

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11
: :
PROTEUS DIGITAL HEALTH, INC., : Case No. 20-11580 (BLS)
: :
Debtor.¹ : Re: Docket Nos. 296, 297
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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
APPROVING AND CONFIRMING THE FIRST AMENDED COMBINED
DISCLOSURE STATEMENT AND CHAPTER 11 PLAN OF LIQUIDATION
DATED OCTOBER 2, 2020 PROPOSED BY PROTEUS DIGITAL HEALTH, INC.**

Upon consideration of (i) the *First Amended Combined Disclosure Statement and Chapter 11 Plan of Liquidation dated October 2, 2020 proposed by Proteus Digital Health, Inc.* [Docket No. 297] (as amended, modified or supplemented, the “Combined Disclosure Statement and Plan”),² which is attached hereto as **Exhibit A**, and (ii) the *Debtor’s Motion for Entry of an Order (A) Approving the Combined Disclosure Statement and Plan on an Interim Basis for Solicitation Purposes Only; (B) Establishing Solicitation and Tabulation Procedures; (C) Approving the Form of Ballots and Solicitation Materials; (D) Establishing the Plan Confirmation Schedule; and (E) Granting Related Relief* [Docket No. 266] filed by the above-captioned debtor and debtor in possession (the “Debtor”); and this Court, by order dated October 6, 2020 [Docket No. 296] (the “Solicitation Procedures Order”), having conditionally approved the Combined Disclosure Statement and Plan for solicitation purposes only and authorized the Debtor to solicit

¹ The last four digits of the Debtor’s taxpayer identification number are 2680. The Debtor’s mailing address is Proteus Digital Health, Inc., c/o SierraConstellation Partners LLC, 355 S. Grand Ave., Suite 1450, Los Angeles, CA 90071.

² Capitalized terms not defined herein shall have the meanings provided to them in the Combined Disclosure Statement and Plan.



votes to accept or reject the Plan; and all objections and all reservations of rights (that have not been withdrawn, waived, or settled) pertaining to final approval of the Disclosure Statement and confirmation of the Plan having been overruled on the merits; and a hearing, if any, having been held on November 16, 2020, regarding final approval of the Disclosure Statement and confirmation of the Plan (the “Confirmation Hearing”); and upon the evidence adduced and proffered and the arguments of counsel made at the Confirmation Hearing (if any); and this Court having reviewed all documents in connection with confirmation of the Plan and having heard all parties desiring to be heard; and upon the record compiled in this Chapter 11 Case; and after due deliberation and consideration of all of the foregoing; and sufficient cause appearing therefor; this Court hereby makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. The findings and conclusions set forth herein and on the record of the Confirmation Hearing (if any) constitute this Court’s findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction over the Chapter 11 Case pursuant to 28 U.S.C. §§ 1334(a) and 157(1) and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012. Venue of these proceedings and the Chapter 11 Case in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2) and this Court may enter a final order hereon under Article III of the U.S. Constitution.

C. On September 17, 2020, the Debtor filed the initial version of the Combined Disclosure Statement and Plan [Docket No. 265]. On October 2, 2020, the Debtor filed the first amended version of the Combined Disclosure Statement and Plan [Docket No. 286]. On October 6, 2020, the Debtor filed the solicitation version of the Combined Disclosure Statement and Plan [Docket No. 297]. The filing of the Combined Disclosure Statement and Plan satisfies Bankruptcy Rule 3016 and Local Rule 3017-2.

D. As evidenced by the *Certificate of Service* [Docket No. 318], on October 9, 2020, the Debtor caused the Ballots to be distributed as required by Bankruptcy Code Sections 1125 and 1126, Bankruptcy Rules 3017 and 3018, the Local Rules, all other applicable provisions of the Bankruptcy Code, the Solicitation Procedures Order, and all other rules, laws and regulations applicable to such solicitation. The Solicitation Packages were transmitted in accordance with the Solicitation Procedures Order. Sufficient time was provided for the Voting Class to accept or reject the Plan, to make a Release Opt-Out Election, and/or to object to final approval of the Disclosure Statement and/or confirmation of the Plan. Such transmittal and service were adequate and sufficient under the circumstances and no other or further notice is or shall be required.

E. As evidenced by the *Certificate of Service* and the *Supplemental Certificate of Service* [Docket Nos. 318, 319], the Debtor has provided proper, adequate, and sufficient notice of the Combined Disclosure Statement and Plan and the Confirmation Hearing, as required by Bankruptcy Rule 3017(d), to all Holders of Claims, all Holders of Interests and all other parties in interest. Such notice provided such Holders of Claims and Interests and all other parties in interest sufficient time to make a Release Opt-Out Election (if applicable to such party in interest) and to object to final approval of the Disclosure Statement and/or confirmation of the Plan, and no other or further notice is or shall be required.

F. The solicitation of acceptance or rejection of the Plan has been fair, properly conducted, in good faith and in compliance with applicable provisions of the Bankruptcy Code, Bankruptcy Rules, Local Rules, the Solicitation Procedures Order, and all other rules, laws and regulations applicable to such solicitation.

G. The Plan complies with all of the applicable provisions of the Bankruptcy Code including, but not limited to: (i) the proper classification of Claims and Interests (Bankruptcy Code Sections 1122, 1123(a)(i)); (ii) the specification of Unimpaired Classes (Bankruptcy Code Section 1123(d)(2)); (iii) the specification of treatment of Impaired Classes (Bankruptcy Code Section 1123(a)(3)); (iv) the provision for the equal treatment of each Claim or Interest within a particular class (Bankruptcy Code Section 1123(a)(4)); (v) the provision for adequate and proper means of implementation (Bankruptcy Code Section 1123(a)(5)); (vi) the prohibition against the issuance of non-voting equity securities (Bankruptcy Code Section 1123(a)(6)); (vii) the manner of selection of the Liquidating Trustee (Bankruptcy Code Section 1123(a)(7)); and (viii) the inclusion of additional Plan provisions permitted to effectuate and implement the transactions contemplated by the Plan (Bankruptcy Code Section 1123(b)); and, thus, the Plan satisfies Bankruptcy Code Section 1129(a)(1).

H. As required by Bankruptcy Code Section 1129(a)(2), the Debtor, as proponent of the Plan, has complied with the Bankruptcy Code, Bankruptcy Rules, Local Rules, Solicitation Procedures Order, all other rules, laws and regulations applicable to such solicitation, and other orders of this Court. In particular, the Debtor is a proper debtor under Bankruptcy Code Section 109 and a proper proponent of the Plan pursuant to Bankruptcy Code Section 1121(a). Thus, the Plan satisfies Bankruptcy Code Section 1129(a)(2).

I. The Plan has been proposed in good faith and in compliance with applicable provisions of the Bankruptcy Code and not by any means forbidden by law, thus satisfying Bankruptcy Code Section 1129(a)(3).

J. Any payments made or promised by the Debtor for services or for costs and expenses in, or in connection with, the Chapter 11 Case, or in connection with the Plan and incident to the Chapter 11 Case, have been approved by, or are subject to approval of, this Court as reasonable, thus satisfying Bankruptcy Code Section 1129(a)(4).

K. The identity of, and the terms of the proposed compensation to be paid to, the proposed Liquidating Trustee is consistent with the interests of the Debtor's creditors, equity holders and with public policy and thus, the Plan satisfies Bankruptcy Code Section 1129(a)(5).

L. The provisions of Bankruptcy Code Section 1129(a)(6) are inapplicable to the Chapter 11 Case.

M. As evidenced by the Combined Disclosure Statement and Plan and at the Confirmation Hearing (if any), each holder of a Claim or Interest in each Impaired Class has either accepted the Plan or will receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtor liquidated under Chapter 7 of the Bankruptcy Code on such date. Thus, the Plan satisfies Bankruptcy Code Section 1129(a)(7).

N. Class 3 has voted to accept the Plan. Classes 1 and 2 are not impaired under the Plan and are, therefore, deemed to have accepted the Plan under Bankruptcy Code Section 1126(f). Class 4 is Impaired by the Plan and is not entitled to receive or retain any property under the Plan and, therefore, is deemed to have rejected the Plan pursuant to Bankruptcy Code Section 1126(g). As found and determined below, pursuant to Bankruptcy Code Section 1129(b)(1), the Plan may

be confirmed notwithstanding the fact that Class 4 is Impaired and is deemed to have rejected the Plan.

O. Except to the extent that the Holder of a particular Claim has agreed to a different treatment of such Claim, the treatment of Claims under the Plan of the type specified in Bankruptcy Code Sections 507(a)(1) and 507(a)(3) - 507(a)(8), if any, complies with the provisions of Bankruptcy Code Section 1129(a)(9).

P. At least one impaired class of Claims (Class 3) has accepted the Plan, determined without including any acceptances of the Plan by any insider. Thus, the Plan satisfies Bankruptcy Code Section 1129(a)(10).

Q. Confirmation of the Plan is not likely to be followed by the need for further financial reorganization of the Debtor, and the Plan provides for adequate means for its implementation; thus, the Plan satisfies the requirements of Bankruptcy Code Section 1129(a)(11).

R. All U.S. Trustee Fees payable on or before the Effective Date, pursuant to United States Code title 28 section 1930, shall be paid in full in Cash on or before the Effective Date. On and after the Effective Date, the Liquidating Trust shall file with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the U.S. Trustee for the Debtor until the Chapter 11 Case is closed, dismissed, or converted. All U.S. Trustee Fees that arise after the Effective Date shall be paid by the Liquidating Trust in full in Cash when due. The Liquidating Trust shall have the obligation to pay U.S. Trustee Fees pursuant to United States Code title 28 section 1930 for the Debtor until the Chapter 11 Case is closed, dismissed, or converted. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of Claim with respect to U.S. Trustee Fees. Thus, the Plan satisfies Bankruptcy Code Section 1129(a)(12).

S. The Debtor did not offer “retiree benefits,” as that term is used in the Bankruptcy Code, nor was it required to pay a domestic support obligation, nor is it an individual. Accordingly, Bankruptcy Code Sections 1129(a)(13)-(15) are inapplicable.

T. The Debtor is a moneyed, business, or commercial corporation. Accordingly, Bankruptcy Code Section 1129(a)(16) is inapplicable.

U. No other chapter 11 plan has been filed.

V. The primary purpose of the Plan is not the avoidance of taxes or the requirements of Section 5 of the Securities Act of 1933.

W. Based upon the record before the Court, the Debtor and its Professionals, and the Committee and its Professionals and its members and their representatives, have acted in good faith with respect to the formulation, solicitation and confirmation of the Plan pursuant to Bankruptcy Code Section 1125(e) and are entitled to the protections afforded by Section 1125(e) and, to the extent applicable, the exculpation and injunction provisions set forth in Article XIV of the Plan.

X. Holders of Interests in Class 4 are deemed to have rejected the Plan. Based upon the evidence proffered, adduced, and presented by the Debtor prior to or at the Confirmation Hearing (if any), the Plan does not discriminate unfairly and is fair and equitable with respect to Class 4, as required by Bankruptcy Code Sections 1129(b)(1) and (b)(2). Thus, the Plan may be confirmed notwithstanding the deemed rejection of the Plan by the Holders of Interests in Class 4.

