABLE OF CONTENTS**

**Contents**

I. OVERVIEW OF THE PLAN..... 12

    A. Introduction..... 12

    B. The Plan ..... 12

    C. The Adequacy of this Disclosure Statement..... 13

    D. Summary of Classes and Treatment of Claims and Interests ..... 14

    E. Solicitation Package..... 15

    F. Voting and Confirmation of the Plan..... 16

        1. Certain Factors to be Considered Prior to Voting..... 16

        2. Voting Procedures and Requirements..... 17

        3. Plan Objection Deadline ..... 17

        4. Confirmation Hearing..... 17

        5. Confirmation..... 18

        6. Acceptance..... 19

        7. Feasibility..... 19

        8. Best Interests Test; Liquidation Analysis ..... 19

        9. Compliance with Applicable Provisions of the Bankruptcy Code ..... 20

        10. Alternatives to Confirmation and Consummation of the Plan..... 20

    G. Releases by the Debtor Set Forth in the Plan..... 20

II. HISTORY OF THE DEBTOR ..... 20

    A. The Debtor’s Corporate Structure and History..... 20

    B. Debtor’s Prepetition Business Operations ..... 21

    C. The Debtor’s Capital Structure ..... 21

        1. Convertible Notes ..... 21

        2. Trade and Related Debt ..... 22

        3. Equity..... 22

    D. Events Leading to the Chapter 11 Case ..... 22

    E. The Prepetition Sale Process..... 23

    F. The Restructuring Support Agreement ..... 24

III. EVENTS DURING CHAPTER 11 CASE..... 25

    A. Commencement of the Chapter 11 Case and the Debtor’s Professionals..... 25

    B. First Day Motions ..... 25

    C. The Proposed Sale of the Debtor’s Assets..... 26

D. Bar Dates..... 28

IV. TREATMENT OF CLAIMS AND INTERESTS ..... 28

A. Unclassified Claims ..... 28

    1. Administrative Claims ..... 28

    2. Priority Tax Claims..... 30

B. Classified Claims ..... 30

    1. Class 1 - Other Secured Claims ..... 30

    2. Class 2 - Other Priority Claims..... 31

    3. Class 3 - Noteholder Claims ..... 31

    4. Class 4 - Patheon Rejection Claim..... 31

    5. Class 5 - General Unsecured Claims ..... 32

    6. Class 6 - *De Minimus* Unsecured Claims ..... 32

    7. Class 7 - Section 510(b) Claims..... 32

    8. Class 8 - Debtor Interests..... 33

A. Special Provisions Governing Unimpaired Claims ..... 33

B. Elimination of Vacant Classes ..... 33

C. Voting Classes; Presumed Acceptance by Non-Voting Classes..... 33

D. Controversy Concerning Impairment ..... 34

E. Subordination of Claims ..... 34

F. Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code..... 34

C. Reservation of Rights Regarding Claims..... 34

D. Post-Petition Interest on Claims..... 34

E. Insurance..... 34

V. MEANS FOR IMPLEMENTATION OF THE PLAN..... 35

G. Sources of Consideration for Plan Distributions ..... 35

H. Vesting of Assets ..... 35

I. Liquidating Trust ..... 35

    1. Establishment of the Liquidating Trust..... 35

    2. Transfer of the Liquidating Trust Assets ..... 35

    3. Liquidating Trust Waterfall ..... 35

    4. Liquidating Trust Agreement..... 36

    5. Purpose of the Liquidating Trust ..... 36

    6. Liquidating Trustee..... 36

    7. Termination of the Liquidating Trust ..... 38

8.	Exculpation Relating to the Liquidating Trust.....	38
J.	Preservation of Causes of Action.....	38
K.	Corporate Action.....	39
1.	Transfer of Assets and Assumption of Liabilities.....	39
2.	Dissolution of the Debtor; Removal of Directors and Officers; Termination of Employees.....	39
L.	Cancellation of Existing Securities and Agreements.....	39
M.	Plan Transactions.....	39
N.	Effectuating Documents and Further Transactions.....	40
O.	Section 1146 Exemption from Certain Taxes and Fees.....	40
P.	Sale Order.....	40
Q.	Authority to Act.....	40
R.	No Revesting of Trust Assets.....	41
S.	Exception from Transfer Taxes.....	41
T.	Presentation of Retained Causes of Action.....	41
U.	Settlement of Claims and Controversies.....	42
V.	Release of Liens.....	42
W.	No Discharge.....	42
VI.	TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES.....	42
A.	General Treatment.....	42
B.	Rejection Damages Claims.....	43
C.	Reservation of Rights.....	43
D.	Preexisting Obligations to Debtor under Executory Contracts or Unexpired Leases.....	43
E.	Insurance Preservation.....	44
F.	Modifications, Amendments, Supplements, Restatements, or Other Agreements.....	44
VII.	PROVISIONS GOVERNING DISTRIBUTIONS.....	44
R.	Distribution Record Date.....	44
S.	Withholdings.....	45
T.	Date of Distributions.....	45
U.	Disbursing Agent.....	45
V.	Powers of Disbursing Agent.....	45
W.	Surrender of Instruments.....	45
X.	IRS Forms.....	46
Y.	Delivery of Distributions.....	46
Z.	Manner of Payment.....	46

AA.	Foreign Currency Exchange Rate .....	47
BB.	Setoffs and Recoupments.....	47
CC.	Minimum Distributions.....	47
DD.	Allocation of Distributions Between Principal and Interest .....	47
EE.	Distributions Free and Clear .....	47
FF.	Claims Paid or Payable by Third Parties .....	48
1.	Claims Paid by Third Parties .....	48
2.	Claims Payable by Third Parties.....	48
3.	Applicability of Insurance Policies.....	48
VIII.	PROCEDURES FOR RESOLVING DISPUTED CLAIMS.....	48
A.	Allowance of Claims.....	48
B.	Claims Administration Responsibilities .....	49
C.	Estimation of Claims.....	49
D.	Adjustment to Claims Without Objection.....	49
E.	Time to File Objections to Claims .....	49
F.	Disallowance of Late Claims .....	49
G.	Disputed Claims.....	50
H.	Amendment to Claims .....	50
I.	No Distributions Pending Allowance .....	50
J.	Distributions After Allowance.....	50
IX.	CONDITIONS PRECEDENT TO THE EFFECTIVE DATE .....	50
A.	Conditions to Effective Date.....	50
B.	Waiver of Conditions to Effective Date.....	51
C.	Effect of Vacatur of the Confirmation Order.....	51
D.	Votes Solicited in Good Faith.....	51
X.	EXCULPATION, RELEASES, AND INJUNCTION .....	52
A.	Exculpation .....	52
B.	Releases.....	52
1.	Releases by the Debtor.....	52
2.	Releases by Holders of Claims and Interests.....	53
C.	Injunction .....	54
D.	Term of Injunctions or Stays.....	55
E.	Opt-Out Election.....	55
XI.	RETENTION OF JURISDICTION.....	55

25.	Hear any other matter over which the Court has jurisdiction. ....	57
XII.	MISCELLANEOUS PROVISIONS.....	58
A.	Debtor’s Operation from Confirmation Hearing Through Effective Date .....	58
B.	Immediate Binding Effect.....	58
C.	Dissolution of the Creditors’ Committee.....	58
D.	Modification of the Plan .....	58
E.	Revocation of the Plan; Effect of Non-Occurrence of Conditions to the Effective Date. ....	59
F.	Inconsistency.....	59
G.	Exhibits and Schedules .....	59
H.	Additional Documents .....	59
I.	Severability .....	59
J.	Reservation of Rights.....	60
K.	Successors and Assigns.....	60
L.	Closing of Chapter 11 Case .....	60
M.	Service of Documents .....	60
XIII.	RISK FACTORS .....	61
A.	Plan Confirmation, Release and Exculpation Provisions and Classification.....	62
B.	The Effective Date May Not Occur .....	62
C.	Allowance of Claims.....	62
D.	Risk Factors That May Affect Recoveries Available to Holders of Allowed Claims Under the Plan.....	62
1.	The Amounts of Allowed Claims May Adversely Affect the Recovery of Some Holders of Allowed Claims .....	62
2.	Any Valuation of Any Assets to be Distributed Under the Plan is Speculative .....	63
3.	The Debtor Cannot Guarantee the Timing of Distributions .....	63
4.	Certain Tax Implication of the Debtor’s Bankruptcy .....	63
5.	Trust’s Expenses .....	63
E.	Risk Factors Relating to Securities Law.....	63
1.	Non-Transferability.....	64
2.	Uncertainty of Value.....	64
F.	Disclosure Statement Disclaimer.....	64
1.	The Financial Information Contained in This Disclosure Statement Has Not Been Audited.....	64
2.	Information Contained in This Disclosure Statement Is For Soliciting Votes .....	65
3.	This Disclosure Statement Was Not Reviewed or Approved by the SEC.....	65

4.	This Disclosure Statement May Contain Forward Looking Statements.....	65
5.	No Legal or Tax Advice Is Provided to You by This Disclosure Statement.....	65
6.	No Admissions Made.....	65
7.	Failure to Identify Potential Objections.....	65
8.	No Waiver of Right to Object or Right to Recover Transfers and Assets.....	66
9.	Information Was Provided by the Debtor and Was Relied Upon by the Debtor's Advisors .....	66
10.	Potential Exists for Inaccuracies, and the Debtor Has No Duty to Update .....	66
11.	No Representations Outside This Disclosure Statement are Authorized.....	66
XIV.	CERTAIN FEDERAL INCOME TAX CONSEQUENCES.....	66
A.	U.S. Federal Income Tax Consequences to Holders of Allowed Claims .....	68
1.	U.S. Federal Income Tax Consequences to U.S. Holders of Allowed Claims in Class 3, 4, 5, or 6 .....	68
2.	Accrued Interest .....	70
3.	Post-Effective Date Cash Distributions .....	70
4.	Market Discount.....	70
5.	Bad Debt or Worthless Securities Deduction .....	71
6.	Medicare Surtax .....	71
B.	Backup Withholding and Information Reporting .....	71
C.	Importance of Obtaining Professional Tax Assistance.....	71
XV.	ADDITIONAL INFORMATION.....	72
XVI.	RECOMMENDATION AND CONCLUSION.....	72

**EXHIBITS**

Exhibit A *Chapter 11 Plan of Liquidation for Tricida, Inc.*

Exhibit B Liquidation Analysis

## I. OVERVIEW OF THE PLAN

### RECOMMENDATION BY THE DEBTOR

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

#### A. Introduction

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

#### B. The Plan

The Debtor filed for chapter 11 bankruptcy protection on January 11, 2023. The Debtor contemplates, through Bankruptcy Court order(s), the sale of substantially all of its assets in the Chapter 11 Case. The following phase of this Chapter 11 Case is the confirmation and consummation of the Plan, pursuant to which the Debtor will establish a Trust to distribute the remaining proceeds of the Asset Sale(s) and monetize any remaining Estate assets.

A chapter 11 bankruptcy case permits a debtor to resolve its affairs and distribute the proceeds of its estate pursuant to a confirmed chapter 11 plan. To that end, the Debtor filed the Plan, the terms of which are more fully described herein, contemporaneously with the filing of this Disclosure Statement. The Plan contemplates a liquidation of the Debtor and its Estate and is therefore referred to as a "plan of liquidation." The primary objective of the Plan is to maximize the value of recoveries to Holders of Allowed Claims and to distribute all property of the Debtor's Estate that is or becomes available for distribution in accordance with the Bankruptcy Code and Plan. The Debtor asserts that the Plan accomplishes this objective and is in the best interests of its

Estate, and therefore seeks to confirm the Plan. The Plan classifies Holders of Claims and Interests according to the type and nature of the Holder's Claim or Interest, as more fully described below.

The Plan designates the Classes of Claims against and Interests in the Debtor and specifies which Classes are (1) Impaired or Unimpaired by the Plan; (2) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code; or (3) deemed to accept or reject the Plan. Claims against the Debtor and Interests in the Debtor are classified in 8 separate Classes, as described herein.

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

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

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

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

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

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

These calculations do not include any value attributed to recoveries by the Liquidation Trust on the Retained Causes of Action. The Debtor has not commenced a review of potential Retained Causes of Action and, therefore, they are not in a position to provide an estimated value for recoveries thereon. The value of the Retained Causes of Action, however, could be material.

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

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

<b>Class 3</b> Noteholder Claims	Noteholder Claims	<b>Impaired</b> Entitled to Vote.	\$201,063,000	8%
<b>Class 4</b>	Patheon Rejection Claim	<b>Impaired</b> Entitled to Vote.	\$149,512,400	8%
<b>Class 5</b>	General Unsecured Claim	<b>Impaired</b> Entitled to Vote.	\$14,738,000	8%
<b>Class 6</b>	<i>De Minimus</i> Unsecured Claims	<b>Impaired</b> Entitled to Vote.	\$60,000	50%
<b>Class 7</b>	Section 510(b) Claims	<b>Impaired</b> Deemed to Reject the Plan. Not Entitled to Vote.	\$0	N/A
<b>Class 8</b>	Debtor's Interests	<b>Impaired</b> Deemed to Reject the Plan. Not Entitled to Vote.	\$0	N/A

**E. Solicitation Package**

The package of materials (the “Solicitation Package”) to be sent to Holders of Claims entitled to vote on the Plan will contain:

- a cover letter describing (1) the contents of the Solicitation Package; (2) information about how to obtain access, free of charge, to the Plan, this Disclosure Statement and the Disclosure Statement Order, together with the exhibits thereto, on the case administration

website; and (3) information about how to obtain, free of charge, paper copies of any of the documents included in the Solicitation Package;

- a notice of the Confirmation Hearing;
- for Holders of Claims in the Voting Classes (*i.e.*, Holders of Claims in Classes 3, 4, 5 and 6), an appropriate form of Ballot, instructions on how to complete the Ballot and a pre-paid, preaddressed Ballot return envelope and such other materials as the Bankruptcy Court may direct; and
- any supplemental documents filed with the Bankruptcy Court and any documents that the Bankruptcy Court orders to be included in the Solicitation Package.

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

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

#### **F. Voting and Confirmation of the Plan**

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

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

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

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

2. Voting Procedures and Requirements

Pursuant to the Bankruptcy Code, only classes of claims against or equity interests in a debtor that are “impaired” under the terms of a plan of liquidation or reorganization are entitled to vote to accept or reject a plan. A class is “impaired” if the legal, equitable or contractual rights attaching to the claims or interests of that class are modified, other than by curing defaults and reinstating maturity. Classes of Claims and Interests that are not impaired are not entitled to vote on the Plan and are conclusively presumed to have accepted the Plan. In addition, Classes of Claims and Interests that do not receive Distributions under the Plan are not entitled to vote on the Plan and are deemed to have rejected the Plan. The classification of Claims and Interests is summarized, together with an indication of whether each Class of Claims or Interests is impaired or unimpaired, in Article I.D.

**Voting on the Plan by each Holder of a Claim in Classes 3, 4, 5 and 6 is important. Please carefully follow all of the instructions contained on the Ballot(s) provided to you. All Ballots must be completed and returned in accordance with the instructions provided. To be counted, your ballot or ballots must be received by 4:00 p.m., prevailing Eastern Time, on March 30, 2023 (the “Voting Deadline”) at the address set forth on the preaddressed envelope provided to you.**

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

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

3. Plan Objection Deadline

The Objection Deadline is March 30, 2023, at 4:00 p.m. (prevailing Eastern Time). All objections to Confirmation of the Plan (the “Confirmation Objections”) must be in writing and must specify in detail the name and address of the objector, all grounds for the objection and the amount of the Claim or Interest held by the objector. Any Confirmation Objection must be filed with the Bankruptcy Court and served on the Debtor, any official committee of unsecured creditors duly appointed by the U.S. Trustee (the “Creditors’ Committee”), and certain other parties in interest in accordance with the Disclosure Statement Order on or before the Objection Deadline.

4. Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on Confirmation of the Plan. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to Confirmation of the Plan. The Bankruptcy Court entered

the Disclosure Statement Order, which, among other things, scheduled a Confirmation Hearing. The Confirmation Hearing will commence on April 6, 2023, at 10:00 a.m. (prevailing Eastern Time), before the Honorable John T. Dorsey, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 N Market St, Fifth Floor, Courtroom 5, Wilmington, Delaware 19801.

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

#### 5. Confirmation

To confirm the Plan, the Bankruptcy Code requires that the Bankruptcy Court make a series of findings concerning the Plan and the Debtor, including that:<sup>3</sup>

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

---

<sup>3</sup> The descriptions contained herein are only a summary of certain confirmation requirements; they are not exhaustive of all confirmation requirements and should not be construed as such.

retain in a chapter 7 liquidation, unless each Holder of a Claim or Interest in that Class has accepted the Plan.

6. Acceptance

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

7. Feasibility

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of a plan not be likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor (unless liquidation or reorganization is proposed in the Plan). Because the Plan proposes a liquidation of all of the Debtor's assets, for purposes of this test the Debtor has analyzed the ability of the Trust to meet its obligations under the Plan. Based on the Debtor's analysis, including the information contained in **Exhibit B** regarding recoveries available to Holders of Allowed Claims under the Plan, the Trust will have sufficient assets to accomplish its tasks under the Plan. Therefore, the Debtor believes that its liquidation pursuant to the Plan will meet the feasibility requirements of the Bankruptcy Code.

8. Best Interests Test; Liquidation Analysis

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

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

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

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

9. Compliance with Applicable Provisions of the Bankruptcy Code

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

10. Alternatives to Confirmation and Consummation of the Plan

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

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

Article IX of the Plan provides that each Released Party is deemed released by the Debtor and its Estate from any and all claims and Causes of Action. The Debtor believes that applicable law and the facts support those releases and that the Bankruptcy Court can and should approve them.

**II. HISTORY OF THE DEBTOR**

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

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

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

## **B. Debtor's Prepetition Business Operations**

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

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

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

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

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

## **C. The Debtor's Capital Structure**

As of the Petition Date, Tricida has approximately \$204.5 million in total funded debt obligations under the Convertible Notes, including accrued but unpaid interest. Tricida has no secured debt.

### **1. Convertible Notes**

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

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

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

## 2. Trade and Related Debt

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

## 3. Equity

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

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

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

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

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

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

#### **E. The Prepetition Sale Process**

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

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

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

## F. The Restructuring Support Agreement

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

Following extensive, arms’-length negotiations, the Debtor and the Convertible Noteholders collectively holding over 80% of the aggregate amount of Convertible Notes outstanding executed the RSA. Under the RSA, the Consenting Noteholders are required to vote in favor of the Plan provided, among other things, that (a) Tricida meets certain milestones set forth in the RSA term sheet (the “Milestones”); (b) Tricida operates in accordance with the approved budget, subject to a permitted variance; and (c) the Consenting Noteholders have certain consultation rights, including with respect to any sale of the assets. In addition to customary termination provisions for the Debtor and the Consenting Noteholders for a restructuring support agreement, on or before the date that is thirty (30) days following the Petition Date, counsel to the Consenting Noteholders may elect to provide notice to the Debtor that the Required Objecting Noteholders (representing at least two-thirds of the Consenting Noteholders) have reasonably determined in good faith that the Plan and Disclosure Statement, as each may be amended from time to time after filing, (i) are inconsistent with the terms of the RSA, including the term sheet attached thereto, or (ii) if not addressed in the RSA or term sheet, otherwise adversely affect the Consenting Noteholders or their claims under the Convertible Notes in any material respect. Upon delivery of any such notice, the Debtor may terminate the RSA or seek to cure the described inconsistency within five (5) days.

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

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

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

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

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

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

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

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

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

- motion to authorize the Debtor to redact certain personally identifiable information and modify the requirements to file a list of all equity security holders and certain related relief [D.I. 10];
- motion relating to the continued use of the Debtor's existing cash management system and certain related relief [D.I. 9];
- motion to establish procedures for determining adequate assurance for the provision of utility services and to prohibit utility service providers from altering, refusing, or discontinuing service and certain related relief [D.I. 4];
- motion for authority to pay certain prepetition employee-related obligations and certain related relief [D.I. 8];
- application to retain KCC as the Debtor's claims and noticing agent and certain related relief [D.I. 3];
- motion for authority to pay certain Warehouseman and certain related relief [D.I. 7];
- motion for authority to pay certain prepetition taxes and fees and certain related relief [D.I. 6]; and

- motion for authority to maintain certain insurance policies and programs, to honor insurance obligations and for certain related relief [D.I. 5].

The relief sought in the First Day Motions was granted on an interim basis on January 13, 2023.

### **C. The Proposed Sale of the Debtor's Assets**

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

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

As set forth more fully in the Bidding Procedures Motion, the Debtor intends to build upon its prepetition efforts to procure a satisfactory purchase offer by marketing the Assets (as defined below) more broadly than it did prepetition and continue to facilitate access to diligence materials. Such materials include details of the proposed Bidding Procedures, a non-confidential presentation and, for those executing a non-disclosure agreement with the Debtor, access to a virtual data room, confidential presentation materials and, as appropriate, meetings with management. Stifel-MB has launched this postpetition process in connection with the filing of the proposed Bidding Procedures, begun contacting all parties from the prepetition process as well as additional potential purchasers, including those who may be interested in only certain business segments or a subset of the Assets. This postpetition marketing process for the Assets will include a broader universe of potential buyers due to the public nature of the Bidding Procedures and the ability to sell the Assets free and clear of claims and interests. Accordingly, the process provides the best path forward to consummating a value-maximizing transaction.

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

- (i) the entry of an order (the "Bidding Procedures Order"):
  - (a) approving proposed bidding procedures (the "Bidding Procedures") in connection with the sale or sales (collectively, the "Sale") of all or substantially all of the Debtor's assets or any portion thereof (the "Assets"), in the form attached to the Bidding Procedures Order as Exhibit 1, and approving the form and manner of notice thereof in the form attached to the Bidding Procedures Order as Exhibit 2,
  - (b) subject to final Court approval of the Stalking Horse Approval Order (as defined in the Bidding Procedure Motion), authorizing, but not directing, the Debtor to designate the Stalking Horse Bidder (as defined in the Bidding Procedure Motion) in accordance with the Bidding Procedures,
  - (c) subject to final Court approval at the Sale Hearing (as in the Bidding Procedure Motion), authorizing and approving the Debtor to enter into and perform under an asset purchase agreement consistent with the Bidding Procedures (the "Purchase Agreement"),
  - (d) scheduling an auction (the "Auction") and a sale hearing (the "Sale Hearing") in connection with the Sale,
  - (e) establishing procedures for the assumption and assignment (the "Assumption and Assignment Procedures") of the executory contracts and unexpired leases identified in the Cure Schedule (as defined in the Bidding Procedure Motion) (each, an "Assumed Contract," and collectively, the "Assumed Contracts") and the form and manner of notice thereof in the form attached to the Bidding Procedures Order as Exhibit 3, and
  - (f) granting related relief; and
- (ii) the entry of an order (the "Sale Order"):
  - (a) authorizing and approving the Debtor's entry into the Purchase Agreement with the Successful Bidder(s) (as defined in the Bidding Procedure Motion) or Next-Highest Bidder(s) (as defined in the Bidding Procedure Motion), as applicable,
  - (b) authorizing the Sale of the Assets to the party or parties that are the Successful Bidder(s) (as defined in the Bidding Procedure Motion) at the Auction (as defined in the Bidding Procedure Motion), free and clear of all liens, claims and encumbrances (the "Encumbrances"), except for certain assumed liabilities,

- (c) authorizing and approving the assumption and assignment of the Assumed Contracts (as defined in the Bidding Procedure Motion) in connection with the Sale, including proposed cure amounts (if any), and
- (d) granting related relief.

**D. Bar Dates**

On January [17], 2023, the Debtor filed a motion [D.I. 67] (the “Bar Date Motion”) to establish certain bar dates for filing Proofs of Claim against the Debtor. Filed concurrently with the Bar Date Motion, the Debtor filed a motion seeking to shorten notice and objection periods with respect to the Bar Date Motion [D.I. 68], so that it may be heard at the hearing the Court has scheduled on January 26, 2023.

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

**IV. TREATMENT OF CLAIMS AND INTERESTS**

**A. Unclassified Claims**

1. Administrative Claims

a. *Bar Date for Administrative Claims*

Except with respect to Professional Fee Claims or otherwise as set forth in the Plan, the Confirmation Order or in the Bar Date Order, Holders of Administrative Claims arising between the Petition Date and the Effective Date must File Administrative Claims by no later than the Administrative Claims Bar Date and pursuant to the procedures specified in the Confirmation Order. Notwithstanding anything to the contrary in any request for allowance and/or payment of an Administrative Claim or other document, any objections to Administrative Claims may be filed by no later than the Claims Objection Bar Date.

Holders of Administrative Claims that must File and serve a request for payment of such Administrative Claims and fail to File such a request by the applicable Bar Date or as otherwise set forth in the Plan, will be forever barred from asserting such Administrative Claims against the Debtor, the Liquidation Trust, or their respective property, and such Administrative Claims will be deemed discharged as of the Effective Date.

b. *Treatment of Administrative Claims in General*

Except as specified in Article II.A. of the Plan, and subject to the Bar Date provisions in the Plan, unless otherwise agreed to by the Holder of an Allowed Administrative Claim and the Debtor or the Liquidating Trustee (as applicable), each Holder of an Allowed Administrative Claim (other than Holders of Professional Fee Claims and Claims for Statutory Fees) will receive in full and final satisfaction of its Allowed Administrative Claim an amount of Cash equal to the

amount of such Allowed Administrative Claim in accordance with the following: (1) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date (or, if not then due, when such Allowed Administrative Claim becomes due or as soon as reasonably practicable thereafter); (2) if such Administrative Claim is not Allowed as of the Effective Date, no later than thirty (30) days after the date on which an order allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; or (3) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court.

c. *Statutory Fees*

On or prior to the Effective Date, the Debtor will pay all outstanding U.S. Trustee Fees that are due and payable. After the Effective Date, the Liquidation Trust will pay all U.S. Trustee Fees as they come due. The Liquidation Trust will remain obligated to pay U.S. Trustee Fees for the Debtor until the case is closed. In the event that the Liquidation Trust does not have sufficient funds to pay the U.S. Trustee Fees in a particular quarter. For the avoidance of doubt, U.S. Trustee Fees shall not be subject to any Bar Date.

d. *Professional Compensation*

- (i) **Final Fee Applications and Payment of Professional Fee Claims.** To the extent required by an order of the Bankruptcy Court, Professionals must file all final requests for payment of Professional Fee Claims incurred during the period from the Petition Date through the Effective Date no later than 45 days after the Effective Date. Once approved for payment by a Final Order, the Liquidation Trustee will pay Allowed Professional Fee Claims from amounts held in the Professional Fee Reserve Account.
- (ii) **Allocation and Estimation of Professional Fee Claims.** All Professionals will reasonably estimate their unpaid Professional Fee Claims as of the Effective Date, and must deliver their estimates to the Debtor no later than three days prior to the Effective Date.
- (iii) **Professional Fee Reserve Account.** When the Debtor or Liquidation Trustee have satisfied all Allowed Professional Fee Claims in full, the Debtor or Liquidation Trustee, as applicable, will distribute any remaining amount in the Professional Fee Reserve Account to the Liquidation Trust. For the avoidance of doubt, prior to the satisfaction of all Allowed Professional Fee Claims, the Professional Fee Reserve Account shall not constitute property of the Debtor's Estate or property of the Liquidation Trust, and the amounts therein shall be held for the benefit of the Professionals.

e. *Consenting Noteholder Fees and Expenses*

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

2. Priority Tax Claims

a. *Payment of Priority Tax Claims*

Unless otherwise agreed by the Holder of a Priority Tax Claim and the Debtor or the Liquidation Trustee, each Holder of an Allowed Priority Tax Claim, at the option of the Debtor or Liquidation Trustee, will receive, in full satisfaction of its Allowed Priority Tax Claim Cash or otherwise receive treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.

**B. Classified Claims**

1. Class 1 - Other Secured Claims

- a. **Composition.** Class 1 consists of all Other Secured Claims against the Debtor.
- b. **Treatment.** On the Effective Date, or as soon as reasonably practicable thereafter, except to the extent that a Holder of an Allowed Other Secured Claim and the Debtor agree to less favorable treatment for such Holder, in full and final satisfaction of the Allowed Other Secured Claim, each Holder thereof will receive: (i) payment in full in Cash; (ii) delivery of the collateral securing any such Claim and payment of any interest required under section 506(b) of the Bankruptcy Code; (iii) reinstatement of such Claim; or (iv) such other treatment rendering such Claim Unimpaired.
- c. **Voting.** Class 1 is Unimpaired, and Holders of Other Secured Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 1 Other Secured Claims are not entitled to vote to accept or reject the Plan.

2. Class 2 - Other Priority Claims

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

3. Class 3 - Noteholder Claims

- a. **Composition.** Class 3 consists of all Noteholder Claims against the Debtor.
- b. **Treatment.** On the Effective Date, the Noteholder Claims shall be deemed Allowed in the outstanding principal amount of the Convertible Notes, plus accrued but unpaid interest, fees, and any and all amounts due thereunder, and except to the extent that a Holder of a Noteholder Claim and the Debtor agree to less favorable treatment for such Holder, in full and final satisfaction of the Allowed Noteholder Claim, each Holder thereof will: (i) be paid in Cash on the Effective Date or as soon as reasonably practicable thereafter, its Noteholder Effective Date Distribution; and (ii) receive its *pro rata* right to recovery from the Liquidating Trust pursuant to the Liquidating Trust Waterfall.
- c. **Voting.** Class 3 is Impaired, and Holders of Noteholder Claims are entitled to vote to accept or reject the Plan.

4. Class 4 - Patheon Rejection Claim

- a. **Composition.** Class 4 consists of General Unsecured Claims.
- b. **Treatment.** Except to the extent that a Holder of a Patheon Rejection Claim and the Debtor agree to less favorable treatment for such Holder, in full and final satisfaction of the Allowed Patheon Rejection Claim, each Holder thereof will: (i) be paid in Cash from the Liquidating Trust pursuant to the Liquidating Trust Waterfall on

the date any of its Patheon Rejection Claim is Allowed, or as soon as reasonably practicable thereafter, its Disputed Claim Distribution; and (ii) receive its *pro rata* right to recovery from the Liquidating Trust pursuant to the Liquidating Trust Waterfall.

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

5. Class 5 - General Unsecured Claims

- a. **Composition.** Class 5 consists of all General Unsecured Claims against the Debtor.