Y. The other transactions contemplated pursuant to the Plan involving the Liquidating Trust are essential elements of the Plan, proposed in good faith, and in the best interests of the Debtor, its Estate, all Holders of Claims, all Holders of Interests, and all other parties in interest. All of the documents to be executed and delivered in connection with such transactions were

negotiated and proposed, and will be or have been entered into, in good faith, without collusion, and from arm's-length bargaining positions. All of such documents are, or will be, valid, binding, and enforceable agreements, and are not in conflict with any applicable federal or state law.

Z. The conditions to the occurrence of the Effective Date in Article XIII of the Combined Disclosure Statement and Plan are reasonably likely to be satisfied or waived in accordance with the Plan.

AA. With respect to any and all Executory Contracts of the Debtor that have not been assumed or assumed and assigned by the Debtor as of the Effective Date, such Executory Contracts are burdensome to the Estate and rejection of such Executory Contracts as of the Effective Date (except for Post-Effective Date Rejected Contracts (as defined in the Plan Supplement), which shall be rejected after the Effective Date as set forth herein) is in the best interests of the Estate.

BB. This Court has jurisdiction under 28 U.S.C. §§1334(a) and (b), and the *Amended Standing Order of Reference* dated as of February 29, 2012, from the United States District Court, to approve the releases set forth in Article XIV of the Combined Disclosure Statement and Plan, as well as the related injunctions or stays provided for therein. Bankruptcy Code Section 105(a) permits approval of such releases and injunctions because, as has been established here, based upon the record in the Chapter 11 Case and the evidence presented at the Confirmation Hearing (if any), such provisions set forth in Article XIV of the Combined Disclosure Statement and Plan are: (i) given in exchange for the good and valuable consideration provided by the Released Parties (as applicable); (ii) a good faith settlement and compromise of the claims released by Article XIV of the Combined Disclosure Statement and Plan; (iii) integral to the agreements among the various parties in interest and are essential to the formulation and implementation of the Plan, as provided in Bankruptcy Code Section 1123; (iv) in the best interests of the Debtor and its Estate; (v) fair,

equitable, and reasonable; (vi) given and made after due notice and opportunity for hearing; and (vii) a bar to any Entity asserting any claim or Cause of Action released by Article XIV of the Combined Disclosure Statement and Plan.

CC. The releases in Article XIV of the Combined Disclosure Statement and Plan, including, without limitation, the third-party releases in Section 14.1(c) of the Combined Disclosure Statement and Plan are consensual in nature. The third-party release is consensual with respect to the Releasing Parties. Specifically, the notice of the Confirmation Hearing sent to parties in interest on October 9, 2020 or October 19, 2020, as applicable, and the Ballots sent to all Holders of Impaired Claims in the Voting Class, in each case, unambiguously stated that the Combined Disclosure Statement and Plan contains the third-party release and provided all such parties in interest a sufficient opportunity to either opt-out of, or object to, such releases. Accordingly, in light of all of the circumstances, the releases satisfy the applicable standards contained in *In re Indianapolis Downs, LLC*, 486 B.R. 286, 303 (Bankr. D. Del. 2013), are fair to the Releasing Parties, and are otherwise appropriate under *In re W.R. Grace & Co.*, 475 B.R. 34, 107 (D. Del. 2012).

DD. The Debtor, as proponent of the Plan, has met its burden of proving the elements of Bankruptcy Code Sections 1129(a) and (b) by a preponderance of the evidence, which is the applicable evidentiary standard. This Court also finds that the Debtor has satisfied the elements of Bankruptcy Code Sections 1129(a) and (b) under the clear and convincing standard of proof.

EE. As a result of the foregoing, the Plan satisfies all applicable confirmation requirements.

FF. This Court properly may retain jurisdiction over the matters set forth in Article XV of the Combined Disclosure Statement and Plan.

GG. Under the circumstances, it is appropriate that the 14-day stay imposed by Bankruptcy Rules 3020(e) and 7062(a) be waived.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Disclosure Statement is hereby approved on a final basis as containing adequate information within the meaning of Bankruptcy Code Section 1125. Any objections to the adequacy of the information contained in the Disclosure Statement or to final approval of the Disclosure Statement, or any reservations of rights thereto, to the extent not withdrawn, waived, or resolved herein, are hereby overruled and denied on the merits.

2. The Plan is hereby confirmed pursuant to Bankruptcy Code Section 1129. The terms of the Plan are incorporated by reference into, and are an integral part of, this Confirmation Order. Any objections to confirmation of the Plan, or any reservations of rights thereto, to the extent not withdrawn, waived, or resolved herein, are hereby overruled and denied on the merits. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order shall control.

3. Subject to the provisions of the Combined Disclosure Statement and Plan, in accordance with Bankruptcy Code Section 1141(a), and notwithstanding any otherwise applicable law, upon the occurrence of the Effective Date, the terms of the Combined Disclosure Statement and Plan and this Confirmation Order shall be binding upon, and inure to the benefit of: (i) the Debtor; (ii) the Committee, its members and their representatives; (iii) the Liquidating Trust; (iv) the Purchaser; (v) any and all Holders of Claims or Interests (irrespective of whether any of such Claims or Interests are Impaired under the Plan or whether the Holders of such Claims or Interests accepted, rejected or are deemed to have accepted or rejected the Plan, or whether such

Holders filed a proof of claim or interest); (vi) any other Entity giving, acquiring or receiving property under the Plan; (vii) any and all non-Debtor Parties to any Executory Contract; (viii) the Liquidating Trustee, in its capacity as such; and (ix) the respective Affiliates, officers, directors, agents, representatives, attorneys, successors or assigns, if any, of any of the foregoing. On the Effective Date, except as otherwise set forth in the Combined Disclosure Statement and Plan: (i) all settlements, compromises, releases, waivers, discharges, exculpations and injunctions set forth in the Combined Disclosure Statement and Plan shall be effective and binding on all Entities who have, or may have, or may not have, standing to assert any settled, compromised, released, waived, discharged, exculpated or enjoined Causes of Action, and, subject to 11 U.S.C. § 307, no other Entity shall possess such standing to assert such Causes of Action following the Effective Date; and (ii) pursuant to Bankruptcy Code Sections 1141(b) and (c), the Liquidating Trust Assets (including, but not limited to, the Retained Causes of Action) shall vest in the Liquidating Trust in accordance with the Plan, free and clear of all Liens, Claims, encumbrances, and/or interests of creditors and equity security holders, except as expressly provided in the Plan or this Confirmation Order. For the avoidance of doubt, and subject to the occurrence of the Effective Date, all Preference Actions are hereby waived.

4. For the avoidance of doubt, the Plan shall not become effective unless and until the conditions set forth in Section 13.1 of the Combined Disclosure Statement and Plan have been satisfied or waived pursuant to Section 13.3 of the Combined Disclosure Statement and Plan.

5. The Debtor shall remain debtor-in-possession under the Bankruptcy Code until the Effective Date. The Debtor, Liquidating Trust, and Liquidating Trustee are hereby authorized to wind up the Debtor's affairs and may make distributions after the Effective Date in accordance with this Confirmation Order and the Plan.

6. The appointment of Matthew Dundon as the Liquidating Trustee and the terms of the proposed compensation thereof are hereby approved. The Liquidating Trustee shall have such rights, powers, and duties and shall receive such compensation as is provided for in the Combined Disclosure Statement and Plan, the Liquidating Trust Agreement, this Confirmation Order, and any Plan Supplement (collectively, “Plan Documents”).

7. Except with respect to the Post-Effective Date Rejected Contracts (as defined in the Plan Supplement), on the Effective Date, all Executory Contracts of the Debtor, other than the Assigned Contracts that were assumed and assigned to the Purchaser [Docket No. 354], are hereby deemed rejected as of the Effective Date, except to the extent: (a) the Debtor previously has assumed, assumed and assigned, or rejected such Executory Contract, or (b) prior to the Effective Date, the Debtor has filed a motion or notice to assume, assume and assign, or reject an Executory Contract on which the Court has not ruled. Notwithstanding anything to the contrary in the Plan, the Post-Effective Date Rejected Contracts shall be deemed rejected effective as of the 91st day following the Effective Date. Otsuka America Pharmaceutical, Inc. shall reimburse the Liquidating Trust, for any costs and expenses (including reasonable and necessary professional fees of the Liquidating Trust) incurred or arising after the Effective Date solely in connection with or related to the continued use of the Post-Effective Date Rejected Contracts.

8. If the rejection by the Debtor, under the Plan, of an Executory Contract gives rise to a Claim for rejection damages in accordance with section 502(g) of the Bankruptcy Code (a “Rejection Damages Claim”), a proof of Claim must be filed in accordance with the procedures set forth in the Bar Date Order with respect to Rejection Damages Claims by the Rejection Damages Claim Bar Date, which shall be thirty (30) days after the Effective Date Notice

is filed or, solely with respect to the Post-Effective Date Rejected Contracts, thirty (30) days after the date on which such contracts are rejected. Absent further Court order, any Rejection Damages Claim not filed by the Rejection Damages Claim Bar Date in accordance with the procedures set forth in the Bar Date Order with respect to Rejection Damages Claims shall be deemed waived and the Holder of such Rejection Damages Claim shall be forever barred from receiving payment on account thereof.

9. For the avoidance of doubt, notwithstanding anything to the contrary in this Confirmation Order, the Plan, or the Bar Date Order, the deadline of Westport Office Park, LLC c/o PGIM Real Estate (the “Landlord”) to file a proof of Claim on account of any Rejection Damages Claim arising under that certain Lease Agreement dated December 7, 2006 (as amended from time to time, the “Rejected Lease”) is November 30, 2020. Notwithstanding anything to the contrary in this Confirmation Order, the Plan, or the Bar Date Order, the Landlord shall be permitted to amend any timely-filed proof of claim to assert: (1) amounts owed under the Rejected Lease that are unbilled or not yet due as of October 30, 2020 (the “Lease Rejection Date”), such as for common area maintenance, insurance, taxes, and similar charges, and any regular or periodic ordinary course year-end adjustments and reconciliations of such charges provided for under the terms of the Rejected Lease, as such charges become due in the ordinary course in accordance with the terms of the Rejected Lease; (2) any percentage rent that may come due under the Rejected Lease; and (3) any other obligations, including indemnification obligations (if any) that arise from third-party claims asserted with respect to or arising from the Debtor’s use and occupancy of the premises prior to the Lease Rejection Date for which the Debtor had a duty to indemnify the Landlord pursuant to the Rejected Lease, or the Debtor’s or any assignee’s obligation to pay any postpetition expenses under the Rejected Lease as they come due. For the avoidance of doubt,

nothing contained herein shall limit any party's rights to object on any ground to any claims of the Landlord, with at least fourteen (14) days' notice to the Landlord, and an opportunity for the Landlord to respond and be heard on any objections. Notwithstanding anything to the contrary in this Confirmation Order, the Plan, or the Bar Date Order, any claims resolution or satisfaction of Landlord's claim shall not be unilaterally determined, and shall be made with at least fourteen (14) days' notice to the Landlord, an opportunity to object and be heard, and determination by a Bankruptcy Court order.

10. On the Effective Date of the Plan, the Committee shall be dissolved as provided by Section 16.7 of the Combined Disclosure Statement and Plan, subject to the rights set forth therein.

11. As of the Effective Date, the engagement of each Professional retained by the Debtor shall be terminated. Nothing herein shall prevent any of the Professionals retained by the Debtor or the Committee from being compensated for actual and necessary fees and expenses incurred for work that would have also been compensable prior to the Effective Date relating to (a) preparation, filing, prosecuting and objecting to Professional Fee Claims, and (b) implementation of the Plan.

12. Holders of Administrative Claims, other than 503(b)(9) Claims,³ Initial Administrative Claims⁴ and Professional Fee Claims, accruing through and including the Effective Date ("Final Administrative Claims"), shall file with the Court and serve on counsel to the Debtor and counsel to the Liquidating Trust requests for payment, in writing, together with supporting documents, substantially complying with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, so as to actually be received on or before the Final Administrative Claim Bar Date,

³ All 503(b)(9) Claims are subject to the General Bar Date (as defined in the Bar Date Order).

⁴ All Initial Administrative Claims are subject to the Initial Administrative Claim Bar Date.

which shall be the date that is forty-five (45) days after the date the Effective Date Notice is filed. The Effective Date Notice shall set forth the Final Administrative Claim Bar Date and shall constitute sufficient notice of such Bar Date. Absent further Court order, any Final Administrative Claim not filed by the Final Administrative Claim Bar Date shall be deemed waived and the Holder of such Final Administrative Claim shall be forever barred from receiving payment on account thereof. Objections to requests for payment of Administrative Claims, other than requests for payment of Professional Fee Claims, must be Filed and served on the requesting party by the Claims Objection Deadline, which shall be the date that is one-hundred eighty (180) days after the Effective Date, or such later date as may be ordered by the Court; *provided however*, that the Liquidating Trustee may seek extensions of this date from the Court.

13. All applications for allowance and payment of Professional Fee Claims shall be filed on or before the Professional Fee Claims Bar Date, which shall be the date that is forty-five (45) days after the date the Effective Date Notice is filed. If an application for a Professional Fee Claim is not filed by the Professional Fee Claims Bar Date, such Professional Fee Claim shall be deemed waived and the Holder of such Claim shall be forever barred from receiving payment on account thereof. The Effective Date Notice shall set forth the Professional Fee Claims Bar Date and shall constitute sufficient notice of such Bar Date. Objections to any Professional Fee Claims must be Filed and served on the Liquidating Trust and the requesting party by no later than twenty-one (21) days after service of the applicable final application for allowance and payment of Professional Fee Claims. Allowed Professional Fee Claims shall be paid in full, in Cash, in such amounts as are Allowed by the Bankruptcy Court upon the earlier of (i) the Effective Date or (ii) five (5) Business Days following the date upon which an order relating to any such Allowed Professional Fee Claim is entered, and in each case, as soon as reasonably

practicable thereafter. For the avoidance of doubt, nothing contained in this paragraph shall require professionals employed by the Debtor pursuant to the *Order Pursuant to Sections 105(a), 327, 328 and 330 of the Bankruptcy Code Authorizing the Debtor to Retain and Compensate Professionals Employed in the Ordinary Course of Business Effective as of the Petition Date* [Docket No. 112] (the “OCP Order”) to file applications for allowance and payment of Professional Fee Claims, unless such professionals are otherwise required to do so pursuant to the OCP Order; however, such professionals shall be required to file requests for payment of Final Administrative Claims in accordance with paragraph 12 of this Confirmation Order by the Final Administrative Claim Bar Date.

14. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules or regulations of any State or any other governmental authority with respect to the implementation or consummation of the Plan. Each federal, state, commonwealth, local, or other governmental agency is hereby authorized to accept any and all documents and instruments necessary or appropriate to effectuate, implement or consummate the transactions contemplated by the Plan and this Confirmation Order.

15. The Debtor is hereby authorized to execute, deliver, file or record such documents, contracts, instruments, releases, and other agreements, and to take such other actions, as may be necessary or appropriate to effectuate, implement, or further evidence the terms and conditions of the Plan. On and after the Effective Date, the Liquidating Trustee is authorized and empowered to issue, execute, file, and deliver or record such documents, contracts, instruments, releases, and other agreements in the name of and on behalf of the Debtor. The Liquidating Trust is hereby granted standing to prosecute any of the Retained Causes of Action in any applicable jurisdiction.

16. Without limiting Section 16.8 of the Combined Disclosure Statement and Plan, pursuant to Bankruptcy Code Section 1146(a), any transfers of property under the Plan shall not be subject to any stamp tax or similar tax. Upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax and may accept for filing and recordation this Confirmation Order without the payment of any such tax, recordation fee, or governmental assessment.

17. The definition of “Releasing Parties” under the Plan is hereby amended and restated in its entirety as follows:

“Releasing Parties” means (a) the Debtor and its Estate, (b) the Committee, (c) the Purchaser, (d) all Holders of Claims other than (i) Claims subordinated under Bankruptcy Code section 510(b), and (ii) De Minimis Claims, and (e) with respect to each of the foregoing, their Related Parties, except that equity holders of the Debtor (solely in their respective capacities as equity holders of the Debtor and not in any other capacity) shall not be Releasing Parties; *provided, however*, that Releasing Parties shall exclude any of the foregoing parties that makes a Release Opt-Out Election.

18. The exculpation, release, and injunction provisions contained in the Combined Disclosure Statement and Plan including, without limitation, those set forth in Article XIV, as set forth below, are approved, and are incorporated by reference into, and are an integral part of, this Confirmation Order. It is hereby ordered that such provisions shall be effective in accordance with their terms and shall be effective and binding on all persons or entities, to the extent provided therein.

(a) **Exculpation and Limitation of Liability.** Notwithstanding any other provision of the Plan, the Exculpated Parties shall not have or incur any liability to, or be subject to any right of action by, any Holder of a Claim or an Interest, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or agents acting in such capacity, or Affiliates, or any of their successors or assigns, for any act or omission occurring on or after the Petition Date and before the Effective Date relating to, in any way, or arising from (i) the Chapter 11 Case, (ii) formulating, negotiating or implementing the combined Disclosure Statement and Plan or any contract, instrument, release or other agreement or document created or entered into in connection with the combined Disclosure Statement and Plan; (iii) the Sale; (iv) any other postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring, sale or

liquidation of the Debtor; (v) the solicitation of acceptances of the Plan, the pursuit of confirmation of the Plan, the Confirmation of the Plan, the Consummation of the Plan or (vi) the administration of the Plan or the property to be distributed under the Plan, except for their gross negligence or willful misconduct as determined by a Final Order, and in all respects shall be entitled to reasonably rely upon the advice of counsel and other retained professionals with respect to their duties and responsibilities under the Plan. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations and any other applicable law or rules protecting the Exculpated Parties from liability. The Confirmation Order shall serve as a permanent injunction against any Entity seeking to enforce any claim or cause of action against the Exculpated Parties that has been exculpated pursuant to Section 14.1(a) of the Plan.

(b) **Releases by the Debtor.** Except as otherwise expressly provided in the Plan or the Confirmation Order, on the Effective Date, for good and valuable consideration, the Debtor, on its own behalf and as a representative of the Estate, to the fullest extent permitted under applicable law, shall, and shall be deemed to, completely and forever release, waive, void, extinguish and discharge unconditionally, each and all of the Released Parties of and from any and all Claims, Causes of Action, interests, obligations, suits, judgments, damages, debts, rights, remedies, set offs, and liabilities of any nature whatsoever, whether liquidated or unliquidated, fixed or Contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, tort, contract, or otherwise, that are or may be based in whole or part on any act, omission, transaction, event, occurrence, or other circumstance, whether direct or derivative, taking place or existing on or prior to the Effective Date (including prior to the Petition Date) in connection with or related to the Debtor or its operations, its Assets, the Estate, or the Chapter 11 Case, that may be asserted by or on behalf of the Debtor or its Estate, against any of the Released Parties.

(c) **Consensual Third-Party Releases by Holders of Claims and Interests.** As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Releasing Parties shall be deemed to forever release, waive and discharge the Released Parties of all claims, obligations, suits, judgments, damages, demands, debts, rights, remedies, causes of action and liabilities of any nature whatsoever in connection with or related to the Debtor, the Chapter 11 Case, or the combined Disclosure Statement and Plan, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or hereafter arising, in law, equity, or otherwise that are or may be based in whole or in part upon any act, omission, transaction, event, or other occurrence taking place or existing on or prior to the Effective Date (other than the rights of Holders of Allowed Claims to enforce the obligations under the Confirmation Order and the Plan); *provided, however*, that nothing in this section shall operate as a release, waiver or discharge of any causes of action or liabilities arising out of gross negligence, willful misconduct, fraud, or criminal acts of any such Released Party as determined by a Final Order.

(d) **Non-Discharge of the Debtor; Injunction.** In accordance with Bankruptcy Code section 1141(d)(3), the Plan does not discharge the Debtor. Bankruptcy Code section 1141(c) nevertheless provides, among other things, that the property dealt with by the Plan is free and clear of all Claims and Interests against the Debtor. As such, no Entity holding a

Claim against the Debtor may receive any payment from, or seek recourse against, any assets that are to be distributed under the Plan other than assets required to be distributed to that Entity under the Plan. Distributions to any such Holder of any such Claim shall be as expressly set forth in the Plan. All parties are precluded from asserting against any property to be distributed under the Plan any Claims, rights, Causes of Action, liabilities, or Interests based upon any act, omission, transaction, or other activity that occurred before the Effective Date except as expressly provided in the Plan or the Confirmation Order.

Except as otherwise expressly provided for in the Plan or in obligations issued pursuant to the Plan, all Entities are permanently enjoined, on and after the Effective Date, on account of any Claim or Interest, from:

- (1) commencing or continuing in any manner any action or other proceeding of any kind against any of the Estate, the Liquidating Trust, their successors and assigns, and any of their assets and properties;**
- (2) enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against the Estate, the Liquidating Trust, their successors and assigns, and any of their assets and properties;**
- (3) creating, perfecting or enforcing any encumbrance of any kind against the Estate, the Liquidating Trust, their successors and assigns, and any of their assets and properties;**
- (4) asserting any right of setoff or subrogation of any kind against any obligation due from the Estate, the Liquidating Trust or their successors and assigns, or against any of their assets and properties, except to the extent a right to setoff or subrogation is asserted with respect to a timely filed proof of Claim; or**
- (5) commencing or continuing in any manner any action or other proceeding of any kind in respect of any Claim or Interest or Cause of Action released under Article XIV of the Plan.**

Any Entity injured by any willful violation of such injunction may seek actual damages and, in appropriate circumstances, may seek punitive damages from the willful violator.

19. No Entity holding a Claim against the Debtor may receive any payment from, or seek recourse against, any assets that are to be distributed under the Plan other than assets required to be distributed to that Entity under the Plan. All parties are precluded from asserting against any property to be distributed under the Plan any Claims, rights, Causes of Action, liabilities, or Interests based upon any act, omission, transaction, or other activity that occurred before the Effective Date except as expressly provided in the Plan or this Confirmation Order.