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

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

6. Class 6 - *De Minimis* Unsecured Claims

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

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

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

7. Class 7 - Section 510(b) Claims

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

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

8. Class 8 - Debtor Interests

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

**A. Special Provisions Governing Unimpaired Claims**

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

**B. Elimination of Vacant Classes**

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

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

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

**D. Controversy Concerning Impairment**

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

**E. Subordination of Claims**

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

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

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

**C. Reservation of Rights Regarding Claims**

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

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

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

**E. Insurance**

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

## V. MEANS FOR IMPLEMENTATION OF THE PLAN

### G. Sources of Consideration for Plan Distributions

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

### H. Vesting of Assets

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

### I. Liquidating Trust

#### 1. Establishment of the Liquidating Trust

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

#### 2. Transfer of the Liquidating Trust Assets

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

#### 3. Liquidating Trust Waterfall

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

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

4. Liquidating Trust Agreement

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

5. Purpose of the Liquidating Trust

The Liquidating Trust shall be established for the purpose of (a) receiving and holding the Liquidating Trust Assets; (b) administering, disputing, objecting to, compromising, or otherwise resolving all General Unsecured Claims; (c) making distributions to the Liquidating Trust Beneficiaries in accordance with the Liquidating Trust Waterfall; (d) maximizing recoveries for the benefit of the Liquidating Trust Beneficiaries; and (e) commencing and pursuing the Retained Causes of Action and managing and administering any proceeds thereof, with no objective to continue or engage in the conduct of a trade or business in accordance with Treas. Reg. § 301.7701-4(d). 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.

6. Liquidating Trustee

a. *Appointment of the Liquidating Trustee*

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

b. *Liquidating Trustee as Representative of the Estate*

From and after the Effective Date, the Liquidating Trustee shall act as the exclusive representative of the Estate for all purposes, including, pursuant to section 1123(b)(3) of the Bankruptcy Code, for the purpose of retaining and enforcing the Retained Causes of Action in accordance with the best interests of and for the benefit of the Liquidating Trust Beneficiaries. Any successor Liquidating Trustee appointed pursuant to the Liquidating Trust Agreement shall be bound by and comply with the terms of the Plan, the Confirmation Order, and the Liquidating Trust Agreement.

c. *Responsibilities and Authority of the Liquidating Trustee*

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

d. *Powers of the Liquidating Trustee*

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

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

e. *Compensation of the Liquidating Trustee*

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

f. *Retention and Payment of Professionals*

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

7. Termination of the Liquidating Trust

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

8. Exculpation Relating to the Liquidating Trust

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

**J. Preservation of Causes of Action**

Except as otherwise provided in Article IX of the Plan or in any contract, instrument, release, or agreement entered into in connection with the Plan or the Sale, in accordance with section 1123(b) of the Bankruptcy Code, all claims and Causes of Action that the Debtor or Estate

may have against any Person or Entity are preserved and transferred to the Liquidating Trust on the Effective Date, including, without limitation, any and all Retained Causes of Action.

**K. Corporate Action**

1. Transfer of Assets and Assumption of Liabilities

On the Effective Date, (a) the Debtor shall, in accordance with the Plan, cause the Liquidating Trust Assets to be transferred to the Liquidating Trust; and (b) the Liquidating Trust shall assume all obligations of the Debtor under the Plan.

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

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

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

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

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

**M. Plan Transactions**

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

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

**N. Effectuating Documents and Further Transactions**

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

**O. Section 1146 Exemption from Certain Taxes and Fees**

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

**P. Sale Order**

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

**Q. Authority to Act**

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

action by such stockholders, security holders, officers, directors, or other owners of the Debtor or notice to, order of, or hearing before, the Bankruptcy Court.

**R. No Revesting of Trust Assets**

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

**S. Exception from Transfer Taxes**

Pursuant to section 1146(a) of the Bankruptcy Code, the transfer of any property under the Plan (including transfers to and from the Liquidation Trust), the making or delivery of any instrument of transfer pursuant to, in implementation of or as contemplated by, the Plan or the vesting, transfer or sale of any real or personal property of the Debtor pursuant to, in implementation of or as contemplated by, the Plan will not be taxed under any state or local law imposing a stamp tax, transfer tax or similar tax or fee. Consistent with the foregoing, each recorder of deeds or similar official for any county, city or governmental unit in which any instrument hereunder is to be recorded will, pursuant to the Confirmation Order, be ordered and directed to accept such instrument, without requiring the payment of any stamp tax, transfer tax or similar tax or fee.

**T. Presentation of Retained Causes of Action**

Unless a Retained Cause of Action against any Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including the Confirmation Order), the Debtor expressly reserves the Retained Causes of Action to be transferred to the Liquidation Trust pursuant to the Plan. No preclusion doctrine, including the doctrines of issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to the Retained Causes of Action upon, or after the entry of, the Confirmation Order or Effective Date based on the Plan or the Confirmation Order, except where a Retained Cause of Action has been released in the Plan or any Final Order (including the Confirmation Order). In accordance with section 1123(b) of the Bankruptcy Code, the Liquidation Trust may enforce all rights to commence and pursue, as appropriate, any and all Retained Causes of Action, as applicable, and the Liquidation Trust's rights to commence, prosecute, or settle any Retained Causes of Action will be preserved notwithstanding entry of the Confirmation Order or the occurrence of the Effective Date. No Entity may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Retained Cause of Action against them as any indication that the Liquidation Trust will not pursue any and all available Retained Causes of Action against them. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Retained Causes of Action that a Debtor may hold against any Entity will vest in the Liquidation Trust and Liquidation Trustee. In addition, the Liquidation Trust reserves the right to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a defendant or an interested party, against any Entity, including the plaintiffs or co-defendants in such lawsuits.

**U. Settlement of Claims and Controversies**

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

**V. Release of Liens**

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

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

**W. No Discharge**

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

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

**A. General Treatment**

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

Assumption of any Executory Contract or Unexpired Lease pursuant to the Sale Documents or the Plan, and payment of any cure amounts relating thereto, shall, upon satisfaction of the applicable requirements of section 365 of the Bankruptcy Code, result in the full, final, and complete release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults or provisions restricting the change in control of ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

**B. Rejection Damages Claims**

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

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

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

**C. Reservation of Rights**

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

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

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of preexisting obligations owed to the Debtor or Liquidating Trustee (as applicable) under such Executory Contracts or Unexpired Leases. In particular, notwithstanding any non-bankruptcy law to the contrary, the Debtor and the Liquidating Trustee

(as applicable) expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties, indemnity or continued maintenance obligations.

**E. Insurance Preservation**

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

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

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

**VII. PROVISIONS GOVERNING DISTRIBUTIONS**

**R. Distribution Record Date**

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

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

**S. Withholdings**

The Liquidating Trustee shall (1) withhold, deduct, and pay over to the appropriate governmental authority any amount required to be withheld under tax laws with respect to any distribution pursuant to the Liquidation Trust Agreement; and (2) comply with any reporting requirements imposed by any federal, state, local, or foreign taxing authority. The Liquidating Trustee may withhold all or the appropriate portion of any distribution due to any Liquidating Trust Beneficiary until such time as such Liquidating Trust Beneficiary provides the necessary information to comply with any withholding requirements of any governmental authority. Any tax withheld shall be treated as distributed and received by the applicable Liquidating trust Beneficiary for all purposes of the Liquidation Trust Agreement and the Plan. If a Liquidating Trust Beneficiary fails to provide the information necessary to comply with any withholding requirements of any governmental authority on or before the day that is one year after the Effective Date of the Plan, then such Liquidating Trust Beneficiary's distribution may be treated as unclaimed property in accordance with the Liquidation Trust Agreement.

**T. Date of Distributions**

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

**U. Disbursing Agent**

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

**V. Powers of Disbursing Agent**

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

**W. Surrender of Instruments**

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

satisfactory to the Disbursing Agent within six months of being entitled to such distribution shall be deemed to have forfeited all rights and claims and may not participate in any distribution hereunder.

#### **X. IRS Forms**

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

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

#### **Y. Delivery of Distributions**

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

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

#### **Z. Manner of Payment**

Any distributions to be made by or on behalf of the Debtor or the Liquidating Trustee (as applicable) pursuant to the Plan shall be made by checks drawn on accounts maintained by the

Debtor or the Liquidating Trustee (as applicable) or by wire transfer if circumstances justify, at the option of the Debtor or the Liquidating Trustee (as applicable).

**AA. Foreign Currency Exchange Rate**

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

**BB. Setoffs and Recoupments**

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

**CC. Minimum Distributions**

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

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

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

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

**EE. Distributions Free and Clear**

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

**FF. Claims Paid or Payable by Third Parties**

1. Claims Paid by Third Parties

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

2. Claims Payable by Third Parties

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

3. Applicability of Insurance Policies

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

**VIII. PROCEDURES FOR RESOLVING DISPUTED CLAIMS**

**A. Allowance of Claims**

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

**B. Claims Administration Responsibilities**

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

**C. Estimation of Claims**

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

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

**D. Adjustment to Claims Without Objection**

Any Claim that has been paid, satisfied, or assumed by Purchaser(s) in the Sale, or any Claim that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Debtor or the Liquidating Trustee (as applicable) without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

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

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

**F. Disallowance of Late Claims**

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

**G. Disputed Claims**

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

**H. Amendment to Claims**

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

**I. No Distributions Pending Allowance**

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

**J. Distributions After Allowance**

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

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

**A. Conditions to Effective Date**

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

1. The Bankruptcy Court shall have approved the Disclosure Statement as containing adequate information with respect to the Plan within the meaning of section 1125 of the Bankruptcy Code.

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

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

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

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

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

**D. Votes Solicited in Good Faith**

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

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

### **A. Exculpation**

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

### **B. Releases**

#### **1. Releases by the Debtor**

As of the Effective Date, pursuant to section 1123(b) of the Bankruptcy Code and for good and valuable consideration, each Released Party is deemed released by the Debtor and its estate from any and all claims and Causes of Action, whether known or unknown, including any claims and Causes of Action that the Debtor or its estate would have been legally entitled to assert in its own right including any claims or Causes of Action that could be asserted derivatively or on behalf of the Debtor (or its estate), that such Entity would have been legally entitled to assert (whether individually or collectively), based on, or relating to, or in any manner arising from, in whole or in part, the Debtor (including the management, ownership, or operation thereof, or otherwise), any securities issued by the Debtor and the ownership thereof, the Debtor's in- or out-of-court restructuring efforts, any avoidance actions, the Chapter 11 Case, the formulation, preparation, dissemination, negotiation, or filing of the Term Sheet, the RSA, the Disclosure Statement, the Sale Motion, the Plan, the Plan Supplement, or any other transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Sale, the Plan, the Plan Supplement, the Chapter 11 Case, the filing of the Chapter 11 Case, the pursuit of the Confirmation Order, the pursuit of the Sale Order, the pursuit of consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence or omission taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (1) any post Effective Date obligations of any party or entity under

the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan; (2) any obligations under or in respect of the Sale Order; or (3) the Retained Causes of Action.

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

2. Releases by Holders of Claims and Interests

As of the Effective Date, each Releasing Party is deemed to have released and discharged each Released Party from any and all claims and Causes of Action, whether known or unknown, including any claims and Causes of Action that the Debtor or its estate would have been legally entitled to assert in its own right including any claims or Causes of Action that could be asserted derivatively or on behalf of the Debtor (or its estate), that such Entity would have been legally entitled to assert (whether individually or collectively), based on, relating to, or in any manner arising from, in whole or in part, the Debtor (including the management, ownership or operation thereof, or otherwise), any securities issued by the Debtor and the ownership thereof, the Debtor’s in- or out-of-court restructuring efforts, any avoidance actions, the Chapter 11 Case, the formulation, preparation, dissemination, negotiation, or filing of the Term Sheet, the RSA, the Disclosure Statement, the Sale Motion, the Plan, the Plan Supplement, or any other transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Sale, the Plan, the Plan Supplement, the Chapter 11 Case, the filing of the Chapter 11 Case, the pursuit of the Confirmation Order, the pursuit of the Sale Order, the pursuit of consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence or omission taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (1) any post Effective Date obligations of any party or entity under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan; (2) any obligations under or in respect of the Sale Order; or (3) the Retained Causes of Action.

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

### C. Injunction

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

account of or in connection with or with respect to any such claims or Interests released or settled pursuant to the Plan.

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

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

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

#### **E. Opt-Out Election**

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

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

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

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

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the

resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims or Interests.

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

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

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

## **XII. MISCELLANEOUS PROVISIONS**

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

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

### **B. Immediate Binding Effect**

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

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

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

### **D. Modification of the Plan**

Subject to the limitations contained in the Plan, the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules (1) to amend or modify the Plan prior to the entry of the Confirmation Order, including amendments or modifications to satisfy section 1129 of the Bankruptcy Code; and (2) after the entry of the Confirmation Order, the Debtor or the Liquidating Trustee (as applicable) may, upon order of the Bankruptcy Court, amend or modify

the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

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

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

**F. Inconsistency**

In the event of any inconsistency among the Plan, the Disclosure Statement, or any exhibit or schedule to the Disclosure Statement, the provisions of the Plan will govern. In the event of any inconsistency among the Plan and any document or agreement Filed in connection with the Plan, including documents in any Plan Supplement, such document or agreement will control. In the event of any inconsistency among the Plan or any document or agreement Filed in connection with the Plan and the Confirmation Order, the Confirmation Order will control.

**G. Exhibits and Schedules**

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

**H. Additional Documents**

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

**I. Severability**

If prior to the entry of the Confirmation Order, any term or provision of the Plan is determined by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court may, at the request of the Debtor, alter and interpret such term or provision to the extent necessary

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

**J. Reservation of Rights**

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

**K. Successors and Assigns**

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

**L. Closing of Chapter 11 Case**

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

**M. Service of Documents**

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

1. The Debtor

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

With a copy to:

**Sidley Austin LLP**

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

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

**Young Conaway Stargatt & Taylor, LLP**

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

2. The Liquidation Trustee: to be included in the Plan Supplement
3. The Creditors' Committee: to be included, if appointed.
4. The Consenting Noteholders

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

**XIII. RISK FACTORS**

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

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

There is no guarantee that the Plan will be confirmed. If the Plan, or a substantially similar plan, is not confirmed, the terms and timing of any plan of liquidation ultimately confirmed in the Chapter 11 Case, and the treatment of Claims and Interest will be unknown. In addition, if the Plan is not confirmed, a significant risk exists that the Chapter 11 Case may be converted to a case under chapter 7. In that event, the Debtor believes that creditor recoveries would be substantially diminished.

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

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

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

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

**C. Allowance of Claims**

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

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

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

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

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

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

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

3. The Debtor Cannot Guarantee the Timing of Distributions

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

4. Certain Tax Implication of the Debtor's Bankruptcy

Holders of Allowed Claims should carefully review Article XIV of this Disclosure Statement, "Certain U.S. Federal Income Tax Consequences of Consummation of the Plan," for a description of certain tax implications of the Plan and the Debtor's Chapter 11 Case.

5. Trust's Expenses

The ultimate amount of Cash available to satisfy the amount of Allowed Claims in Classes 3, 4, and 5 depends, in part, on the manner in which the Liquidation Trustee operates its Trust and the expenses it incurs. Such expenses may include, without limitation, the ordinary course and other expenses of administering the Liquidation Trust, including the costs to liquidate the Liquidation Trust Assets, investigate and prosecute the Retained Causes of Action, prosecute objections to Claims, and make Distributions. The expenses of the Liquidation Trustee will be given priority over Distributions to holders of Claims in Classes 3, 4, and 5. As a result, if the Liquidation Trustee incurs professional or other expenses in excess of current expectations, the amount of distributable assets remaining to satisfy Allowed Claims in Classes 3, 4, and 5 will decrease.

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

Section 1145(a)(1) of the Bankruptcy Code exempts the offer and sale of securities under a plan from registration under the Securities Act and state securities laws if three principal requirements are satisfied: (1) the securities must be offered and sold under a plan and must be securities of the debtor, an affiliate participating in a joint plan with the debtor or a successor to

the debtor under the plan; (2) the recipients of the securities must hold a pre-petition or administrative expense claim against the debtor or an interest in the debtor; and (3) the securities must be issued entirely in exchange for the recipient's claim against or interest in the debtor, or principally in such exchange and partly for cash or property. To the extent that the rights to Distributions from the Liquidation Trust are deemed to constitute securities issued in accordance with the Plan, the Debtor believes that those interests satisfy the requirements of section 1145(a)(1) of the Bankruptcy Code and, therefore, those interests are exempt from registration under the Securities Act and applicable state securities laws.

1. Non-Transferability

Holders of Claims in Classes 3, 4, and 5 also should be aware that their rights to Distribution from the Liquidation Trust are not transferable. Therefore, there will not be any trading market for those rights, nor will those the rights be listed on any public exchange or other market. The lack of liquidity of the rights to Distributions from the Liquidation Trust may have a negative impact on their value.

2. Uncertainty of Value

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

**F. Disclosure Statement Disclaimer**

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

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

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

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

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

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

4. This Disclosure Statement May Contain Forward Looking Statements

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

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

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

6. No Admissions Made

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

7. Failure to Identify Potential Objections

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

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

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

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

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

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

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

11. No Representations Outside This Disclosure Statement are Authorized

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

#### **XIV. CERTAIN FEDERAL INCOME TAX CONSEQUENCES**

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

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

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

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

For purposes of this discussion, a "U.S. Holder" is a Holder that is: (A) an individual citizen or resident of the United States for U.S. federal income tax purposes; (B) a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized under the laws of the United States, any state thereof or the District of Columbia; (C) an estate the income of which is subject to U.S. federal income taxation regardless of the source of such income; or (D) a trust (1) if a court within the United States is able to exercise primary jurisdiction over the trust's administration and one or more United States persons have authority to control all substantial decisions of the trust or (2) that has a valid election in effect under applicable Treasury Regulations to be treated as a United States person (as defined in the IRC).

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

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

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

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

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

In accordance with the Plan, Holders of Allowed Claims in Classes 3, 4, and 5 will be entitled to receive Distributions from the Trust. On the Effective Date, the Debtor (a) will generally transfer and assign the Liquidation Trust Assets to the Liquidation Trust, which will be established for the purpose of, among other things, making distributions to Holders of Allowed Claims in accordance with the terms of the Plan. The Liquidation Trust is intended to be treated for U.S. federal income tax purposes as liquidating trusts described in Treasury Regulation Section 301.7701-4(d) and, to the extent applicable, as one or more Disputed Claims Reserves treated as disputed ownership funds described in Treasury Regulation Section 1.468B-9. The remainder of this discussion assumes that this treatment is correct. It is possible that the IRS could require an alternative characterization of the Liquidation Trust, which could result in different (and possibly adverse) tax consequences to the Trust or to the Holders of Allowed Claims in Classes 3, 4, and 5.

Except to the extent of the Disputed Claims Reserves, the Liquidation Trust is not expected to be treated as taxable entities for U.S. federal income tax purposes. Accordingly, except to the extent distributions are made to Holders of Allowed Claims in Class 3, 4, or 5 as of the Effective Date (as described below), (a) the Debtor will be deemed to have distributed to (i) the Holders of Allowed Class 3, 4 and 5 Claims an undivided interest in any Liquidation Trust Assets, subject to any liabilities of the Debtor or the Liquidation Trust payable from the proceeds of such assets and (b) such Holders will be deemed to have contributed such assets (subject to such liabilities) to the Trust in exchange for beneficial interests in such Liquidation Trust.

Subject to the discussion below in the last paragraph of this Article XIV.A.1 regarding distributions made as of the Effective Date, each U.S. Holder of Allowed Class 3, Class 4, 5 and Class 6 Claims (each such Holder is referred to in this discussion as a “Beneficial Owner”) will recognize gain or loss upon receipt of such Pro Rata share equal to the difference between the “amount realized” by such Beneficial Owner and such Beneficial Owner’s adjusted tax basis in his, her or its Claim. The amount realized is equal to the fair market value of such Beneficial Owner’s Pro Rata share of the Liquidation Trust’s assets (subject to any applicable liabilities), less the amount (if any) allocable to accrued but unpaid interest, as discussed below under the heading “Accrued Interest.” Any such gain or loss realized by a Beneficial Owner generally should constitute capital gain or loss to such Beneficial Owner, unless such Claim is not a capital asset in the hands of such Beneficial Owner. If an Allowed Class 3, Class 4, 5 or Class 6 Claim, as applicable, is a capital asset and it has been held for more than one year, the Beneficial Owner will realize long-term capital gain or loss. The deductibility of capital losses is subject to limitations. The tax basis of the Liquidation Trust’s assets deemed received in the exchange will equal the amount realized (as described above) by the Beneficial Owner and the holding period for such assets will begin on the day following the exchange. For the avoidance of doubt, U.S. Holders of Allowed Class 3, Class 4, and Class 5 Claims are not intended to be treated for U.S. federal income tax purposes as receiving Trust assets that are contributed to any Disputed Claims Reserves until such time as distributions are made from such Disputed Claims Reserves, in which case (and at which time) U.S. Holders of such Allowed Claims are intended to be treated as receiving the Distributions actually received from the Disputed Claims Reserves, if any.

For U.S. federal income tax purposes, it is intended that each Beneficial Owner be treated as an owner of the Liquidation Trust, and therefore their pro rata share of the respective Trust’s assets, and thus, will be subject to tax on such Beneficial Owner’s Pro Rata share of taxable income or gain, if any, of the Liquidation Trust, regardless of whether the corresponding Cash proceeds are distributed to each Beneficial Owner. Accordingly, each Beneficial Owner will be required to include in its annual taxable income, and pay tax to the extent due on, its allocable share of each item of income, gain, loss, deduction, or credit recognized by the Liquidation Trust, including interest or dividend income earned on bank accounts and other investments, and the Liquidation Trustee will allocate such items to the Beneficial Owners using any reasonable allocation method. If the Liquidation Trust sells or otherwise disposes of the Liquidation Trust’s asset in a transaction in which gain or loss is recognized, each Beneficial Owner that is entitled to a distribution from such Liquidation Trust’s asset, or the proceeds thereof, will be required to include in income gain or loss equal to the difference between (a) the Beneficial Owner’s Pro Rata share of the Cash or property received in exchange for the Liquidation Trust’s asset sold or otherwise disposed of and (b) the Beneficial Owner’s adjusted basis in its Pro Rata share of the Liquidation Trust’s asset. The character and amount of any gain or loss will be determined by reference to the character of the asset sold or otherwise disposed of. Each Beneficial Owner will be required to report any income or gain recognized on the sale or other disposition of the Liquidation Trust’s asset whether or not the Liquidation Trust distributes the sale proceeds currently and may, as a result, incur a tax liability before the Beneficial Owner receives a distribution from the Liquidation Trust.

Notwithstanding the foregoing, Distributions made as of the Effective Date to U.S. Holders of Allowed Class 3, Class 4, 5 and Class 6 Claims are intended to be treated for U.S. federal income tax purposes as made directly from the Debtor to Holders of such Allowed Claims. Generally, where a U.S. Holder receives only Cash in respect of an Allowed Claim, such a Holder would

recognize taxable gain or loss in an amount equal to the difference between the amount of the Cash received and such Holder's adjusted tax basis in its Allowed Claim. Any gain or loss recognized would be capital or ordinary, depending on the status of the Allowed Claim in the U.S. Holder's hands. Generally, any gain or loss recognized by a U.S. Holder of an Allowed Claim would be a long-term capital gain or loss if the Allowed Claim is a capital asset in the hands of such Holder and such Holder has held such Allowed Claim for more than one year, unless such Holder had previously claimed a bad debt deduction or such Holder had accrued market discount with respect to such Allowed Claim. See the discussions below under the headings "—Bad Debt or Worthless Securities Deduction" and "—Market Discount." The deductibility of capital losses is subject to limitations. To the extent any portion of a U.S. Holder's recovery is allocable to interest on such Holder's Allowed Claim that was not previously included in such Holder's income, such portion would be treated as interest income to such Holder. See the discussion below under the heading "Accrued Interest."

2. Accrued Interest

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

3. Post-Effective Date Cash Distributions

Because certain U.S. Holders of Allowed Claims may receive Cash distributions after the Effective Date, the imputed interest provisions of the IRC may apply and cause a portion of the subsequent distributions to be treated as interest. Additionally, because U.S. Holders may receive distributions with respect to an Allowed Claim in a taxable year or years following the year of the initial distribution, any loss and a portion of any gain realized by the U.S. Holder may be deferred. All U.S. Holders of Allowed Claims are urged to consult their tax advisors regarding the possible application of (or ability to elect out of) the "installment method" of reporting with respect to their Claims.

4. Market Discount

If a U.S. Holder of an Allowed Claim purchased the Claim for an amount that is less than its stated redemption price at maturity, the amount of the difference may be treated as "market

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

5. Bad Debt or Worthless Securities Deduction

A U.S. Holder who receives in respect of an Allowed Claim an amount less than the U.S. Holder’s tax basis in the Claim may be entitled in the year of receipt (or in an earlier or later year) to a bad debt deduction in some amount under IRC Section 166(a) or a worthless securities deduction under IRC Section 165(g). The rules governing the character, timing and amount of bad debt and worthless securities deductions place considerable emphasis on the facts and circumstances of the U.S. Holder, the obligor and the instrument with respect to which a deduction is claimed. U.S. Holders of Allowed Claims, therefore, are urged to consult their tax advisors with respect to their ability to take such a deduction.

6. Medicare Surtax

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

**B. Backup Withholding and Information Reporting**

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

**C. Importance of Obtaining Professional Tax Assistance**

**The foregoing is intended to be only a summary of certain U.S. federal income tax consequences of the Plan and is not a substitute for careful tax planning with a tax professional. The U.S. federal, state, local, and foreign income and other tax consequences**

**of the Plan are complex and in some cases uncertain. Such consequences may also vary based on the individual circumstances of each Holder of an Allowed Claim. Accordingly, each Holder of an Allowed Claim is strongly urged to consult with his, her, or its own tax advisor regarding the U.S. federal, state, local, and foreign income and other tax consequences of the Plan.**

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

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

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

For all of the reasons set forth in this Disclosure Statement, the Debtor believes that the Confirmation and consummation of the Plan is preferable to all other alternatives. Consequently, the Debtor urges all holders of Claims in Classes 3, 4, 5 and 6, the only Classes entitled to vote on the Plan, to vote to accept the Plan and to evidence their acceptance by duly completing and returning their ballots so that they will be received on or before the Voting Deadline.

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

Dated: January 18, 2023

Respectfully submitted,

DocuSigned by:  
  
FD98CCC9DD124BB...

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

**EXHIBIT A**

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

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

Chapter 11  
  
Case No. 23-10024 (JTD)

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

**YOUNG CONAWAY  
STARGATT & TAYLOR, LLP**

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

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

Dated: January 18, 2023

**SIDLEY AUSTIN LLP**

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

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

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

*Proposed Counsel for Debtor and Debtor in Possession*

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

## TABLE OF CONTENTS

ARTICLE I. DEFINED TERMS AND RULES OF INTERPRETATION .....	1
A.    Definitions .....	1
B.    Rules of Interpretation.....	12
C.    Computation of Time .....	13
D.    Controlling Document.....	13
ARTICLE II. ADMINISTRATIVE CLAIMS, PRIORITY TAX CLAIMS, AND STATUTORY FEES .....	13
A.    Administrative Claims.....	13
B.    Professional Fee Claims .....	14
1.    Final Fee Applications .....	14
2.    Administrative Claims of OCPs.....	14
3.    Post-Effective Date Fees and Expenses .....	14
4.    Professional Fee Reserve Amount.....	14
5.    Professional Fee Reserve .....	15
C.    Priority Tax Claims .....	15
D.    U.S. Trustee Statutory Fees.....	15
E.    Consenting Noteholder Fees and Expenses.....	16
ARTICLE III. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS ....	16
A.    Classification of Claims and Interests .....	16
B.    Treatment of Claims and Interests.....	17
1.    Class 1 – Other Secured Claims.....	17
2.    Class 2 – Other Priority Claims .....	17
3.    Class 3 – Noteholders Claims.....	17
4.    Class 4 – Patheon Rejection Claim.....	18
5.    Class 5 – General Unsecured Claims.....	18
6.    Class 6 – <i>De Minimis</i> Unsecured Claims.....	18
7.    Class 7 – Section 510(b) Claims.....	19
8.    Class 8 – Interests .....	19
C.    Special Provisions Governing Unimpaired Claims.....	19
D.    Elimination of Vacant Classes .....	19
E.    Voting Classes; Presumed Acceptance by Non-Voting Classes .....	20
F.    Controversy Concerning Impairment.....	20
G.    Subordination of Claims.....	20

H. Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code ..... 20

ARTICLE IV. MEANS FOR IMPLEMENTATION OF THE PLAN ..... 20

A. Sources of Consideration for Plan Distributions ..... 20

B. Vesting of Assets ..... 21

C. Liquidating Trust ..... 21

    1. Establishment of the Liquidating Trust ..... 21

    2. Transfer of the Liquidating Trust Assets ..... 21

    3. Liquidating Trust Waterfall ..... 21

    4. Liquidating Trust Agreement ..... 22

    5. Purpose of the Liquidating Trust ..... 22

    6. Liquidating Trustee ..... 22

    7. Termination of the Liquidating Trust ..... 24

    8. Exculpation Relating to the Liquidating Trust ..... 24

D. Preservation of Causes of Action ..... 24

E. Corporate Action ..... 24

    1. Transfer of Assets and Assumption of Liabilities ..... 24

    2. Dissolution of the Debtor; Removal of Directors and Officers; Termination of Employees ..... 25

F. Cancellation of Existing Securities and Agreements ..... 25

G. Plan Transactions ..... 25

H. Effectuating Documents and Further Transactions ..... 26

I. Section 1146 Exemption from Certain Taxes and Fees ..... 26

J. Sale Order ..... 26

K. Authority to Act ..... 26

ARTICLE V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND INSURANCE POLICIES ..... 26

A. General Treatment ..... 26

B. Rejection Damages Claims ..... 27

C. Reservation of Rights ..... 27

D. Preexisting Obligations to Debtor under Executory Contracts or Unexpired Leases .. 28

E. Insurance Preservation ..... 28

F. Modifications, Amendments, Supplements, Restatements, or Other Agreements ..... 28

ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS ..... 28

A. Distribution Record Date ..... 28

B. Withholdings ..... 29

C.	Date of Distributions .....	29
D.	Disbursing Agent.....	29
E.	Powers of Disbursing Agent.....	29
F.	Surrender of Instruments .....	30
G.	IRS Forms.....	30
H.	Delivery of Distributions.....	30
I.	Manner of Payment .....	31
J.	Foreign Currency Exchange Rate.....	31
K.	Setoffs and Recoupments .....	31
L.	Minimum Distributions .....	31
M.	Allocation of Distributions Between Principal and Interest.....	31
N.	Distributions Free and Clear.....	32
O.	Claims Paid or Payable by Third Parties.....	32
1.	Claims Paid by Third Parties .....	32
2.	Claims Payable by Third Parties.....	32
3.	Applicability of Insurance Policies.....	32
ARTICLE VII. PROCEDURES FOR RESOLVING UNLIQUIDATED AND DISPUTED CLAIMS .....		33
A.	Allowance of Claims .....	33
B.	Claims Administration Responsibilities.....	33
C.	Estimation of Claims .....	33
D.	Adjustment to Claims Without Objection .....	33
E.	Time to File Objections to Claims .....	34
F.	Disallowance of Late Claims .....	34
G.	Disputed Claims .....	34
H.	Amendment to Claims.....	34
I.	No Distributions Pending Allowance.....	34
J.	Distributions After Allowance .....	34
ARTICLE VIII. CONDITIONS PRECEDENT TO THE EFFECTIVE DATE .....		35
A.	Conditions Precedent.....	35
B.	Waiver of Conditions .....	35
ARTICLE IX. RELEASE, INJUNCTION, AND RELATED PROVISIONS.....		36
A.	Releases by the Debtor .....	36
B.	Releases by Holders of Claims and Interests .....	37
C.	Exculpation.....	37