Except as otherwise expressly provided for in the Plan, all Entities are permanently enjoined, on and after the Effective Date, on account of any Claim or Interest, from: (i) commencing or continuing in any manner any action or other proceeding of any kind against any of the Debtor, the Estate, the Liquidating Trust, their respective successors and assigns, and any of their assets and properties; (ii) enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against any of the Debtor, the Estate, the Liquidating Trust, their respective successors and assigns, and any of their assets and properties; (iii) creating, perfecting or enforcing any encumbrance of any kind against any of the Debtor, the Estate, the Liquidating Trust, their successors and assigns, and any of their respective assets and properties; (iv) asserting any right of setoff or subrogation of any kind against any obligation due from any of the Debtor, the Estate, the Liquidating Trust or their respective successors and assigns, or against any of their assets and properties, except to the extent a right to setoff or subrogation is asserted with respect to a timely filed proof of Claim; or (v) commencing or continuing in any manner any action or other proceeding of any kind in respect of any Claim or Interest or Cause of Action released under Article XIV of the Combined Disclosure Statement and Plan. All injunctions or stays provided for in the Chapter 11 Case under Bankruptcy Code Sections 105 or 362, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the closing of the Chapter 11 Case.

20. The provisions of the Plan and this Confirmation Order shall be, and hereby are now, and forever afterwards, binding on the Debtor, all holders of Claims and Interests (whether or not impaired under the Plan and whether or not, if impaired, they accepted the Plan), any other party in interest, any other party making an appearance in the Chapter 11 Case, and any other Entity affected thereby, as well as their respective heirs, successors, assigns, trustees,

subsidiaries, affiliates, officers, directors, agents, employees, representatives, attorneys, beneficiaries, guardians, and similar officers, or any Entity claiming through or in the right of any such Entity.

21. Each term and provision of the Plan, as it may have been altered or interpreted by the terms of this Confirmation Order, is: (i) valid and enforceable pursuant to its terms; (ii) integral to the Plan; and (iii) non-severable and mutually dependent.

22. This Court hereby retains jurisdiction of the Chapter 11 Case and all matters arising under, arising out of, or related to, the Chapter 11 Case and the Combined Disclosure Statement and Plan (i) as provided for in Article XV of the Combined Disclosure Statement and Plan, (ii) as provided for in this Confirmation Order, and (iii) for the purposes set forth in Bankruptcy Code Sections 1127 and 1142.

23. The failure to reference or discuss any particular provision of the Plan in this Confirmation Order shall have no effect on the validity, binding effect and enforceability or such provision and such provision shall have the same validity, binding effect and enforceability as every other provision of the Plan.

24. The provisions of Federal Rule of Civil Procedure 62, as applicable pursuant to Bankruptcy Rule 7062, and Bankruptcy Rule 3020(e) shall not apply to this Confirmation Order. The period in which an appeal with respect to this Confirmation Order must be filed shall commence immediately upon the entry of this Confirmation Order.

25. The Effective Date Notice, substantially in the form attached hereto as **Exhibit B**, is hereby approved. Pursuant to Bankruptcy Rule 2002(f)(7) and 3020(c), the Debtor or the Liquidating Trustee shall serve the Effective Date Notice, in accordance with Section 13.2

of the Combined Disclosure Statement and Plan, no later than five (5) Business Days after the Effective Date.

26. In accordance with Section 9.4 of the Plan, from and after the Effective Date, the Debtor shall continue in existence pursuant to the terms of the Plan. From and after the Effective Date, the Liquidating Trustee shall be the sole director and officer of the Debtor. Upon termination of the Liquidating Trustee or the wind down of the Liquidating Trust, the Debtor shall be deemed dissolved for all purposes and of no further legal existence under any applicable state or federal law, without the need to take any further action or file any plan of dissolution, notice, or application with the Secretary of State of the Delaware or any other authority. On the Effective Date or as soon thereafter as is reasonably practicable, the Liquidating Trustee shall wind-up the affairs of the Debtor and file final tax returns for the Debtor. All company governance activities of the Debtor shall be exercised by the Liquidating Trustee and the Liquidating Trustee shall be authorized and empowered to take or cause to be taken all company actions necessary or appropriate to implement and consummate the Plan. The Liquidating Trust shall bear the cost and expense of the wind-up of the affairs of the Debtor and the cost and expense of the preparation and filing of the final tax returns for the Debtor.

27. Notwithstanding any language to the contrary contained in the Combined Disclosure Statement and Plan and/or this Confirmation Order, no provision contained herein or therein shall (i) preclude the U.S. Securities and Exchange Commission (the “SEC”) from enforcing its police or regulatory powers; or (ii) enjoin, limit, impair or delay the SEC from commencing or continuing any claims, causes of action, proceedings or investigations against any nondebtor person or nondebtor entity in any forum.

28. Any insurance policies of the Debtor in which the Debtor is or was an insured party (including any policies covering directors' or officers' conduct), or any related insurance agreement issued prior to the Petition Date, shall be treated in accordance with Section 16.11 of the Plan. Except as expressly provided in the Plan, this Confirmation Order, a final Order of this Court, or as agreed to by the Debtor (or the Liquidating Trustee, as applicable) and an Insurer, each Insurer is enjoined and prohibited from denying, refusing, altering, or delaying coverage solely on any basis regarding or related to the Chapter 11 Case, this Confirmation Order, the Plan, or any provision within the Plan.

29. Notwithstanding any provision to the contrary in the Plan, this Order or any implementing Plan documents (collectively, "Documents"):

(a) As to the United States, nothing in the Documents shall: (1) discharge, release, enjoin, impair or otherwise preclude (a) any liability to the United States that is not a "claim" within the meaning of section 101(5) of the Bankruptcy Code ("claim"), (b) any claim of the United States arising after the Confirmation Date, or (c) any liability of any entity or person under police or regulatory statutes or regulations to any Governmental Unit (as defined by section 101(27) of the Bankruptcy Code) as the owner, lessor, lessee or operator of property or rights to property that such entity owns, operates or leases after the Confirmation Date; (2) release, nullify, preclude or enjoin the enforcement of any police or regulatory power; (3) expand the scope of relief available to the Debtor and the Debtor's estate under the Bankruptcy Code, including but not limited to, Bankruptcy Code Sections 505 and 502; (4) release, satisfy, exculpate, enjoin, impair or discharge any non-Debtor from any claim, liability, suit, right or Cause of Action of the United States; (5) affect any setoff or recoupment rights of the United States and such rights are preserved; (6) require the United States to file an administrative claim in order to receive payment

for any liability described in Section 503(b)(1)(B) and (C) pursuant to Section 503(b)(1)(D) of the Bankruptcy Code; (7) constitute an approval or consent by the United States without compliance with all applicable legal requirements and approvals under non-bankruptcy law; (8) be construed as a compromise or settlement of any liability, claim, Cause of Action or interest of the United States; (9) cause the filing of any claim by the United States without prior authorization of the Bankruptcy Court or the Liquidating Trustee, including but not limited to amended claims, to be automatically disallowed and expunged; or (10) confer exclusive jurisdiction upon the Bankruptcy Court.

(b) Administrative expense claims of the United States allowed pursuant to the Plan or the Bankruptcy Code shall be paid in full and shall accrue interest and penalties as provided by non-bankruptcy law until paid in full. Priority Tax Claims of the United States allowed pursuant to the Plan or the Bankruptcy Code will be paid in full in accordance with Section 1129(a)(9)(C) of the Bankruptcy Code. To the extent allowed Priority Tax Claims (including any penalties, interest or additions to tax entitled to priority under the Bankruptcy Code) are not paid in full in cash on the Effective Date, then such Priority Tax Claims shall accrue interest commencing on the Effective Date at the rate set forth in Section 511 of the Bankruptcy Code. Penalty claims of the United States shall be allowed and paid in accordance with the Bankruptcy Code. Moreover, nothing shall effect a release, injunction or otherwise preclude any claim whatsoever against any Debtor or the Debtor's Estate by or on behalf of the United States for any liability arising a) out of pre-petition or post-petition tax periods for which a return has not been filed or b) as a result of a pending audit or audit that may be performed with respect to any pre-petition or post-petition tax period. Further, nothing shall enjoin the United States from amending any claim against any Debtor or the Debtor's Estate with respect to any tax liability a) arising out of pre-petition or post-

petition tax periods for which a tax return has not been filed or b) from a pending audit or audit that may be performed with respect to any pre-petition or post-petition tax period. Any liability arising a) out of pre-petition or post-petition tax periods for which a return has not been filed or b) as a result of a pending audit or audit which may be performed with respect to any pre-petition or post-petition tax period shall be paid in accordance with 1129(a)(9)(A) and (C) of the Bankruptcy Code. Without limiting the foregoing but for the avoidance of doubt, nothing contained in the Documents shall be deemed to bind the United States to any characterization of any transaction for tax purposes or to determine the tax liability of any person or entity, including, but not limited to, the Debtor and the Debtor's estate, nor shall the Documents be deemed to have determined the federal tax treatment of any item, distribution, or entity, including the federal tax consequences of this Plan, nor shall anything in the Documents be deemed to have conferred jurisdiction upon the Bankruptcy Court to make determinations as to federal tax liability and federal tax treatment except as provided under Section 505 of the Bankruptcy Code.

30. Upon the entry of this Confirmation Order, all conditions to the release of the Holdback Amount to the Debtor under the Asset Purchase Agreement are hereby deemed satisfied, and the Holdback Amount shall be indefeasibly paid to the Debtor within five (5) business days after the entry of this Confirmation Order. The Escrow Agent is hereby directed to take all actions necessary to release the Holdback Amount to the Debtor.

31. Subject to the occurrence of the Effective Date, and notwithstanding Bankruptcy Rules 3020(e), 6004(h), 7062, 8001 or otherwise, immediately upon the entry of this Confirmation Order, the terms of the Plan and this Confirmation Order shall be, and hereby are, immediately effective and enforceable and deemed binding upon the Debtor, the Committee, Liquidating Trust, the Liquidating Trustee, any and all other Holders of Claims or Interests

(irrespective of whether such Claims or Interests are Impaired under the Plan or whether the Holders of such Claims or Interests accepted, were deemed to have accepted, rejected or were deemed to have rejected the Plan), any trustees or examiners appointed in the Chapter 11 Case, all Entities that are party to or subject to the settlements, compromises, releases, discharges, injunctions, stays and exculpations described in the Combined Disclosure Statement and Plan or herein, each Entity acquiring property under the Plan, any and all non-Debtor parties to Executory Contracts, and the respective heirs, executors, administrators, successors or assigns, affiliates, officers, directors, agents, representatives, attorneys, beneficiaries, or guardians, if any, of any of the foregoing.

32. The Debtor is authorized to consummate the Plan at any time after the entry of the Confirmation Order, subject to satisfaction or waiver of the conditions precedent to the occurrence of the Effective Date as set forth in Article XIII of the Combined Disclosure Statement and Plan. On the Effective Date and the commencement of Distributions under the Plan, the Plan shall be deemed to be substantially consummated within the meaning in Bankruptcy Code Section 1101 and pursuant to Bankruptcy Code Section 1127(b).

**Dated: November 13th, 2020 Wilmington,
Delaware**

A handwritten signature in black ink, appearing to read "Brendan L. Shannon", written over a horizontal line.

BRENDAN L. SHANNON UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Combined Disclosure Statement and Plan

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

-----	X	
	:	Chapter 11
In re:	:	
	:	Case No. 20-11580 (BLS)
PROTEUS DIGITAL HEALTH, INC.,	:	
	:	
Debtor. ¹	:	
	:	
-----	X	

**FIRST AMENDED COMBINED DISCLOSURE STATEMENT AND
CHAPTER 11 PLAN OF LIQUIDATION DATED OCTOBER 2, 2020
PROPOSED BY
PROTEUS DIGITAL HEALTH, INC.**

October 2, 2020

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DEBTOR IN POSSESSION**

¹ The last four digits of the Debtor's taxpayer identification number are 2680. The Debtor's mailing address is Proteus Digital Health, Inc., c/o SierraConstellation Partners LLC, 355 S. Grand Ave., Suite 1450, Los Angeles, CA 90071.

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DISCLAIMER

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

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

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

NO PARTY IS AUTHORIZED TO GIVE ANY INFORMATION WITH RESPECT TO THIS COMBINED DISCLOSURE STATEMENT AND PLAN OTHER THAN THAT WHICH IS CONTAINED IN THIS COMBINED DISCLOSURE STATEMENT AND PLAN. NO REPRESENTATIONS CONCERNING THE DEBTOR OR THE VALUE OF ITS PROPERTY HAS BEEN AUTHORIZED BY THE DEBTOR OTHER THAN AS SET FORTH IN THIS COMBINED DISCLOSURE STATEMENT AND PLAN. ANY INFORMATION, REPRESENTATIONS, OR INDUCEMENTS MADE TO OBTAIN AN ACCEPTANCE OF THIS COMBINED DISCLOSURE STATEMENT AND PLAN OTHER THAN, OR INCONSISTENT WITH, THE INFORMATION CONTAINED HEREIN SHOULD NOT BE RELIED UPON BY ANY HOLDER OF A CLAIM OR INTEREST. THE COMBINED DISCLOSURE STATEMENT AND PLAN HAS BEEN PREPARED IN ACCORDANCE WITH BANKRUPTCY CODE SECTION 1125 AND BANKRUPTCY RULE 3016(b) AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-APPLICABLE BANKRUPTCY LAWS.

SEE ARTICLE V HEREIN, ENTITLED “CERTAIN RISK FACTORS TO BE CONSIDERED PRIOR TO VOTING,” FOR A DISCUSSION OF CERTAIN CONSIDERATIONS IN CONNECTION WITH A DECISION BY A HOLDER OF AN IMPAIRED CLAIM TO ACCEPT THE PLAN.

INTRODUCTION²

The Debtor hereby proposes the Plan set forth herein for the liquidation of the Debtor’s remaining Assets and distribution of the proceeds of the Assets to the Holders of Allowed Claims against the Debtor as set forth herein. The Debtor is a proponent of the Plan within the meaning of Bankruptcy Code section 1129.

This combined Disclosure Statement and Plan contains, among other things, a discussion of the Debtor’s history, business, properties, operations, the Chapter 11 Case, risk factors, summary and analysis of the Plan, and certain other related matters.

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

RECOMMENDATION TO VOTE TO ACCEPT THE PLAN

The Debtor is a proponent of the Plan and the Committee supports confirmation of the Plan. In the opinion of the Debtor and the Committee, the Plan is preferable to the alternatives described in this Combined Plan and Disclosure Statement because the Plan provides for a larger distribution to the Debtor’s creditors than would otherwise result in a liquidation under chapter 7 of the Bankruptcy Code. Any delay in confirmation of the Plan could result in significant additional administrative expenses and reduce the distributions to Holders of Allowed Claims that is proposed under this Plan. **Accordingly, the Debtor and the Committee recommend that all Holders of Impaired Claims support confirmation of the Plan and vote to accept the Plan.**

ARTICLE I **DEFINED TERMS AND RULES OF INTERPRETATION**

Defined Terms

1.1 “503(b)(9) Claims” shall mean Claims arising under Bankruptcy Code section 503(b)(9).

1.2 “Ad Hoc Committee” shall mean the ad hoc committee of equity security holders comprised of certain members in the *Amended Verified Statement of the Ad Hoc Committee of*

² Capitalized terms not defined in this Introduction shall have the meanings ascribed below.

Preferred Equity Security Holders Pursuant to Rule 2019 of the Federal Rules of Bankruptcy Procedure [Docket No. 201] (as such committee may be reconstituted from time to time).

1.3 “Administrative Claim” shall mean a Claim for costs and expenses of administration of the Chapter 11 Case under Bankruptcy Code sections 503(b), 507(b) or, if applicable, 1114(e)(2), including but not limited to: (a) any actual and necessary costs and expenses incurred after the Petition Date of preserving the Estate and operating the business of the Debtor (including, but not limited to, wages, salaries, commissions for services and payments for inventories, leased equipment and premises) and Claims by Governmental Units for taxes (including Claims related to taxes which accrued after the Petition Date, but excluding Claims related to taxes which accrued on or before the Petition Date); (b) compensation for legal, financial, advisory, accounting and other services and reimbursement of expenses allowed by the Bankruptcy Court under Bankruptcy Code sections 328, 330, 331, 363 or 503(b) to the extent incurred on or prior to the Effective Date; (c) all fees and charges assessed against the Estate under United States Code title 28 section 1930; (d) any 503(b)(9) Claims; and (e) any Claims that have been designated “Administrative Claims” by order of this Bankruptcy Court.

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

1.5 “Allowed” shall mean all or a portion of a Claim against the Debtor or an Interest in the Debtor (a) that has been listed by the Debtor in the Schedules as liquidated in amount and not “disputed” or “contingent,” and with respect to which no contrary proof of Claim or proof of Interest has been filed, (b) as to which no objection or request for estimation has been Filed on or before the Claims Objection Deadline or the expiration of such other applicable period fixed by the Bankruptcy Court, (c) as to which any objection has been settled, waived, withdrawn or denied by a Final Order, or (d) that is allowed (i) by a Final Order, or (ii) by a stipulation entered into between the Holder of such Claim or Interest and the Liquidating Trustee on or after the Effective Date. For purposes of computing Distributions under the Plan, a Claim or Interest that has been deemed “Allowed” shall not include interest, costs, fees or charges on such Claim or Interest from and after the Petition Date, except as provided in Bankruptcy Code section 506(b) or as otherwise expressly set forth in the Plan.

1.6 “Asset Purchase Agreement” shall mean that certain Asset Purchase Agreement by and between the Debtor, as Seller, and Otsuka America Pharmaceutical, Inc., as Purchaser, dated as of July 10, 2020 and Filed with the Bankruptcy Court at Docket No. 116, as amended by First Amendment to Asset Purchase Agreement, dated as of August 19, 2020 and Filed with the Bankruptcy Court at Docket No. 226, including all schedules and exhibits thereto, and as may be further amended from time to time.

1.7 “Assets” shall mean any and all right, title, and interest of the Debtor and the Estate in and to property of whatever type or nature, including its books and records.

1.8 “Avoidance Actions” shall mean any and all avoidance or equitable subordination or recovery actions under the Bankruptcy Code, including under Bankruptcy Code sections 105(a), 502(d), 510, 542 through 551, and 553, or any similar federal, state, or common law causes of action.

1.9 “Ballot” shall mean the ballot form distributed to each Holder of a Claim entitled to vote to accept or reject this Plan.

1.10 “Bankruptcy Code” shall mean title 11 of the United States Code, 11 U.S.C. §§ 101-1532, and as such title has been, or may be, amended from time to time, to the extent that any such amendment is applicable to the Chapter 11 Case.

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

1.12 “Bankruptcy Rules” shall mean the Federal Rules of Bankruptcy Procedure, the Official Bankruptcy Forms, or the Local Rules, and as each has been, or may be, amended from time to time, to the extent that any such amendment is applicable to the Chapter 11 Case.

1.13 “Bar Date” shall mean, with respect to any particular Claim, the specific date set by the Bankruptcy Court (including pursuant to the Bar Date Order, the Plan or the Confirmation Order) as the last day for Filing Proofs of Claim or motions or requests for allowance or payment of Administrative Claims against the Debtor in the Chapter 11 Case for that specific Claim.

1.14 “Bar Date Order” shall mean the *Order (I) Establishing Bar Dates (A) for Filing Prepetition Proofs of Claim and (B) for the Filing of Requests for Allowance of Certain Administrative Claims; (II) Approving the Form and Manner of Notice Thereof; and (III) Granting Related Relief* entered by the Bankruptcy Court on August 7, 2020, at Docket No. 179.

1.15 “Beneficiary” shall mean a holder of a Liquidating Trust Interest, whether individually or as agent on behalf of one or more other Entities, and whether or not such holder’s Claim is Disputed or Allowed as of the Effective Date To the extent Holders of Allowed Claims are entitled to a Distribution from the Liquidating Trust pursuant to the terms of the combined Disclosure Statement and Plan, each such Holder is a Beneficiary.

1.16 “Bidding Procedures Order” shall mean the *Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtor’s Assets, (II) Approving Bid Protections, (III) Scheduling Auction for and Hearing to Approve the Sale (IV) Approving Form and Manner of Notices of Sale, Auction and Sale Hearing, (V) Approving Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (VI) Approving Form and Manner of Notice Thereof, and (VII) Granting Related Relief* as entered by the Bankruptcy Court on July 14, 2020, at Docket No. 125.

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

1.18 “Cash” or “\$” shall mean legal tender of the United States of America or the equivalent thereof, including bank deposits, checks and cash equivalents.

1.19 “Cash Collateral Orders” shall mean, collectively, (a) the *Interim Order Under 11 U.S.C. §§ 105, 361, 362, 363, and 507, and Bankruptcy Rules 2002, 4001, and 9014 (I)*

Authorizing Debtor to Use Cash Collateral, (II) Granting Adequate Protection to Secured Lender, and (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b), entered by the Bankruptcy Court on June 18, 20120, at Docket No. 45, and (b) the *Final Order Under 11 U.S.C. §§ 105, 361, 362, 363, and 507, and Bankruptcy Rules 2002, 4001, and 9014 (I) Authorizing Debtor to Use Cash Collateral, (II) Granting Adequate Protection to Secured Lender, and (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b)* entered by the Bankruptcy Court on July 14, 2020, at Docket No. 124.

1.20 “Causes of Action” shall mean all Claims, actions, causes of action, choses in action, suits, debts, dues, damages, defenses, judgments, set-off claims, third-party claims, counterclaims, and cross claims that are or may be pending or existing on the Effective Date against any Entity, based in law or equity, including, but not limited to, under the Bankruptcy Code, whether direct, indirect, known or unknown, derivative, or otherwise and whether asserted or unasserted as of the date of entry of the Confirmation Order, and including unknown Causes of Action that have not been released by the Plan or any order of the Bankruptcy Court.