D.	Injunction.....	38
E.	No Discharge.....	39
F.	Release of Liens .....	39
ARTICLE X. RETENTION OF JURISDICTION .....		39
ARTICLE XI. MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN .....		41
A.	Modification of the Plan.....	41
B.	Other Amendments.....	42
C.	Effect of Confirmation on Modifications .....	42
D.	Revocation of Plan; Effect of Non-Occurrence of Conditions to the Effective Date ..	42
ARTICLE XII. MISCELLANEOUS PROVISIONS .....		42
A.	Debtor’s Operation from Confirmation Hearing Through Effective Date.....	42
B.	Immediate Binding Effect .....	42
C.	Additional Documents.....	43
D.	Substantial Consummation.....	43
E.	Reservation of Rights .....	43
F.	Successors and Assigns .....	43
G.	Determination of Tax Liabilities .....	43
H.	Notices.....	43
I.	Term of Injunctions or Stays .....	44
J.	Entire Agreement .....	45
K.	Plan Supplement Exhibits .....	45
L.	Governing Law.....	45
M.	Nonseverability of Plan Provision Upon Confirmation .....	45
N.	Closing of Chapter 11 Case.....	46

## INTRODUCTION

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

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

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

## ARTICLE I. DEFINED TERMS AND RULES OF INTERPRETATION

### A. Definitions

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

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

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

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

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

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

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

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

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

9. “Bar Date” means, as applicable, the Administrative Claims Bar Date, and any other date or dates established by an order of the Bankruptcy Court by which Proofs of Claim must be Filed, including the general bar date and bar date for Governmental Units, each as set forth in the *Order (I) Fixing Deadline for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof*. Notwithstanding the foregoing, the Professional Fee Claims shall be Filed in accordance with Article II.B herein and shall not otherwise be subject to the Bar Date.

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

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

12. “Causes of Action” means any claims, interests, damages, remedies, causes of action, demands, rights, actions, controversies, proceedings, agreements, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or

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

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

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

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

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

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

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

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

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

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

22. “Consenting Noteholder Fees and Expenses” means (a) the reasonable and documented fees and expenses of the Consenting Noteholder Professionals; (b) all fees and expenses due to U.S. Bank Trust Company, National Association, as trustee; and (c) any other

reasonable and documented fees, costs, and expenses of any of the Consenting Noteholders incurred in connection with the Chapter 11 Case.

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

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

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

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

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

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

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

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

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

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

33. “Disclosure Statement” means the *Disclosure Statement for the Chapter 11 Plan of Liquidation for Tricida, Inc.*, dated January 18, 2023 (as such may be amended, supplemented, or modified from time to time), including all exhibits and schedules thereto and references therein that relate to this Plan, that is prepared and distributed in accordance with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law.

34. “Disputed” means, with respect to any Claim or Interest, any Claim or Interest: (a) listed on the Schedules as unliquidated, disputed or contingent, unless a Proof of Claim has

been Filed in a liquidated and non-contingent amount and no objection to such Proof of Claim has been filed; (b) included in a Proof of Claim as to which an objection or request for estimation has been filed, or as to which the Debtor, the Liquidating Trustee, or other parties in interest in accordance with applicable law, retain the ability to interpose a timely objection or request for estimation in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Plan or the Confirmation Order; or (c) which is otherwise disputed by the Debtor or the Liquidating Trustee, (as applicable) in accordance with applicable law and for which the objection, request for estimation, or dispute has not been withdrawn or determined by a Final Order. To the extent that a Claim is held by a Holder that is or may be liable to the Debtor, the Estate, or the Liquidating Trustee on account of a Retained Cause of Action, such Claim shall be a Disputed Claim unless and until such Retained Cause of Action has been settled or withdrawn or has been determined by a Final Order. Claims that are Allowed by the Plan or that have been Allowed by a Final Order shall not be Disputed Claims.

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

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

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

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

39. “Effective Date Cash Amount” means the Debtor’s aggregate amount of Cash on hand as of the Effective Date, to be determined following (a) payment of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Secured Claims, and Allowed Other Priority Claims; (b) payment of the Allowed *De Minimis* Unsecured Claims according to the treatment set forth in Article III.B.6 herein and subject to the aggregate recovery cap of \$60,000; and (c) funding of the Professional Fee Reserve and the Wind-Down Budget.

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

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

42. “Exculpated Party” or “Exculpated Parties” means, in each case in its capacity as such, (a) the Debtor; (b) the Debtor’s directors and officers during the Chapter 11 Case; and (c) with respect to the foregoing causes (a) through (b), to the fullest extent permitted by law, such Person’s Related Parties.

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

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

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

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

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

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

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

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

51. “Insurance Policies” means all insurance policies that have been issued at any time to or provide coverage to the Debtor and all agreements, documents, or instruments relating thereto, *provided* that it does not include any such policies that are, or have been, assumed and assigned to the Purchaser(s) on or before the Effective Date pursuant to the Purchase Agreement(s), the Sale Order, and section 365 of the Bankruptcy Code.

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

53. “Interim Compensation Order” means an order entered by the Bankruptcy Court approving the Debtor’s motion to establish procedures for monthly, interim, and final compensation and reimbursement of Retained Professionals.

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

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

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

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

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

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

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

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

62. “Liquidating Trustee” means the trustee selected by the Majority Consenting Noteholders and appointed by the Debtor and identified in the Plan Supplement to act as trustee of and administer the Liquidating Trust and take such other actions as may be authorized under the Liquidating Trust Agreement, along with any successor thereto.

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

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

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

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

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

68. “OCP Order” means an order entered by the Bankruptcy Court approving the Debtor’s motion or motions to retain and compensate certain OCPs in the ordinary course of business.

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

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

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

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

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

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

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

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

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

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

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

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

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

82. “Purchase Agreement(s)” means the negotiated purchase and sale agreement (as such may be amended, supplemented, or modified from time to time) between and among the Debtor, as seller, and the Purchaser(s), as buyer for the sale of the Debtor’s assets according to the terms set forth therein.

83. “Purchaser(s)” means the Person(s) or Entity(ies) who purchase the Debtor’s assets pursuant to the Purchase Agreement(s) and the Sale Order.

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

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

86. “Released Party” means each of, and in each case in its capacity as such: (a) the Debtor; (b) the Consenting Noteholder Releasing Parties; and (c) each Related Party of the Debtor or the Consenting Noteholder Releasing Parties, including, for the avoidance of doubt, any professional retained by the Debtor or the Consenting Noteholders in connection with this Chapter 11 Case.

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

88. “Retained Causes of Action” means the Causes of Action of the Debtor listed on the Schedule of Retained Causes of Action.

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

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

91. “Sale” means the transaction between and among the Debtor and the Purchaser(s), pursuant to which the Debtor sold substantially all of its assets to the Purchaser(s) pursuant to sections 363 and 365 of the Bankruptcy Code, as set forth in the Sale Order and the Purchase Agreement(s).

92. “Sale Motion” means the motion to approve the Sale Order, including any bidding procedures in connection therewith.

93. “Sale Documents” means, collectively, the Purchase Agreement(s) and all agreements, documents, and instruments related thereto, including the Sale Order.

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

95. “Schedule of Retained Causes of Action” means the schedule in the Plan Supplement, which is a schedule of certain Causes of Action of the Debtor that are not released, subject to exculpation, waived, or transferred pursuant to the Plan or otherwise.

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

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

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

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

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

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

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

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

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

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

**B. Rules of Interpretation**

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

**C. Computation of Time**

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

**D. Controlling Document**

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

**ARTICLE II.**

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

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

**A. Administrative Claims**

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

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

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

**Except as otherwise provided in Articles II.B or II.D herein, Holders of Administrative Claims that do not File and serve a Proof of Claim or application for payment**

**of administrative expense requesting the allowance of an Administrative Claim by the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting Administrative Claims against the Debtor, the Estate, the Liquidating Trust, the Liquidating Trustee, or their assets and properties, and any Administrative Claims shall be deemed disallowed as of the Effective Date unless otherwise ordered by the Court.**

**B. Professional Fee Claims**

1. Final Fee Applications

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

2. Administrative Claims of OCPs

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

3. Post-Effective Date Fees and Expenses

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

4. Professional Fee Reserve Amount

Unless otherwise agreed to prior to the Effective Date by the Debtor and the Retained Professional or the Consenting Noteholder Professional (as applicable), to receive payment for unbilled fees and expenses incurred through the Effective Date, the Retained Professionals and the

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

5. Professional Fee Reserve

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

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

C. Priority Tax Claims

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

D. U.S. Trustee Statutory Fees

All U.S. Trustee Statutory Fees due and payable prior to the Effective Date shall be paid by the Debtor on the Effective Date. After the Effective Date, any and all Statutory Fees shall be paid to the U.S. Trustee by the Liquidating Trustee when due and payable. The Debtor and the

Liquidating Trust (as applicable) shall remain obligated to pay the U.S. Trustee Statutory Fees until the earliest of the Debtor’s case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code. Neither the U.S. Trustee nor any other Governmental Unit is required to File a request for an Administrative Claim for Statutory Fees.

**E. Consenting Noteholder Fees and Expenses**

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

**ARTICLE III.  
CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

**A. Classification of Claims and Interests**

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

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

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

7	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
8	Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

**B. Treatment of Claims and Interests**

1. Class 1 – Other Secured Claims

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

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

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

2. Class 2 – Other Priority Claims

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

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

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

3. Class 3 – Noteholders Claims

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

(b) *Treatment*: On the Effective Date, the Noteholder Claims shall be deemed Allowed in the outstanding principal amount of the Convertible Notes, plus accrued but unpaid interest, fees, and any and all amounts due thereunder, and except to the extent that a Holder of a Noteholder Claim and the Debtor agree to less favorable treatment for such Holder, in full and final satisfaction of the Allowed Noteholder Claim, each Holder thereof will: (i) be paid in Cash on the Effective Date or as soon as reasonably practicable thereafter, its Noteholder Effective Date Distribution; and (ii) receive its *pro rata* right to recovery from the Liquidating Trust pursuant to the Liquidating Trust Waterfall.

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

4. Class 4 – Patheon Rejection Claim

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

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

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

5. Class 5 – General Unsecured Claims

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

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

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

6. Class 6 – *De Minimis* Unsecured Claims

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

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

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

7. Class 7 – Section 510(b) Claims

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

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

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

8. Class 8 – Interests

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

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

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

**C. Special Provisions Governing Unimpaired Claims**

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

**D. Elimination of Vacant Classes**

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from this Plan for purposes of voting

to accept or reject this Plan and for purposes of determining acceptance or rejection of this Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

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

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

**F. Controversy Concerning Impairment**

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

**G. Subordination of Claims**

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

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

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

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

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

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

**B. Vesting of Assets**

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

**C. Liquidating Trust**

1. Establishment of the Liquidating Trust

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

2. Transfer of the Liquidating Trust Assets

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

3. Liquidating Trust Waterfall

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

4. Liquidating Trust Agreement

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

5. Purpose of the Liquidating Trust

The Liquidating Trust shall be established for the purpose of (a) receiving and holding the Liquidating Trust Assets; (b) administering, disputing, objecting to, compromising, or otherwise resolving all General Unsecured Claims; (c) making distributions to the Liquidating Trust Beneficiaries in accordance with the Liquidating Trust Waterfall; (d) maximizing recoveries for the benefit of the Liquidating Trust Beneficiaries; and (e) commencing and pursuing the Retained Causes of Action and managing and administering any proceeds thereof, with no objective to continue or engage in the conduct of a trade or business in accordance with Treas. Reg. § 301.7701-4(d). 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.

6. Liquidating Trustee

(a) *Appointment of the Liquidating Trustee*

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

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

From and after the Effective Date, the Liquidating Trustee shall act as the exclusive representative of the Estate for all purposes, including, pursuant to section 1123(b)(3) of the Bankruptcy Code, for the purpose of retaining and enforcing the Retained Causes of Action in accordance with the best interests of and for the benefit of the Liquidating Trust Beneficiaries. Any successor Liquidating Trustee appointed pursuant to the Liquidating Trust Agreement shall be bound by and comply with the terms of this Plan, the Confirmation Order, and the Liquidating Trust Agreement.

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

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

(d) *Powers of the Liquidating Trustee*

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

(e) *Compensation of the Liquidating Trustee*

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

(f) *Retention and Payment of Professionals*

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

7. Termination of the Liquidating Trust

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

8. Exculpation Relating to the Liquidating Trust

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

**D. Preservation of Causes of Action**

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

**E. Corporate Action**

1. Transfer of Assets and Assumption of Liabilities

On the Effective Date, (a) the Debtor shall, in accordance with this Plan, cause the Liquidating Trust Assets to be transferred to the Liquidating Trust; and (b) the Liquidating Trust shall assume all obligations of the Debtor under this Plan.

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

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

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

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

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

**G. Plan Transactions**

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

**H. Effectuating Documents and Further Transactions**

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

**I. Section 1146 Exemption from Certain Taxes and Fees**

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

**J. Sale Order**

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

**K. Authority to Act**

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

**ARTICLE V.  
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND  
INSURANCE POLICIES**

**A. General Treatment**

On the Effective Date, except as otherwise provided herein (which exclusion includes the Insurance Policies), all Executory Contracts or Unexpired Leases not previously assumed,

assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court, will be deemed rejected, in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code other than those Executory Contracts or Unexpired Leases that are the subject of a motion to assume that is pending on the Confirmation Date.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Sale Documents or this Plan, and payment of any cure amounts relating thereto, shall, upon satisfaction of the applicable requirements of section 365 of the Bankruptcy Code, result in the full, final, and complete release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults or provisions restricting the change in control of ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

**B. Rejection Damages Claims**

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

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

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

**C. Reservation of Rights**

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

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

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

**E. Insurance Preservation**

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

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

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

**ARTICLE VI.  
PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Distribution Record Date**

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

Except as otherwise provided herein, the Disbursing Agent shall make distributions to Holders of Allowed Claims as of the Distribution Record Date at the address for each such Holder as indicated on the Debtor's records as of the date of any such distribution; *provided, however,*

that the manner of such distributions shall be determined at the discretion of the Debtor or the Liquidating Trustee (as applicable); *provided further, however*, that the address for each Holder of an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim Filed by that Holder.