1.21 “Chapter 11 Case” shall mean the chapter 11 case of Proteus Digital Health, Inc., Case No. 20-11580 (BLS) in the Bankruptcy Court.

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

1.23 “Claims Objection Deadline” shall mean one-hundred eighty (180) days after the Effective Date, or such later date as may be ordered by the Bankruptcy Court; *provided however*, that the Liquidating Trustee may seek extensions of this date from the Bankruptcy Court.

1.24 “Class” shall mean each category or group of Holders of Claims or Interests that has been designated as a class in Article II of this combined Disclosure Statement and Plan.

1.25 “Closing” shall have the meaning as defined in the Asset Purchase Agreement.

1.26 “Closing Date” shall mean August 20, 2020.

1.27 “Committee” shall mean the Official Committee of Unsecured Creditors appointed in the Chapter 11 Case.

1.28 “Confirmation” shall mean entry of the Confirmation Order by the Bankruptcy Court on the docket of the Chapter 11 Case.

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

1.30 “Confirmation Hearing” shall mean the hearing held by the Bankruptcy Court to consider confirmation of the Plan and final approval of the Disclosure Statement, as such hearing may be adjourned or continued from time to time.

1.31 “Confirmation Notice” shall mean the notice of Confirmation Hearing to be delivered pursuant to Bankruptcy Rules 2002(c)(3) and 2002(f).

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

1.33 “Consummation” shall mean the occurrence of the Effective Date.

1.34 “Contingent” shall mean, with reference to a Claim, a Claim that has not accrued or is not otherwise payable and the accrual of which, or the obligation to make payment on which, is dependent upon a future event that may or may not occur.

1.35 “Creditor” shall have the meaning ascribed to such term in Bankruptcy Code section 101(10).

1.36 “Debtor” shall mean Proteus Digital Health, Inc.

1.37 “De Minimis Claim” shall mean a Claim on account of which the Liquidating Trustee makes no distribution pursuant to Section 10.7 of this combined Disclosure Statement and Plan. For the avoidance of doubt, to the extent that the Liquidating Trustee makes any distribution on account of a Claim, such Claim shall not be a De Minimis Claim.

1.38 “Disallowed” shall mean, with respect to any Claim or Interest or portion thereof, any Claim against or Interest in the Debtor which: (i) has been disallowed, in whole or part, by a Final Order; (ii) has been withdrawn, in whole or in part, by the Holder thereof; (iii) is listed in the Schedules as zero or as Disputed, Contingent or unliquidated and in respect of which a proof of Claim or a proof of Interest, as applicable, has not been timely Filed or deemed timely Filed pursuant to the Plan, the Bankruptcy Code or any Final Order or other applicable law; (iv) has been reclassified, expunged, subordinated or estimated to the extent that such reclassification, expungement, subordination or estimation results in a reduction in the Filed amount of any proof of Claim or proof of Interest; (v) is evidenced by a proof of Claim or a proof of Interest which has been Filed, or which has been deemed to be Filed under applicable law or order of the Bankruptcy Court or which is required to be Filed by order of the Bankruptcy Court but as to which such proof of Claim or proof of Interest was not timely or properly Filed; (vi) is unenforceable to the extent provided in Bankruptcy Code section 502(b); or (vii) where the Holder of a Claim is an Entity from which property is recoverable under Bankruptcy Code sections 542, 543, 550, or 553 or that is a transferee of a transfer avoidable under Bankruptcy Code sections 522(f), 522(h), 544, 545, 548, 549, or 724(a), unless such Entity or transferee has paid the amount, or turned over any such Property, for which such Entity or transferee is liable under Bankruptcy Code section 522(i), 542, 543, 550, or 553, and if required by the Bankruptcy Code, an Objection or adversary proceeding has been Filed. In each case a Disallowed Claim or a Disallowed Interest is disallowed only to the extent of disallowance, withdrawal, reclassification, expungement, subordination, or estimation.

1.39 “Disbursing Agent” shall mean the Liquidating Trustee; *provided, however*, that the Liquidating Trustee may, in its discretion, retain a third party to act as Disbursing Agent.

1.40 “Disclosure Statement” shall mean the disclosure statement, as amended, supplemented, or modified from time to time, that is embodied within the combined Disclosure Statement and Plan and distributed in accordance with, among others, Bankruptcy Code sections 1125, 1126(b), and 1145, Bankruptcy Rule 3018 and other applicable law.

1.41 “Disputed” shall mean any Claim or Interest which has not yet been Allowed or Disallowed in accordance with the terms of the Plan.

1.42 “Disputed Claim Reserve” shall mean the reserve established and maintained by the Liquidating Trustee for payment of Disputed Claims in an amount equal to the face value of all Disputed Administrative Claims, Disputed Priority Tax Claims, Disputed Priority Non-Tax Claims, and Disputed Other Secured Claims, or such other amount as may be ordered by the Bankruptcy Court.

1.43 “Distribution” shall mean a delivery of Cash by the Disbursing Agent to the Holders of Allowed Claims pursuant to the Plan.

1.44 “Distribution Date” shall mean the date on which a Distribution is made pursuant to the Plan.

1.45 “Distribution Record Date” shall mean the date established for determining the Holders of Allowed Claims or Allowed Interests entitled to Distributions pursuant to the Plan, which shall be the Effective Date, or such other date established in the Confirmation Order.

1.46 “Distribution Proceeds” shall mean all Cash realizable from the Liquidating Trust Assets after Payment in Full or satisfaction of the (i) Allowed First Tier Claims and (ii) the payment of, and reserving for, Liquidating Trust Expenses in accordance with the Plan and Liquidating Trust Agreement.

1.47 “Effective Date” shall mean the first Business Day after the later of the date on which (a) all conditions in Article XIII of the Plan have been satisfied or waived in accordance with that Article and (b) no stay of the Confirmation Order is in effect.

1.48 “Effective Date Notice” shall mean the notice of the Effective Date.

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

1.50 “Estate” shall mean the Debtor’s estate created by Bankruptcy Code section 541 upon the commencement of the Chapter 11 Case on the Petition Date.

1.51 “Exculpated Parties” shall mean, in each of their capacities as such, (a) the Debtor, (b) the Committee and its members and their respective representatives, and (c) and the retained professionals, directors and officers, as applicable, of the Debtor and Committee.

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

1.53 “File,” “Filed,” or “Filing” shall mean, respectively, file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

1.54 “Final Administrative Claim Bar Date” shall mean the date that is forty-five (45) days after the date the Effective Date Notice is Filed.

1.55 “Final Distribution” shall mean the final Distributions to Holders of Allowed Claims.

1.56 “Final Order” shall mean an unstayed order, ruling or judgment of the Bankruptcy Court or any other court of competent jurisdiction as to which the time to appeal, petition for certiorari, or request for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending, or as to which any right to appeal, petition for certiorari, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor (prior to the Effective Date) or the Liquidating Trustee (on or after the Effective Date), or, in the event that an appeal, writ of certiorari, or reargument or rehearing thereof has been sought, such order of the Bankruptcy Court or other court of competent jurisdiction shall have been determined by the highest court to which such order was appealed, or certiorari, reargument or rehearing shall have been denied and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or applicable state court rules of civil procedure, may be Filed with respect to such order, shall not cause such order not to be a Final Order.

1.57 “First Day Declaration” shall mean the *Declaration of Lawrence R. Perkins in Support of the Debtor’s Chapter 11 Petition and First Day Pleadings* [Docket No. 2].

1.58 “First Tier Claims” shall mean all Administrative Claims (including Professional Fee Claims), Priority Tax Claims, Priority Non-Tax Claims, and Other Secured Claims.

1.59 “General Unsecured Claim” shall mean a Claim against the Debtor, but excluding any First Tier Claims and any Interests.

1.60 “Governmental Unit” shall have the meaning ascribed to such term in Bankruptcy Code section 101(27).

1.61 “Holder” shall mean any Entity holding a Claim or Interest.

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

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

1.64 “Interests” shall mean the legal interests, equitable interests, contractual interests, equity interests or ownership interests, or other rights of any Entity in the Debtor including all capital stock, stock certificates, common stock, preferred stock, partnership interests, limited liability company or membership interests, rights, treasury stock, options, warrants, contingent warrants, convertible or exchangeable securities, investment securities, subscriptions or other

agreements and contractual rights to acquire or obtain such an interest or share in the Debtor, partnership interests in the Debtor's stock appreciation rights, conversion rights, repurchase rights, redemption rights, dividend rights, preemptive rights, subscription rights and liquidation preferences, puts, calls, awards or commitments of any character whatsoever relating to any such equity, common stock, preferred stock, ownership interests or other shares of capital stock of the Debtor or obligating the Debtor to issue, transfer or sell any shares of capital stock whether or not certificated, transferable, voting or denominated "stock" or a similar security.

1.65 "Initial Administrative Claim Bar Date" shall mean the deadline established by the Bar Date Order for filing requests for payment of Administrative Claims (excluding 503(b)(9) Claims and excluding certain other Administrative Claims that are specifically exempted pursuant to the Bar Date Order) that arose on or prior to August 15, 2020.

1.66 "Initial Administrative Claims" shall mean Administrative Claims that are subject to the Initial Administrative Claim Bar Date.

1.67 "Insurance Contract" shall mean 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.

1.68 "Insurer" means any company or other entity that issued an Insurance Contract, any third party administrator, and any respective predecessors and/or affiliates thereof.

1.69 "Internal Revenue Code" shall mean the United States Internal Revenue Code 1986, as amended.

1.70 "IRS" shall mean the Internal Revenue Service.

1.71 "Liquidating Trust" shall mean the trust with a term of not more than 5 years (subject to extensions as provided) to be established under the combined Disclosure Statement and Plan and the Liquidating Trust Agreement.

1.72 "Liquidating Trust Agreement" shall mean a trust agreement that establishes the Liquidating Trust and governs the powers, duties, and responsibilities of the Liquidating Trustee. The Liquidating Trust Agreement shall be filed as part of the Plan Supplement.

1.73 "Liquidating Trust Assets" shall consist of all Assets of the Estate existing as of the Effective Date, including, but not limited to, (i) Cash, (ii) Retained Causes of Action, (iii) any proceeds realized or received from such Assets, (iv) all rights of setoff, recoupment, and other defenses against Claims, (v) all rights under the Asset Purchase Agreement and any other documents related to the Sale, (vi) all bank accounts, (vii) the Debtor's interests in its subsidiaries, and (viii) all documents, communications and information, without regard to whether such documents, communications and information are subject to the attorney-client privilege. For the avoidance of doubt, the Liquidating Trust Assets shall not include any Preference Actions or any Claims and Causes of Action that have been released pursuant to the Plan.

1.74 “Liquidating Trustee” shall mean the Entity designated by the Committee and retained as the trustee to the Liquidating Trust, as of the Effective Date or as soon as reasonably practicable thereafter, as the fiduciary responsible for administering the Liquidating Trust, and any successor subsequently appointed pursuant to the Liquidating Trust Agreement. The identity of the Liquidating Trustee shall be disclosed in the Plan Supplement.