**B. Withholdings**

The Liquidating Trustee shall (1) withhold, deduct, and pay over to the appropriate governmental authority any amount required to be withheld under tax laws with respect to any distribution pursuant to the Liquidation Trust Agreement; and (2) comply with any reporting requirements imposed by any federal, state, local, or foreign taxing authority. The Liquidating Trustee may withhold all or the appropriate portion of any distribution due to any Liquidating Trust Beneficiary until such time as such Liquidating Trust Beneficiary provides the necessary information to comply with any withholding requirements of any governmental authority. Any tax withheld shall be treated as distributed and received by the applicable Liquidating trust Beneficiary for all purposes of the Liquidation Trust Agreement and the Plan. If a Liquidating Trust Beneficiary fails to provide the information necessary to comply with any withholding requirements of any governmental authority on or before the day that is one year after the Effective Date of the Plan, then such Liquidating Trust Beneficiary's distribution may be treated as unclaimed property in accordance with the Liquidation Trust Agreement.

**C. Date of Distributions**

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

**D. Disbursing Agent**

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

**E. Powers of Disbursing Agent**

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

**F. Surrender of Instruments**

As a condition precedent to receiving any distribution under this Plan, each holder of a certificated instrument or note must surrender such instrument or note held by it to the Disbursing Agent or its designee. Any holder of such instrument or note that fails to (1) surrender the instrument or note; or (2) execute and deliver an affidavit of loss or indemnity reasonably satisfactory to the Disbursing Agent and furnish a bond in form, substance, and amount reasonably satisfactory to the Disbursing Agent within six months of being entitled to such distribution shall be deemed to have forfeited all rights and claims and may not participate in any distribution hereunder.

**G. IRS Forms**

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

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

**H. Delivery of Distributions**

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

If any distribution to a Holder of an Allowed Claim (1) is returned as undeliverable for lack of a current address or otherwise; or (2) is not cashed or otherwise presented for collection by the Holder of the Allowed Claim within ninety (90) calendar days after the mailing of such distribution, the Liquidating Trustee shall be authorized to cancel such distribution check and file with the Bankruptcy Court the name and last known address of the Holder of undeliverable distribution or uncashed distribution, as applicable. If, after the passage of thirty (30) calendar days after such Filing, the payment or distribution on the Allowed Claim still cannot be made, then

(1) the Holder of such Claim shall cease to be entitled to the undeliverable distribution or uncashed distribution, which will revert to the Liquidating Trust; and (2) the Allowed Claim of such Holder shall be deemed disallowed and expunged for purposes of further distributions under the Plan.

**I. Manner of Payment**

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

**J. Foreign Currency Exchange Rate**

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

**K. Setoffs and Recoupments**

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

**L. Minimum Distributions**

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

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

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

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

**N. Distributions Free and Clear**

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

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

1. Claims Paid by Third Parties

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

2. Claims Payable by Third Parties

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

3. Applicability of Insurance Policies

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

**ARTICLE VII.  
PROCEDURES FOR RESOLVING UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Allowance of Claims**

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

**B. Claims Administration Responsibilities**

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

**C. Estimation of Claims**

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

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

**D. Adjustment to Claims Without Objection**

Any Claim that has been paid, satisfied, or assumed by Purchaser(s) in the Sale, or any Claim that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Debtor or the Liquidating Trustee (as applicable) without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

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

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

**F. Disallowance of Late Claims**

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

**G. Disputed Claims**

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

**H. Amendment to Claims**

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

**I. No Distributions Pending Allowance**

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

**J. Distributions After Allowance**

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

**ARTICLE VIII.  
CONDITIONS PRECEDENT TO THE EFFECTIVE DATE**

**A. Conditions Precedent**

The occurrence of the Effective Date of this Plan is subject to each of the following conditions precedent.

1. The Bankruptcy Court shall have approved the Disclosure Statement as containing adequate information with respect to the Plan within the meaning of section 1125 of the Bankruptcy Code.

2. The Confirmation Order shall have been entered and shall be in full force and effect.

3. There shall have been no modification or stay of the Confirmation Order or entry of any other order prohibiting the transactions contemplated by this Plan from being consummated.

4. The Professional Fee Reserve shall have been fully funded pursuant to the terms of this Plan.

5. All Consenting Noteholder Fees and Expenses incurred and invoiced as of the Effective Date shall have been paid in full.

6. The RSA shall not have been terminated and shall remain in full force and effect and the Debtor and the Consenting Noteholders shall be in compliance therewith.

7. All actions, documents and agreements necessary to implement the Plan shall have been effected, executed and/or tendered for delivery. All conditions precedent to the effectiveness of such documents and agreements shall have been satisfied or waived pursuant to the terms thereof (or will be satisfied and waived substantially concurrently with the occurrence of the Effective Date).

8. The Liquidating Trustee shall have been appointed and assumed its rights and responsibilities under the Plan and the Liquidating Trust Agreement, as applicable.

9. The Debtor shall have received all authorizations, consents, regulatory approvals, rulings, letters, no-action letters, opinions, or documents necessary to implement this Plan and any transaction contemplated hereby that are required by law, regulation, or order.

**B. Waiver of Conditions**

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

**ARTICLE IX.  
RELEASE, INJUNCTION, AND RELATED PROVISIONS**

**A. Releases by the Debtor**

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

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

**B. Releases by Holders of Claims and Interests**

As of the Effective Date, each Releasing Party is deemed to have released and discharged each Released Party from any and all claims and Causes of Action, whether known or unknown, including any claims and Causes of Action that the Debtor or its estate would have been legally entitled to assert in its own right including any claims or Causes of Action that could be asserted derivatively or on behalf of the Debtor (or its estate), that such Entity would have been legally entitled to assert (whether individually or collectively), based on, relating to, or in any manner arising from, in whole or in part, the Debtor (including the management, ownership or operation thereof, or otherwise), any securities issued by the Debtor and the ownership thereof, the Debtor's in- or out-of-court restructuring efforts, any avoidance actions, the Chapter 11 Case, the formulation, preparation, dissemination, negotiation, or filing of the Term Sheet, the RSA, the Disclosure Statement, the Sale Motion, the Plan, the Plan Supplement, or any other transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Sale, the Plan, the Plan Supplement, the Chapter 11 Case, the filing of the Chapter 11 Case, the pursuit of the Confirmation Order, the pursuit of the Sale Order, the pursuit of consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence or omission taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (1) any post Effective Date obligations of any party or entity under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan; (2) any obligations under or in respect of the Sale Order; or (3) the Retained Causes of Action.

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

**C. Exculpation**

Except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur liability for, and each Exculpated Party is exculpated from any Cause of Action for any Claim related to any act or omission in connection with, relating to, or arising out of, the

**Chapter 11 Case, the formulation, preparation, dissemination, negotiation, or filing of the Debtor's in-court restructuring efforts, the Term Sheet, the RSA, the Disclosure Statement, the Sale Motion, the Plan, the Plan Supplement, or any restructuring transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Sale, the Plan, the Plan Supplement, the Chapter 11 Case, the filing of the Chapter 11 Case, the pursuit of the Confirmation Order, the pursuit of the Sale Order, the pursuit of consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence or omission taking place between the Petition Date and the Effective Date, except for claims related to any act or omission that is determined in a final order by a court of competent jurisdiction to have constituted actual intentional fraud, willful misconduct, or gross negligence of such Person, but in all respects such Entities shall be entitled to reasonably rely upon the written advice of counsel with respect to their duties and responsibilities pursuant to the Plan.**

**D. Injunction**

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

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

**E. No Discharge**

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

**F. Release of Liens**

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

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

**ARTICLE X.  
RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, or related to, the Chapter 11 Case, the Sale, the Sale Documents, the Confirmation Order, and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to each of the following:

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims or Interests.
2. Resolve any cases, controversies, suits, or disputes that may arise in connection with Claims, including Claim objections, allowance, disallowance, subordination, estimation and distribution.

3. Decide and resolve all matters related to the granting and denying, in whole or in part of, any applications for allowance of compensation or reimbursement of expenses to Retained Professionals authorized pursuant to the Bankruptcy Code or the Plan.

4. Resolve any matters related to: (a) the assumption or assumption and assignment of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor may be liable and to hear, determine, and, if necessary, liquidate, any cure amount arising therefrom; and/or (b) any dispute regarding whether a contract or lease is or was executory or expired.

5. Adjudicate, decide or resolve any motions, adversary proceedings, contested, or litigated matters, and any other matters, and grant or deny any applications involving the Debtor that may be pending on the Effective Date.

6. Adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code.

7. Adjudicate, decide or resolve any motions, adversary proceedings, contested, or litigated matters, and any other matters relating to the Retained Causes of Action.

8. Enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan or the Disclosure Statement.

9. Resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the interpretation or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan.

10. Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with enforcement of the Plan.

11. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the releases, injunctions, and other provisions contained in the Plan and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions.

12. Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated.

13. Determine any other matters that may arise in connection with or related to the Sale Documents, the Disclosure Statement, the Plan, and the Confirmation Order.

14. Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan.

15. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by any Holder for amounts not timely repaid.

16. Adjudicate any and all disputes arising from or relating to distributions under the Plan.
17. Consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order.
18. Hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or the Confirmation Order.
19. Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code.
20. To recover all assets of the Debtor and property of the Debtor's Estate, wherever located.
21. To consider requests for extensions of the term of the Liquidating Trust as provided herein.
22. To hear and determine any Causes of Action that may be brought by the Liquidating Trustee.
23. To hear and determine any other rights, claims, or Causes of Action held by or accruing to the Debtor or the Liquidating Trust pursuant to the Bankruptcy Code or any applicable state or federal statute or legal theory.
24. Enter an order or final decree concluding or closing the Chapter 11 Case.
25. Enforce all orders previously entered by the Bankruptcy Court.
26. Hear any other matter over which the Court has jurisdiction.

#### **ARTICLE XI.**

#### **MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

##### **A. Modification of the Plan**

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

**B. Other Amendments**

The Debtor may make appropriate non-material, technical adjustments and modifications to this Plan or the Plan Supplement prior to the Effective Date without further order or approval of the Bankruptcy Court.

**C. Effect of Confirmation on Modifications**

Entry of the Confirmation Order shall mean that all modifications or amendments to the Plan since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

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

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

**ARTICLE XII.  
MISCELLANEOUS PROVISIONS**

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

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

**B. Immediate Binding Effect**

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

**C. Additional Documents**

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

**D. Substantial Consummation**

On the Effective Date, this Plan shall be deemed to be substantially consummated (within the meaning set forth in section 1101 of the Bankruptcy Code) pursuant to section 1127(b) of the Bankruptcy Code.

**E. Reservation of Rights**

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

**F. Successors and Assigns**

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

**G. Determination of Tax Liabilities**

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

**H. Notices**

In order for all notices, requests, and demands to or upon the Debtor and the Liquidating Trustee, as the case may be, to be effective such notices, requests and demands shall be in writing (including by electronic mail) and, unless otherwise expressly provided herein, shall be deemed to

have been duly given or made when actually delivered or, in the case of notice by email, when received, and served on or delivered to the following parties:

<b>Debtor</b>	<b>Counsel to the Debtor</b>
Tricida, Inc. 7000 Shoreline Court, Suite 201 South San Francisco, CA 94080 Attention: Bob McKague, Executive Vice President, General Counsel, & Chief Compliance Officer E-mail address: bmckague@tricida.com	Sidley Austin LLP 787 Seventh Avenue New York, New York 10019 Attention: Geoff Levin and Sam Newman Email: glevin@sidley.com, sam.newman@sidley.com -and- Young, Conaway Stargatt & Taylor, LLP Rodney Square 1000 North King Street Wilmington, Delaware 19801 Attention: Sean M. Beach and Allison S. Mielke Email: sbeach@ycst.com amielke@ycst.com
<b>Liquidating Trustee</b>	<b>Counsel to the Liquidating Trustee</b>
To be included in the Plan Supplement	To be included in the Plan Supplement

After the Effective Date, Persons or Entities that wish to continue to receive documents pursuant to Bankruptcy Rule 2002 must File a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Liquidating Trustee is authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities that Filed such renewed requests.

**I. Term of Injunctions or Stays**

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

**J. Entire Agreement**

On the Effective Date, the Plan and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

**K. Plan Supplement Exhibits**

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. Copies of such exhibits and documents shall be made available upon written request to Debtor's counsel or Liquidating Trustee's counsel (as applicable) at the address above or by downloading such exhibits and documents free of charge from the Notice and Claims Agent's website.

Unless otherwise ordered by the Bankruptcy Court, to the extent any exhibit or document in the Plan Supplement is inconsistent with the terms of any part of the Plan that does not constitute the Plan Supplement, such part of the Plan that does not constitute the Plan Supplement shall control. The documents in the Plan Supplement are considered an integral part of the Plan and shall be deemed approved by the Bankruptcy Court pursuant to the Confirmation Order.

**L. Governing Law**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Delaware, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control), and corporate governance matters.

**M. Nonseverability of Plan Provision Upon Confirmation**

If any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation.

The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is the following: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the consent of the Debtor or the Liquidating Trustee (as applicable); and (3) nonseverable and mutually dependent.

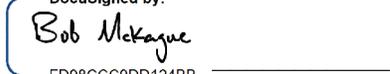
**N. Closing of Chapter 11 Case**

After the full administration of the Chapter 11 Case, the Liquidating Trustee shall promptly File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022, a motion pursuant to Local Rule 3022-1(a), and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

*[Remainder of Page Intentionally Left Blank]*

Dated: January 18, 2023

Respectfully submitted,

DocuSigned by:  
  
FD98CCC9DD124BB...  
By: Bob McKague  
Executive Vice President, General Counsel,  
and Chief Compliance Officer  
Tricida, Inc.