1.75 “Liquidating Trust Expenses” shall mean all reasonable legal and other fees and expenses incurred by the Liquidating Trustee on account of administration of the Liquidating Trust, including, without limitation, reasonable professional fees and expenses, insurance costs, taxes, escrow expenses and all other costs of administering the Liquidating Trust in accordance with the combined Disclosure Statement and Plan and the Liquidating Trust Agreement.

1.76 “Liquidating Trust Interests” shall mean the non-transferable interests in the Liquidating Trust that are issued to the Beneficiaries pursuant to the combined Disclosure Statement and Plan.

1.77 “Liquidating Trust Operating Reserve” shall mean such reserve of Cash determined from time to time by the Liquidating Trustee pursuant to the Liquidating Trust Agreement to be reasonably necessary to pay Liquidating Trust Expenses, including: (a) the unpaid liabilities, debts, or obligations of the Liquidating Trust; (b) the fees and expenses of the Liquidating Trustee; (c) all fees and expenses of professionals retained by the Liquidating Trustee; and (d) any and all other costs associated with the liquidation or preservation of the Liquidating Trust Assets.

1.78 “Local Rules” shall mean the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

1.79 “Objection” shall mean any objection, application, motion, complaint or any other legal proceeding seeking, in whole or in part, to disallow, determine, liquidate, classify, reclassify, or establish the priority, expunge, subordinate or estimate any Claim (including any Administrative Claim).

1.80 “Other Secured Claim” shall mean any Secured Claim other than a Prepetition Loan Claim.

1.81 “Paid in Full,” “Payment in Full,” or “Pay in Full” shall mean, with respect to an Allowed Claim, payment in Cash or other consideration in an aggregate amount equal to the Allowed amount thereof.

1.82 “Permitted Investments” shall mean (i) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than twelve months from the date of acquisition, (ii) dollar denominated time deposits and certificates of deposit in any domestic commercial bank of recognized standing having capital and surplus in excess of \$500,000,000, and (iii) money market mutual funds (as defined in Rule 2(a).7 of the Investment Company Act of 1940) registered under the

Investment Company Act of 1940, as amended, that are administered by reputable financial institutions having capital of at least \$500,000,000.

1.83 “Petition Date” shall mean June 15, 2020, the date on which the Debtor commenced its Chapter 11 Case in the Bankruptcy Court.

1.84 “Plan” shall mean this First Amended Combined Disclosure Statement and Chapter 11 Plan of Liquidation dated October 2, 2020 proposed by Proteus Digital Health, Inc. under chapter 11 of the Bankruptcy Code, as it may be altered, amended, modified or supplemented from time to time, including, without limitation, the Plan Supplement and any exhibits, supplements or documents submitted in support hereof and the Bankruptcy Code or the Bankruptcy Rules.

1.85 “Plan Supplement” shall mean the ancillary documents necessary to the implementation and effectuation of the Plan, including the Liquidating Trust Agreement, which shall be Filed on or before the date that is seven (7) days prior to the Voting Deadline, *provided, however*, that the Debtor shall have the right to amend documents contained in, and exhibits to, the Plan Supplement.

1.86 “Preference Actions” shall mean any right, claim, or cause of action of the Debtor arising under Bankruptcy Code section 547.

1.87 “Prepetition Credit Agreement” shall mean that certain *Credit Agreement* dated as of May 8, 2015, as it has been amended, restated, modified, supplemented, or replaced from time to time, by and between the Debtor, as borrower, and the Prepetition Lender.

1.88 “Prepetition Lender” shall mean OrbiMed Royalty Opportunities II, LP, a Delaware limited partnership, in its capacity as lender under the Prepetition Credit Agreement.

1.89 “Prepetition Loan Claims” shall mean any and all Claims of the Prepetition Lender pursuant to or arising under the Prepetition Loan Documents.

1.90 “Prepetition Loan Documents” shall mean, collectively, the Prepetition Credit Agreement and all agreements, documents, notes, mortgages, security agreements, pledges, guaranties, forbearance agreements, subordination agreements, instruments, amendments, and any other agreements and documents delivered pursuant thereto or in connection therewith, including the Prepetition Security Agreement.

1.91 “Prepetition Security Agreement” shall mean that certain *Pledge and Security Agreement* dated as of May 8, 2015 by and between the Debtor, as borrower, and the Prepetition Lender.

1.92 “Priority Non-Tax Claim” shall mean any and all Claims accorded priority in right of payment under Bankruptcy Code section 507(a), other than Priority Tax Claims and Administrative Claims.

1.93 “Priority Tax Claim” shall mean a Claim or a portion of a Claim for which priority is asserted under Bankruptcy Code section 507(a)(8).

1.94 “Professional” shall mean an Entity employed pursuant to a Final Order in accordance with Bankruptcy Code sections 327, 328, 333, 363, 1103 and to be compensated for services rendered prior to the Confirmation Date, pursuant to Bankruptcy Code sections 327, 328, 329, 330, and 331, or for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to Bankruptcy Code section 503(b)(4).

1.95 “Professional Fee Claims Bar Date” shall mean the deadline for Filing all applications for Professional Fee Claims, which shall be forty-five (45) days after the Effective Date Notice is Filed.

1.96 “Professional Fee Claims” shall mean all fees and expenses (including but not limited to, transaction fees and success fees) for services rendered by Professionals in connection with the Chapter 11 Case from the Petition Date through and including the Effective Date.

1.97 “Purchased Assets” shall mean all Assets purchased by the Purchaser pursuant to the Asset Purchase Agreement as approved by the Sale Order.

1.98 “Purchaser” shall mean Otsuka America Pharmaceutical, Inc. and its permitted designees, successors and assigns.

1.99 “Rejection Damages Claim Bar Date” shall mean the date that is thirty (30) days after the date the Effective Date Notice is Filed.

1.100 “Related Parties” shall mean officer, director, agent, attorney, advisor, employee, professional, partner (general or limited), direct or indirect parent, Affiliate, member, representative, manager, equity holder, trustee, executor, predecessor in interest, or successor or assign of any referenced Entity.

1.101 “Released Parties” shall mean (a) the Debtor and its Estate, (b) the Committee, (c) the Purchaser and (d) with respect to each of the foregoing, their Related Parties.

1.102 “Release Opt-Out Election” shall mean the timely election to “opt out” of being a Releasing Party by (a) submitting a Ballot by the Voting Deadline that either (i) votes to reject the Plan or (ii) selects the option set forth on the Ballot to not grant the releases set forth in Section 14.1(c) of this Plan, or (b) Filing a written objection to the releases set forth in Section 14.1(c) of this Plan by the objection deadline established by the Solicitation Procedures Order.

1.103 “Releasing Parties” shall mean (a) the Debtor and its Estate, (b) the Committee, (c) the Purchaser, (d) all Holders of Claims other than (i) Claims subordinated under Bankruptcy Code section 510(b), and (ii) De Minimis Claims, and (e) with respect to each of the foregoing, their Related Parties, except that equity holders of the Debtor shall not be Releasing Parties; *provided, however*, that Releasing Parties shall exclude any of the foregoing parties that makes a Release Opt-Out Election.

1.104 “Retained Causes of Action” shall mean all Causes of Actions against third parties, including, without limitation, Avoidance Actions and the rights and claims described in the Plan Supplement, but excluding all Preference Actions and those Causes of Action released

pursuant to Section 14.1(b) hereof; *provided, however*, that the Retained Causes of Action shall not include any Purchased Assets.

1.105 “Revenue Procedure” shall mean an official statement of a procedure published by the IRS in the Internal Revenue Bulletin.

1.106 “Sale” shall mean the sale of substantially all of the Debtor’s Assets to the Purchaser pursuant to the Asset Purchase Agreement and the Sale Order.

1.107 “Sale Motion” shall mean *Debtor’s Motion for Entry of (A) an Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtor’s Assets, (II) Approving Bid Protections, (III) Scheduling an Auction for and Hearing to Approve the Sale, (IV) Approving Form and Manner of Notice of Auction, Sale and Sale Hearing, (V) Approving Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (VI) Approving Form and Manner of Notice Thereof, and (VII) Granting Related Relief; and (B) an Order Authorizing and Approving (I) the Sale of Substantially All of the Debtor’s Assets Free and Clear of Liens, Claims, Rights, Encumbrances and Other Interests, (II) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (III) Granting Related Relief as Filed with the Bankruptcy Court at Docket No. 53.*

1.108 “Sale Order” shall mean the *Order (A) Approving and Authorizing the Sale of Substantially All of Debtor’s Assets Pursuant to Asset Purchase Agreement, Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (C) Granting Related Relief as entered by the Bankruptcy Court on August 20, 2020, at Docket No. 227.*

1.109 “Schedules” shall mean the schedules of assets and liabilities and statements of financial affairs Filed by the Debtor pursuant to Bankruptcy Code section 521 [Docket No. 145], as the same may have been or may be amended, modified, or supplemented from time to time.

1.110 “Secured Claim” shall mean, pursuant to Bankruptcy Code section 506, that portion of a Claim that is (a) secured by a valid, perfected and enforceable security interest, lien, mortgage, or other encumbrance, 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, or (b) Allowed as such pursuant to the terms of the Plan (subject to the Confirmation Order becoming a Final Order). The defined term Secured Claim includes any Claim that is (i) subject to an offset right under applicable law as of the Petition Date, and (ii) a secured claim against the Debtor pursuant to Bankruptcy Code sections 506(a) and 553.

1.111 “Solicitation Procedures Order” shall mean that certain *Order (A) Approving the Combined Disclosure Statement and Plan on an Interim Basis for Solicitation Purposes Only; (B) Establishing Solicitation and Tabulation Procedures; (C) Approving the Form of Ballots and Solicitation Materials; (D) Establishing the Plan Confirmation Schedule; and (E) Granting Related Relief* [Docket No. 296].

1.112 “Taxes” shall mean all income, gross receipts, sales, use, transfer, payroll, employment, franchise, profits, property, excise, or other similar taxes, estimated import duties, fees, stamp taxes, and duties, value added taxes, assessments, or similar charges of any kind whatsoever (whether payable directly or by withholding), together with any valid and enforceable interest and any penalties, additions to tax, or additional amounts imposed by any taxing authority of a Governmental Unit with respect thereto.

1.113 “Treasury Regulations” shall mean the regulations (including temporary regulations) promulgated by the United States Department of the Treasury pursuant to and in respect of provisions of the Internal Revenue Code. All references herein to sections of the Treasury Regulations shall include any corresponding provision or provisions of succeeding, similar or substitute, temporary or final Treasury Regulations.

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

1.115 “U.S. Trustee Fees” shall mean fees payable pursuant to 28 U.S.C. § 1930 and any interest accruing thereon pursuant to 31 U.S.C. § 3717.

1.116 “Voting Agent” shall mean Kurtzman Carson Consultants LLC.

1.117 “Voting Deadline” shall mean **November 9, 2020 at 5:00 p.m. (prevailing Eastern Time)**, the date and time by which Ballots to accept or reject the Plan must be received to be counted, as established by the Solicitation Procedures Order.