**EXHIBIT A**

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

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

Chapter 11  
  
Case No. 23-10024 (JTD)

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

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

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

Dated: January 18, 2023

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

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

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

*Proposed Counsel for Debtor and Debtor in Possession*

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

**TABLE OF CONTENTS**

ARTICLE I. DEFINED TERMS AND RULES OF INTERPRETATION ..... 1

    A.    Definitions ..... 1

    B.    Rules of Interpretation..... 12

    C.    Computation of Time ..... 13

    D.    Controlling Document..... 13

ARTICLE II. ADMINISTRATIVE CLAIMS, PRIORITY TAX CLAIMS, AND STATUTORY FEES ..... 13

    A.    Administrative Claims..... 13

    B.    Professional Fee Claims ..... 14

        1.    Final Fee Applications ..... 14

        2.    Administrative Claims of OCPs..... 14

        3.    Post-Effective Date Fees and Expenses ..... 14

        4.    Professional Fee Reserve Amount ..... 14

        5.    Professional Fee Reserve ..... 15

    C.    Priority Tax Claims ..... 15

    D.    U.S. Trustee Statutory Fees ..... 15

    E.    Consenting Noteholder Fees and Expenses..... 16

ARTICLE III. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS .... 16

    A.    Classification of Claims and Interests ..... 16

    B.    Treatment of Claims and Interests..... 17

        1.    Class 1 – Other Secured Claims..... 17

        2.    Class 2 – Other Priority Claims ..... 17

        3.    Class 3 – Noteholders Claims ..... 17

        4.    Class 4 – Patheon Rejection Claim..... 18

        5.    Class 5 – General Unsecured Claims..... 18

        6.    Class 6 – *De Minimis* Unsecured Claims..... 18

        7.    Class 7 – Section 510(b) Claims..... 19

        8.    Class 8 – Interests ..... 19

    C.    Special Provisions Governing Unimpaired Claims..... 19

    D.    Elimination of Vacant Classes ..... 19

    E.    Voting Classes; Presumed Acceptance by Non-Voting Classes ..... 20

    F.    Controversy Concerning Impairment..... 20

    G.    Subordination of Claims..... 20

H. Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code ..... 20

ARTICLE IV. MEANS FOR IMPLEMENTATION OF THE PLAN ..... 20

A. Sources of Consideration for Plan Distributions ..... 20

B. Vesting of Assets ..... 21

C. Liquidating Trust ..... 21

    1. Establishment of the Liquidating Trust ..... 21

    2. Transfer of the Liquidating Trust Assets ..... 21

    3. Liquidating Trust Waterfall ..... 21

    4. Liquidating Trust Agreement ..... 22

    5. Purpose of the Liquidating Trust ..... 22

    6. Liquidating Trustee ..... 22

    7. Termination of the Liquidating Trust ..... 24

    8. Exculpation Relating to the Liquidating Trust ..... 24

D. Preservation of Causes of Action ..... 24

E. Corporate Action ..... 24

    1. Transfer of Assets and Assumption of Liabilities ..... 24

    2. Dissolution of the Debtor; Removal of Directors and Officers; Termination of Employees ..... 25

F. Cancellation of Existing Securities and Agreements ..... 25

G. Plan Transactions ..... 25

H. Effectuating Documents and Further Transactions ..... 26

I. Section 1146 Exemption from Certain Taxes and Fees ..... 26

J. Sale Order ..... 26

K. Authority to Act ..... 26

ARTICLE V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND INSURANCE POLICIES ..... 26

A. General Treatment ..... 26

B. Rejection Damages Claims ..... 27

C. Reservation of Rights ..... 27

D. Preexisting Obligations to Debtor under Executory Contracts or Unexpired Leases .. 28

E. Insurance Preservation ..... 28

F. Modifications, Amendments, Supplements, Restatements, or Other Agreements ..... 28

ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS ..... 28

A. Distribution Record Date ..... 28

B. Withholdings ..... 29

C.	Date of Distributions .....	29
D.	Disbursing Agent.....	29
E.	Powers of Disbursing Agent.....	29
F.	Surrender of Instruments .....	30
G.	IRS Forms.....	30
H.	Delivery of Distributions.....	30
I.	Manner of Payment .....	31
J.	Foreign Currency Exchange Rate.....	31
K.	Setoffs and Recoupments .....	31
L.	Minimum Distributions .....	31
M.	Allocation of Distributions Between Principal and Interest.....	31
N.	Distributions Free and Clear.....	32
O.	Claims Paid or Payable by Third Parties.....	32
1.	Claims Paid by Third Parties .....	32
2.	Claims Payable by Third Parties.....	32
3.	Applicability of Insurance Policies.....	32
ARTICLE VII. PROCEDURES FOR RESOLVING UNLIQUIDATED AND DISPUTED CLAIMS .....		33
A.	Allowance of Claims .....	33
B.	Claims Administration Responsibilities.....	33
C.	Estimation of Claims .....	33
D.	Adjustment to Claims Without Objection .....	33
E.	Time to File Objections to Claims .....	34
F.	Disallowance of Late Claims .....	34
G.	Disputed Claims .....	34
H.	Amendment to Claims.....	34
I.	No Distributions Pending Allowance.....	34
J.	Distributions After Allowance .....	34
ARTICLE VIII. CONDITIONS PRECEDENT TO THE EFFECTIVE DATE .....		35
A.	Conditions Precedent.....	35
B.	Waiver of Conditions .....	35
ARTICLE IX. RELEASE, INJUNCTION, AND RELATED PROVISIONS.....		36
A.	Releases by the Debtor .....	36
B.	Releases by Holders of Claims and Interests .....	37
C.	Exculpation.....	37

D. Injunction..... 38

E. No Discharge ..... 39

F. Release of Liens ..... 39

ARTICLE X. RETENTION OF JURISDICTION ..... 39

ARTICLE XI. MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN ..... 41

A. Modification of the Plan..... 41

B. Other Amendments..... 42

C. Effect of Confirmation on Modifications ..... 42

D. Revocation of Plan; Effect of Non-Occurrence of Conditions to the Effective Date .. 42

ARTICLE XII. MISCELLANEOUS PROVISIONS ..... 42

A. Debtor’s Operation from Confirmation Hearing Through Effective Date..... 42

B. Immediate Binding Effect ..... 42

C. Additional Documents..... 43

D. Substantial Consummation..... 43

E. Reservation of Rights ..... 43

F. Successors and Assigns ..... 43

G. Determination of Tax Liabilities ..... 43

H. Notices..... 43

I. Term of Injunctions or Stays ..... 44

J. Entire Agreement ..... 45

K. Plan Supplement Exhibits ..... 45

L. Governing Law..... 45

M. Nonseverability of Plan Provision Upon Confirmation ..... 45

N. Closing of Chapter 11 Case..... 46

## INTRODUCTION

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

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

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

## ARTICLE I. DEFINED TERMS AND RULES OF INTERPRETATION

### A. Definitions

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

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

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

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

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

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

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

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

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

9. “Bar Date” means, as applicable, the Administrative Claims Bar Date, and any other date or dates established by an order of the Bankruptcy Court by which Proofs of Claim must be Filed, including the general bar date and bar date for Governmental Units, each as set forth in the *Order (I) Fixing Deadline for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof*. Notwithstanding the foregoing, the Professional Fee Claims shall be Filed in accordance with Article II.B herein and shall not otherwise be subject to the Bar Date.

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

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

12. “Causes of Action” means any claims, interests, damages, remedies, causes of action, demands, rights, actions, controversies, proceedings, agreements, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or

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

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

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

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

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

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

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

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

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

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

22. “Consenting Noteholder Fees and Expenses” means (a) the reasonable and documented fees and expenses of the Consenting Noteholder Professionals; (b) all fees and expenses due to U.S. Bank Trust Company, National Association, as trustee; and (c) any other

reasonable and documented fees, costs, and expenses of any of the Consenting Noteholders incurred in connection with the Chapter 11 Case.

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

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

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

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

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

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

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

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

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

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

33. “Disclosure Statement” means the *Disclosure Statement for the Chapter 11 Plan of Liquidation for Tricida, Inc.*, dated January 18, 2023 (as such may be amended, supplemented, or modified from time to time), including all exhibits and schedules thereto and references therein that relate to this Plan, that is prepared and distributed in accordance with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law.

34. “Disputed” means, with respect to any Claim or Interest, any Claim or Interest: (a) listed on the Schedules as unliquidated, disputed or contingent, unless a Proof of Claim has

been Filed in a liquidated and non-contingent amount and no objection to such Proof of Claim has been filed; (b) included in a Proof of Claim as to which an objection or request for estimation has been filed, or as to which the Debtor, the Liquidating Trustee, or other parties in interest in accordance with applicable law, retain the ability to interpose a timely objection or request for estimation in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Plan or the Confirmation Order; or (c) which is otherwise disputed by the Debtor or the Liquidating Trustee, (as applicable) in accordance with applicable law and for which the objection, request for estimation, or dispute has not been withdrawn or determined by a Final Order. To the extent that a Claim is held by a Holder that is or may be liable to the Debtor, the Estate, or the Liquidating Trustee on account of a Retained Cause of Action, such Claim shall be a Disputed Claim unless and until such Retained Cause of Action has been settled or withdrawn or has been determined by a Final Order. Claims that are Allowed by the Plan or that have been Allowed by a Final Order shall not be Disputed Claims.

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

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

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

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

39. “Effective Date Cash Amount” means the Debtor’s aggregate amount of Cash on hand as of the Effective Date, to be determined following (a) payment of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Secured Claims, and Allowed Other Priority Claims; (b) payment of the Allowed *De Minimis* Unsecured Claims according to the treatment set forth in Article III.B.6 herein and subject to the aggregate recovery cap of \$60,000; and (c) funding of the Professional Fee Reserve and the Wind-Down Budget.

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

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

42. “Exculpated Party” or “Exculpated Parties” means, in each case in its capacity as such, (a) the Debtor; (b) the Debtor’s directors and officers during the Chapter 11 Case; and (c) with respect to the foregoing causes (a) through (b), to the fullest extent permitted by law, such Person’s Related Parties.

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

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

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

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

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

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

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

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

51. “Insurance Policies” means all insurance policies that have been issued at any time to or provide coverage to the Debtor and all agreements, documents, or instruments relating thereto, *provided* that it does not include any such policies that are, or have been, assumed and assigned to the Purchaser(s) on or before the Effective Date pursuant to the Purchase Agreement(s), the Sale Order, and section 365 of the Bankruptcy Code.

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

53. “Interim Compensation Order” means an order entered by the Bankruptcy Court approving the Debtor’s motion to establish procedures for monthly, interim, and final compensation and reimbursement of Retained Professionals.

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

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

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

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

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

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

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

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

62. “Liquidating Trustee” means the trustee selected by the Majority Consenting Noteholders and appointed by the Debtor and identified in the Plan Supplement to act as trustee of and administer the Liquidating Trust and take such other actions as may be authorized under the Liquidating Trust Agreement, along with any successor thereto.

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

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

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

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

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

68. “OCP Order” means an order entered by the Bankruptcy Court approving the Debtor’s motion or motions to retain and compensate certain OCPs in the ordinary course of business.

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

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

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

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

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

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

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

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

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

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

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

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

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

82. “Purchase Agreement(s)” means the negotiated purchase and sale agreement (as such may be amended, supplemented, or modified from time to time) between and among the Debtor, as seller, and the Purchaser(s), as buyer for the sale of the Debtor’s assets according to the terms set forth therein.

83. “Purchaser(s)” means the Person(s) or Entity(ies) who purchase the Debtor’s assets pursuant to the Purchase Agreement(s) and the Sale Order.

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

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

86. “Released Party” means each of, and in each case in its capacity as such: (a) the Debtor; (b) the Consenting Noteholder Releasing Parties; and (c) each Related Party of the Debtor or the Consenting Noteholder Releasing Parties, including, for the avoidance of doubt, any professional retained by the Debtor or the Consenting Noteholders in connection with this Chapter 11 Case.

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

88. “Retained Causes of Action” means the Causes of Action of the Debtor listed on the Schedule of Retained Causes of Action.

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

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

91. “Sale” means the transaction between and among the Debtor and the Purchaser(s), pursuant to which the Debtor sold substantially all of its assets to the Purchaser(s) pursuant to sections 363 and 365 of the Bankruptcy Code, as set forth in the Sale Order and the Purchase Agreement(s).

92. “Sale Motion” means the motion to approve the Sale Order, including any bidding procedures in connection therewith.

93. “Sale Documents” means, collectively, the Purchase Agreement(s) and all agreements, documents, and instruments related thereto, including the Sale Order.

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

95. “Schedule of Retained Causes of Action” means the schedule in the Plan Supplement, which is a schedule of certain Causes of Action of the Debtor that are not released, subject to exculpation, waived, or transferred pursuant to the Plan or otherwise.

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

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

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

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

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

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

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

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

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

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

**B. Rules of Interpretation**

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

**C. Computation of Time**

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

**D. Controlling Document**

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

**ARTICLE II.**

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

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

**A. Administrative Claims**

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

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

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

**Except as otherwise provided in Articles II.B or II.D herein, Holders of Administrative Claims that do not File and serve a Proof of Claim or application for payment**

**of administrative expense requesting the allowance of an Administrative Claim by the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting Administrative Claims against the Debtor, the Estate, the Liquidating Trust, the Liquidating Trustee, or their assets and properties, and any Administrative Claims shall be deemed disallowed as of the Effective Date unless otherwise ordered by the Court.**

**B. Professional Fee Claims**

1. Final Fee Applications

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

2. Administrative Claims of OCPs

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

3. Post-Effective Date Fees and Expenses

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

4. Professional Fee Reserve Amount

Unless otherwise agreed to prior to the Effective Date by the Debtor and the Retained Professional or the Consenting Noteholder Professional (as applicable), to receive payment for unbilled fees and expenses incurred through the Effective Date, the Retained Professionals and the

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

5. Professional Fee Reserve

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

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

C. Priority Tax Claims

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

D. U.S. Trustee Statutory Fees

All U.S. Trustee Statutory Fees due and payable prior to the Effective Date shall be paid by the Debtor on the Effective Date. After the Effective Date, any and all Statutory Fees shall be paid to the U.S. Trustee by the Liquidating Trustee when due and payable. The Debtor and the

Liquidating Trust (as applicable) shall remain obligated to pay the U.S. Trustee Statutory Fees until the earliest of the Debtor’s case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code. Neither the U.S. Trustee nor any other Governmental Unit is required to File a request for an Administrative Claim for Statutory Fees.

**E. Consenting Noteholder Fees and Expenses**

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

**ARTICLE III.  
CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

**A. Classification of Claims and Interests**

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

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

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

7	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
8	Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

**B. Treatment of Claims and Interests**

1. Class 1 – Other Secured Claims

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

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

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

2. Class 2 – Other Priority Claims

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

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

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

3. Class 3 – Noteholders Claims

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

(b) *Treatment*: On the Effective Date, the Noteholder Claims shall be deemed Allowed in the outstanding principal amount of the Convertible Notes, plus accrued but unpaid interest, fees, and any and all amounts due thereunder, and except to the extent that a Holder of a Noteholder Claim and the Debtor agree to less favorable treatment for such Holder, in full and final satisfaction of the Allowed Noteholder Claim, each Holder thereof will: (i) be paid in Cash on the Effective Date or as soon as reasonably practicable thereafter, its Noteholder Effective Date Distribution; and (ii) receive its *pro rata* right to recovery from the Liquidating Trust pursuant to the Liquidating Trust Waterfall.

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

4. Class 4 – Patheon Rejection Claim

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

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

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

5. Class 5 – General Unsecured Claims

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

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

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

6. Class 6 – *De Minimis* Unsecured Claims

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

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

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

7. Class 7 – Section 510(b) Claims

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

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

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

8. Class 8 – Interests

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

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

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

**C. Special Provisions Governing Unimpaired Claims**

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

**D. Elimination of Vacant Classes**

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from this Plan for purposes of voting

to accept or reject this Plan and for purposes of determining acceptance or rejection of this Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

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

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

**F. Controversy Concerning Impairment**

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

**G. Subordination of Claims**

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

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

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

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

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

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

**B. Vesting of Assets**

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

**C. Liquidating Trust**

1. Establishment of the Liquidating Trust

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

2. Transfer of the Liquidating Trust Assets

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

3. Liquidating Trust Waterfall

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

4. Liquidating Trust Agreement

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

5. Purpose of the Liquidating Trust

The Liquidating Trust shall be established for the purpose of (a) receiving and holding the Liquidating Trust Assets; (b) administering, disputing, objecting to, compromising, or otherwise resolving all General Unsecured Claims; (c) making distributions to the Liquidating Trust Beneficiaries in accordance with the Liquidating Trust Waterfall; (d) maximizing recoveries for the benefit of the Liquidating Trust Beneficiaries; and (e) commencing and pursuing the Retained Causes of Action and managing and administering any proceeds thereof, with no objective to continue or engage in the conduct of a trade or business in accordance with Treas. Reg. § 301.7701-4(d). 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.

6. Liquidating Trustee

(a) *Appointment of the Liquidating Trustee*

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

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

From and after the Effective Date, the Liquidating Trustee shall act as the exclusive representative of the Estate for all purposes, including, pursuant to section 1123(b)(3) of the Bankruptcy Code, for the purpose of retaining and enforcing the Retained Causes of Action in accordance with the best interests of and for the benefit of the Liquidating Trust Beneficiaries. Any successor Liquidating Trustee appointed pursuant to the Liquidating Trust Agreement shall be bound by and comply with the terms of this Plan, the Confirmation Order, and the Liquidating Trust Agreement.

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

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

(d) *Powers of the Liquidating Trustee*

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

(e) *Compensation of the Liquidating Trustee*

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

(f) *Retention and Payment of Professionals*

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

7. Termination of the Liquidating Trust

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

8. Exculpation Relating to the Liquidating Trust

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

**D. Preservation of Causes of Action**

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

**E. Corporate Action**

1. Transfer of Assets and Assumption of Liabilities

On the Effective Date, (a) the Debtor shall, in accordance with this Plan, cause the Liquidating Trust Assets to be transferred to the Liquidating Trust; and (b) the Liquidating Trust shall assume all obligations of the Debtor under this Plan.

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

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

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

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

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

**G. Plan Transactions**

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

**H. Effectuating Documents and Further Transactions**

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

**I. Section 1146 Exemption from Certain Taxes and Fees**

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

**J. Sale Order**

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

**K. Authority to Act**

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

**ARTICLE V.  
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND  
INSURANCE POLICIES**

**A. General Treatment**

On the Effective Date, except as otherwise provided herein (which exclusion includes the Insurance Policies), all Executory Contracts or Unexpired Leases not previously assumed,

assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court, will be deemed rejected, in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code other than those Executory Contracts or Unexpired Leases that are the subject of a motion to assume that is pending on the Confirmation Date.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Sale Documents or this Plan, and payment of any cure amounts relating thereto, shall, upon satisfaction of the applicable requirements of section 365 of the Bankruptcy Code, result in the full, final, and complete release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults or provisions restricting the change in control of ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

**B. Rejection Damages Claims**

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

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

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

**C. Reservation of Rights**

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

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

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

**E. Insurance Preservation**

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

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

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

**ARTICLE VI.  
PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Distribution Record Date**

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

Except as otherwise provided herein, the Disbursing Agent shall make distributions to Holders of Allowed Claims as of the Distribution Record Date at the address for each such Holder as indicated on the Debtor's records as of the date of any such distribution; *provided, however,*

that the manner of such distributions shall be determined at the discretion of the Debtor or the Liquidating Trustee (as applicable); *provided further, however*, that the address for each Holder of an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim Filed by that Holder.

**B. Withholdings**

The Liquidating Trustee shall (1) withhold, deduct, and pay over to the appropriate governmental authority any amount required to be withheld under tax laws with respect to any distribution pursuant to the Liquidation Trust Agreement; and (2) comply with any reporting requirements imposed by any federal, state, local, or foreign taxing authority. The Liquidating Trustee may withhold all or the appropriate portion of any distribution due to any Liquidating Trust Beneficiary until such time as such Liquidating Trust Beneficiary provides the necessary information to comply with any withholding requirements of any governmental authority. Any tax withheld shall be treated as distributed and received by the applicable Liquidating trust Beneficiary for all purposes of the Liquidation Trust Agreement and the Plan. If a Liquidating Trust Beneficiary fails to provide the information necessary to comply with any withholding requirements of any governmental authority on or before the day that is one year after the Effective Date of the Plan, then such Liquidating Trust Beneficiary's distribution may be treated as unclaimed property in accordance with the Liquidation Trust Agreement.

**C. Date of Distributions**

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

**D. Disbursing Agent**

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

**E. Powers of Disbursing Agent**

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

**F. Surrender of Instruments**

As a condition precedent to receiving any distribution under this Plan, each holder of a certificated instrument or note must surrender such instrument or note held by it to the Disbursing Agent or its designee. Any holder of such instrument or note that fails to (1) surrender the instrument or note; or (2) execute and deliver an affidavit of loss or indemnity reasonably satisfactory to the Disbursing Agent and furnish a bond in form, substance, and amount reasonably satisfactory to the Disbursing Agent within six months of being entitled to such distribution shall be deemed to have forfeited all rights and claims and may not participate in any distribution hereunder.

**G. IRS Forms**

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

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

**H. Delivery of Distributions**

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

If any distribution to a Holder of an Allowed Claim (1) is returned as undeliverable for lack of a current address or otherwise; or (2) is not cashed or otherwise presented for collection by the Holder of the Allowed Claim within ninety (90) calendar days after the mailing of such distribution, the Liquidating Trustee shall be authorized to cancel such distribution check and file with the Bankruptcy Court the name and last known address of the Holder of undeliverable distribution or uncashed distribution, as applicable. If, after the passage of thirty (30) calendar days after such Filing, the payment or distribution on the Allowed Claim still cannot be made, then

(1) the Holder of such Claim shall cease to be entitled to the undeliverable distribution or uncashed distribution, which will revert to the Liquidating Trust; and (2) the Allowed Claim of such Holder shall be deemed disallowed and expunged for purposes of further distributions under the Plan.

**I. Manner of Payment**

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

**J. Foreign Currency Exchange Rate**

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

**K. Setoffs and Recoupments**

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

**L. Minimum Distributions**

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

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

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

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

**N. Distributions Free and Clear**

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

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

1. Claims Paid by Third Parties

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

2. Claims Payable by Third Parties

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

3. Applicability of Insurance Policies

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

**ARTICLE VII.  
PROCEDURES FOR RESOLVING UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Allowance of Claims**

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

**B. Claims Administration Responsibilities**

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

**C. Estimation of Claims**

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

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

**D. Adjustment to Claims Without Objection**

Any Claim that has been paid, satisfied, or assumed by Purchaser(s) in the Sale, or any Claim that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Debtor or the Liquidating Trustee (as applicable) without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

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

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

**F. Disallowance of Late Claims**

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

**G. Disputed Claims**

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

**H. Amendment to Claims**

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

**I. No Distributions Pending Allowance**

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

**J. Distributions After Allowance**

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

**ARTICLE VIII.  
CONDITIONS PRECEDENT TO THE EFFECTIVE DATE**

**A. Conditions Precedent**

The occurrence of the Effective Date of this Plan is subject to each of the following conditions precedent.

1. The Bankruptcy Court shall have approved the Disclosure Statement as containing adequate information with respect to the Plan within the meaning of section 1125 of the Bankruptcy Code.

2. The Confirmation Order shall have been entered and shall be in full force and effect.

3. There shall have been no modification or stay of the Confirmation Order or entry of any other order prohibiting the transactions contemplated by this Plan from being consummated.

4. The Professional Fee Reserve shall have been fully funded pursuant to the terms of this Plan.

5. All Consenting Noteholder Fees and Expenses incurred and invoiced as of the Effective Date shall have been paid in full.

6. The RSA shall not have been terminated and shall remain in full force and effect and the Debtor and the Consenting Noteholders shall be in compliance therewith.

7. All actions, documents and agreements necessary to implement the Plan shall have been effected, executed and/or tendered for delivery. All conditions precedent to the effectiveness of such documents and agreements shall have been satisfied or waived pursuant to the terms thereof (or will be satisfied and waived substantially concurrently with the occurrence of the Effective Date).

8. The Liquidating Trustee shall have been appointed and assumed its rights and responsibilities under the Plan and the Liquidating Trust Agreement, as applicable.

9. The Debtor shall have received all authorizations, consents, regulatory approvals, rulings, letters, no-action letters, opinions, or documents necessary to implement this Plan and any transaction contemplated hereby that are required by law, regulation, or order.

**B. Waiver of Conditions**

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

**ARTICLE IX.  
RELEASE, INJUNCTION, AND RELATED PROVISIONS**

**A. Releases by the Debtor**

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

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

**B. Releases by Holders of Claims and Interests**

As of the Effective Date, each Releasing Party is deemed to have released and discharged each Released Party from any and all claims and Causes of Action, whether known or unknown, including any claims and Causes of Action that the Debtor or its estate would have been legally entitled to assert in its own right including any claims or Causes of Action that could be asserted derivatively or on behalf of the Debtor (or its estate), that such Entity would have been legally entitled to assert (whether individually or collectively), based on, relating to, or in any manner arising from, in whole or in part, the Debtor (including the management, ownership or operation thereof, or otherwise), any securities issued by the Debtor and the ownership thereof, the Debtor's in- or out-of-court restructuring efforts, any avoidance actions, the Chapter 11 Case, the formulation, preparation, dissemination, negotiation, or filing of the Term Sheet, the RSA, the Disclosure Statement, the Sale Motion, the Plan, the Plan Supplement, or any other transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Sale, the Plan, the Plan Supplement, the Chapter 11 Case, the filing of the Chapter 11 Case, the pursuit of the Confirmation Order, the pursuit of the Sale Order, the pursuit of consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence or omission taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (1) any post Effective Date obligations of any party or entity under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan; (2) any obligations under or in respect of the Sale Order; or (3) the Retained Causes of Action.

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

**C. Exculpation**

Except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur liability for, and each Exculpated Party is exculpated from any Cause of Action for any Claim related to any act or omission in connection with, relating to, or arising out of, the

**Chapter 11 Case, the formulation, preparation, dissemination, negotiation, or filing of the Debtor's in-court restructuring efforts, the Term Sheet, the RSA, the Disclosure Statement, the Sale Motion, the Plan, the Plan Supplement, or any restructuring transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Sale, the Plan, the Plan Supplement, the Chapter 11 Case, the filing of the Chapter 11 Case, the pursuit of the Confirmation Order, the pursuit of the Sale Order, the pursuit of consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence or omission taking place between the Petition Date and the Effective Date, except for claims related to any act or omission that is determined in a final order by a court of competent jurisdiction to have constituted actual intentional fraud, willful misconduct, or gross negligence of such Person, but in all respects such Entities shall be entitled to reasonably rely upon the written advice of counsel with respect to their duties and responsibilities pursuant to the Plan.**

**D. Injunction**

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

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

**E. No Discharge**

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

**F. Release of Liens**

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

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

**ARTICLE X.  
RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, or related to, the Chapter 11 Case, the Sale, the Sale Documents, the Confirmation Order, and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to each of the following:

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims or Interests.
2. Resolve any cases, controversies, suits, or disputes that may arise in connection with Claims, including Claim objections, allowance, disallowance, subordination, estimation and distribution.

3. Decide and resolve all matters related to the granting and denying, in whole or in part of, any applications for allowance of compensation or reimbursement of expenses to Retained Professionals authorized pursuant to the Bankruptcy Code or the Plan.

4. Resolve any matters related to: (a) the assumption or assumption and assignment of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor may be liable and to hear, determine, and, if necessary, liquidate, any cure amount arising therefrom; and/or (b) any dispute regarding whether a contract or lease is or was executory or expired.

5. Adjudicate, decide or resolve any motions, adversary proceedings, contested, or litigated matters, and any other matters, and grant or deny any applications involving the Debtor that may be pending on the Effective Date.

6. Adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code.

7. Adjudicate, decide or resolve any motions, adversary proceedings, contested, or litigated matters, and any other matters relating to the Retained Causes of Action.

8. Enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan or the Disclosure Statement.

9. Resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the interpretation or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan.

10. Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with enforcement of the Plan.

11. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the releases, injunctions, and other provisions contained in the Plan and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions.

12. Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated.

13. Determine any other matters that may arise in connection with or related to the Sale Documents, the Disclosure Statement, the Plan, and the Confirmation Order.

14. Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan.

15. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by any Holder for amounts not timely repaid.

16. Adjudicate any and all disputes arising from or relating to distributions under the Plan.
17. Consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order.
18. Hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or the Confirmation Order.
19. Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code.
20. To recover all assets of the Debtor and property of the Debtor's Estate, wherever located.
21. To consider requests for extensions of the term of the Liquidating Trust as provided herein.
22. To hear and determine any Causes of Action that may be brought by the Liquidating Trustee.
23. To hear and determine any other rights, claims, or Causes of Action held by or accruing to the Debtor or the Liquidating Trust pursuant to the Bankruptcy Code or any applicable state or federal statute or legal theory.
24. Enter an order or final decree concluding or closing the Chapter 11 Case.
25. Enforce all orders previously entered by the Bankruptcy Court.
26. Hear any other matter over which the Court has jurisdiction.

#### **ARTICLE XI.**

#### **MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

##### **A. Modification of the Plan**

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

**B. Other Amendments**

The Debtor may make appropriate non-material, technical adjustments and modifications to this Plan or the Plan Supplement prior to the Effective Date without further order or approval of the Bankruptcy Court.

**C. Effect of Confirmation on Modifications**

Entry of the Confirmation Order shall mean that all modifications or amendments to the Plan since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

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

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

**ARTICLE XII.  
MISCELLANEOUS PROVISIONS**

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

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

**B. Immediate Binding Effect**

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

**C. Additional Documents**

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

**D. Substantial Consummation**

On the Effective Date, this Plan shall be deemed to be substantially consummated (within the meaning set forth in section 1101 of the Bankruptcy Code) pursuant to section 1127(b) of the Bankruptcy Code.

**E. Reservation of Rights**

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

**F. Successors and Assigns**

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

**G. Determination of Tax Liabilities**

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

**H. Notices**

In order for all notices, requests, and demands to or upon the Debtor and the Liquidating Trustee, as the case may be, to be effective such notices, requests and demands shall be in writing (including by electronic mail) and, unless otherwise expressly provided herein, shall be deemed to

have been duly given or made when actually delivered or, in the case of notice by email, when received, and served on or delivered to the following parties:

<b>Debtor</b>	<b>Counsel to the Debtor</b>
Tricida, Inc. 7000 Shoreline Court, Suite 201 South San Francisco, CA 94080 Attention: Bob McKague, Executive Vice President, General Counsel, & Chief Compliance Officer E-mail address: bmckague@tricida.com	Sidley Austin LLP 787 Seventh Avenue New York, New York 10019 Attention: Geoff Levin and Sam Newman Email: glevin@sidley.com, sam.newman@sidley.com -and- Young, Conaway Stargatt & Taylor, LLP Rodney Square 1000 North King Street Wilmington, Delaware 19801 Attention: Sean M. Beach and Allison S. Mielke Email: sbeach@ycst.com amielke@ycst.com
<b>Liquidating Trustee</b>	<b>Counsel to the Liquidating Trustee</b>
To be included in the Plan Supplement	To be included in the Plan Supplement

After the Effective Date, Persons or Entities that wish to continue to receive documents pursuant to Bankruptcy Rule 2002 must File a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Liquidating Trustee is authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities that Filed such renewed requests.

**I. Term of Injunctions or Stays**

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

**J. Entire Agreement**

On the Effective Date, the Plan and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

**K. Plan Supplement Exhibits**

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. Copies of such exhibits and documents shall be made available upon written request to Debtor's counsel or Liquidating Trustee's counsel (as applicable) at the address above or by downloading such exhibits and documents free of charge from the Notice and Claims Agent's website.

Unless otherwise ordered by the Bankruptcy Court, to the extent any exhibit or document in the Plan Supplement is inconsistent with the terms of any part of the Plan that does not constitute the Plan Supplement, such part of the Plan that does not constitute the Plan Supplement shall control. The documents in the Plan Supplement are considered an integral part of the Plan and shall be deemed approved by the Bankruptcy Court pursuant to the Confirmation Order.

**L. Governing Law**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Delaware, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control), and corporate governance matters.

**M. Nonseverability of Plan Provision Upon Confirmation**

If any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation.

The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is the following: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the consent of the Debtor or the Liquidating Trustee (as applicable); and (3) nonseverable and mutually dependent.

**N. Closing of Chapter 11 Case**

After the full administration of the Chapter 11 Case, the Liquidating Trustee shall promptly File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022, a motion pursuant to Local Rule 3022-1(a), and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

*[Remainder of Page Intentionally Left Blank]*

Dated: January 18, 2023

Respectfully submitted,

DocuSigned by:  
  
FD98CCC9DD124BB...  
By: Bob McKague  
Executive Vice President, General Counsel,  
and Chief Compliance Officer  
Tricida, Inc.

**Exhibit B**

**Liquidation Analysis**

To be provided.