Rules of Interpretation

1.118 For purposes of the Plan, except as expressly provided or unless the context otherwise requires, (a) any capitalized term used in the combined Disclosure Statement and Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable, (b) whenever the context requires, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in the masculine, feminine, or neuter shall include the masculine, feminine and the neuter, (c) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions, (d) any reference in the Plan to an existing document or exhibit means such document or exhibit as it may be amended, modified, or supplemented from time to time, (e) unless otherwise specified, all references in the Plan to sections, articles, schedules, and exhibits are references to sections, articles, schedules, and exhibits of or to the Plan, (f) the words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to the Plan in its entirety rather than to any particular paragraph, subparagraph, or clause contained in the Plan, (g) captions and headings to articles and sections are inserted for convenience of reference only and shall not limit or otherwise affect the provisions hereof or the interpretation of the Plan, and (h) the rules of construction set forth in Bankruptcy Code section 102 and in the Bankruptcy Rules shall apply.

ARTICLE II
CLASSIFICATION OF CLAIMS AND INTERESTS AND ESTIMATED RECOVERIES

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

2.1 Classification. The information in the table below is provided in summary form for illustrative purposes only and is subject to material change based on certain contingencies, including those related to the claims reconciliation process. Actual recoveries may widely vary within these ranges, and any changes to any of the assumptions underlying these amounts could result in material adjustments to recovery estimates provided herein and/or the actual distribution received by Creditors. The projected recoveries are based on information available to the Debtor as of the date hereof and reflect the Debtor's estimates as of the date hereof only. In addition to the cautionary notes contained elsewhere in the combined Disclosure Statement and Plan, it is underscored that the Debtor makes no representation as to the accuracy of these recovery estimates. The Debtor expressly disclaims any obligation to update any estimates or assumptions after the Solicitation Date on any basis (including new or different information received and/or errors discovered).

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

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

Class/ Designation	Plan Treatment	Estimated Amount of Claims	Status	Projected Recovery
Class 1: Priority Non-Tax Claims	Each Holder of an Allowed Priority Non-Tax Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Priority Non-Tax Claim: (A) Cash equal to the amount of such Allowed Priority Non-Tax Claim; or (B) such other treatment which the Debtor (in consultation with the Committee) or the Liquidating	Less than \$100,000	Unimpaired/ Deemed to accept Plan	100%

Class/ Designation	Plan Treatment	Estimated Amount of Claims	Status	Projected Recovery
	Trustee, as applicable, and the Holder of such Allowed Priority Non-Tax Claim have agreed upon in writing.			
Class 2: Other Secured Claims	Each Holder of an Allowed Other Secured Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Other Secured Claim: (A) return of the collateral securing such Allowed Other Secured Claim; or (B) Cash equal to the amount of such Allowed Other Secured Claim; or (C) such other treatment which the Debtor (in consultation with the Committee) or the Liquidating Trustee, as applicable, and the Holder of such Allowed Other Secured Claim have agreed upon in writing.	<i>De minimis</i>	Unimpaired/ Deemed to accept Plan	100%
Class 3: General Unsecured Claims	Each Holder of an Allowed General Unsecured Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed General Unsecured Claim: (A) such Holder's pro rata share of the Liquidating Trust Interests; or (B) such other treatment which the Debtor (in consultation with the Committee) or the Liquidating Trustee, as applicable, and the Holder of such Allowed General Unsecured Claim have agreed upon in writing.	Approx. \$11 million - \$13 million	Impaired/ Entitled to Vote	Approx. 28% - 40% ³
Class 4: Interests	On the Effective Date, all Interests shall be extinguished as of the Effective Date, and owners thereof shall receive no Distribution on account of such Interests.	N/A	Impaired/ Deemed to reject Plan	0%

³

This estimate assumes that the Holdback Amount will be released to the Debtor.

ARTICLE III

BACKGROUND AND DISCLOSURES

3.1 General Background⁴

(a) The Debtor's Corporate Structure

The Debtor is a Delaware corporation that was formed in 2002 by Andrew Thompson, Dr. George Savage, and Mark Zdeblick for the purpose of researching and developing “Digital Medicines” and, specifically, to improve outcomes for patients who regularly take prescription medication. Since its founding and until the closing of the Sale on August 20, 2020, the Debtor pursued its vision to revolutionize and improve the healthcare industry through creating and establishing the clinical, regulatory and commercial standards, infrastructure, pathways, evidence, and advocacy to make drug therapy based on Digital Medicines the standard of care.

Prior to the Petition Date, the Debtor leased headquarters located at 2600 Bridge Parkway, Redwood City, California 94065 and a manufacturing facility located at 3956 Point Eden Way, Hayward, CA 94545.

The Debtor has two wholly owned subsidiaries, non-debtor Proteus Digital Health UK Limited (“Proteus UK”), which is based in London, England, and non-debtor Proteus Digital Health Asia Limited (“Proteus HK”), which is based in Hong Kong. Proteus UK and Proteus HK have no significant assets or operations.

The Debtor has issued and outstanding approximately 13.734 million shares of common stock, held by hundreds of investors. The Debtor also has issued and outstanding approximately 76 million shares of preferred stock, and approximately 900,000 warrants for the purchase of both common and preferred stock remained outstanding as of the Petition Date. Additionally, certain current and former employees were issued options to purchase the Debtor's equity in the Debtor pursuant to an employee incentive plan.

(b) The Debtor's Business

The Debtor was a pioneer and leader of the Digital Medicines industry. Digital Medicines are oral pharmaceuticals formulated with an ingestible sensor aimed at tracking a patient's adherence to prescribed medication treatments. When patients use Digital Medicines, their mobile devices collect information about medication taken and safely transmit the data via the cloud to the healthcare provider. Care teams are able to see if their patients are properly taking their medication and observe and analyze real-time data regarding the patient's overall health such as heart rate, activity and rest. Digital Medicines enable care teams to manage larger patient populations and make medical decisions without the need for a patient to physically travel to the doctor's office. Digital Medicines can help accelerate the trend toward conducting medical consultations over the internet. This opportunity is especially pronounced in rural areas and

⁴ Additional information regarding the Debtor's business, assets, capital structure, and the circumstances leading to the filing of the Chapter 11 Case is set forth in detail in the First Day Declaration, which is incorporated herein by reference.

developing economies both domestically and internationally, particularly in light of challenges posed by the COVID-19 pandemic and resulting social distancing measures.

The Debtor developed and commercialized a service offering called Proteus Discover™, a Digital Medicines solution that connects drug ingestions to outcomes and is designed to enable patients to engage in their own healthcare, be rapidly assessed and treated to goal.

The Proteus Discover ingestible sensor is the size of a grain of sand and comprised of dietary materials that are embedded in pill-form medications. Once swallowed, the sensor transmits data to a wearable sensor patch that records the date and time of ingestion. The sensor patch also tracks the patient's steps, sleep and heart rate. This data is encrypted and sent to a mobile device application via bluetooth. Patients can review the health statistics collected on the application and share the data with their healthcare providers through a digital portal. Through the digital portal, healthcare providers can analyze individual and aggregated patient data, recommend treatment modifications, and understand patterns and trends common to all of their patients.

Prior to the Petition Date, the Debtor engaged in ongoing scientific validation of Proteus Discover, including bench studies, randomized clinical trials, and studies in certain high risk populations. The Debtor studied patients with a number of health conditions including cardiovascular disease, diabetes, tuberculosis, hepatitis C, cancer, and mental illness.

The Debtor made significant progress over the last five years, including the commencement of clinical trials in 2015 in conjunction with a partnership between the Debtor and Oracle Corporation. In 2016, the Debtor entered into its first agreement with a large health care system based in California that would start prescribing Proteus Discover to its patients.

In 2017, the Debtor announced the first United States Food and Drug Administration approval of the Digital Medicine Abilify MyCite®, a drug-device combination product comprised of Abilify tablets to be marketed and distributed by Otsuka Pharmaceutical Co., Ltd. ("Otsuka") in conjunction with the Debtor's sensor, patch and mobile device application.

The Proteus-Otsuka relationship was originally governed by a License and Collaboration Agreement dated as of June 25, 2012 (the "LCA") pursuant to which Otsuka obtained from the Debtor exclusive rights in certain disease fields to develop and commercialize Otsuka's products incorporating, or for use with, the Debtor's technology. Together with the LCA, the Debtor and Otsuka entered into a Supply Agreement, Quality Agreement and the Pharmacovigilance Agreement (collectively, the "LCA Ancillary Agreements").

In October 2018, the Debtor and Otsuka entered into that certain Expanded Collaboration Agreement (as amended from time to time), which superseded the LCA while maintaining the parties' rights under the LCA Ancillary Agreements. The Expanded Collaboration Agreement provided for Otsuka to pay the Debtor certain milestone payments and other royalties. The Expanded Collaboration Agreement was amended from time to time, and most recently amended and restated effective as of December 30, 2019.

On May 5, 2020, the Debtor announced a multi-year, outcomes-based initiative with the State of Tennessee's Medicaid program, "TennCare." This collaboration, which is based

upon compelling evidence regarding the benefit of Digital Medicines for underserved populations, would support TennCare-covered patients undergoing hepatitis C treatment to achieve a cure through improved medication adherence and stronger connections to their care teams. Particularly with the impact of the COVID-19 pandemic and related social distancing, enabling healthcare teams to effectively engage and connect with patients remotely through tools like Proteus Discover can have significant benefit in improving health outcomes. The Debtor also collaborated with patient advocacy leaders to gather feedback and recommendations to shape its innovative TennCare initiative.

As of the Petition Date, Debtor had a panel of more than 20 Digital Medicines that treat cardiovascular and metabolic diseases including hypertension and diabetes being prescribed to patients in the United States. They are prepared and delivered via specialty pharmacy services.

(c) *The Debtor's Capital Structure*

i. *Funded Debt Obligations*

The Debtor was a borrower under the Prepetition Credit Agreement pursuant to which the Prepetition Lender provided a Prepetition Loan to the Debtor in aggregate principal amount of \$50,000,000. Interest on the Prepetition Loan accrued at the non-default rate of 15% per annum payable in cash. Commencing upon the Termination Date (as defined in the Prepetition Credit Agreement, as amended), interest accrued at a rate of 19% per annum payable in cash.

Pursuant to that certain Pledge and Security agreement dated as of May 8, 2015 (the "Prepetition Security Agreement"), the Prepetition Loan was secured by a first priority lien on the "Collateral" (as defined in the Prepetition Security Agreement) (the "Prepetition Collateral"), which was comprised of substantially all of the Debtor's assets, except for certain assets specifically identified in the Prepetition Security Agreement.

As of the Petition Date, the aggregate principal amount, plus accrued interest, owing by the Debtor to the Prepetition Lender under the Prepetition Credit Agreement was approximately \$9,502,842.51. As described below, the Debtor and the Prepetition Lender reached an agreement regarding the Debtor's use of the Prepetition Lender's cash collateral during the Chapter 11 Case, and the Bankruptcy Court approved the Debtor's use of cash collateral as set forth in the Cash Collateral Orders. In addition, pursuant to the Cash Collateral Orders and the Sale Order, at the closing of the Sale, the Debtor paid all amounts owing to the Prepetition Lender in full from the proceeds of the Sale.

ii. *Trade and Miscellaneous Unsecured Debts.*

As of the Petition Date, the Debtor owed (i) approximately \$3.5 million for trade and other third party accounts payable, (ii) approximately \$2.23 million on account of a loan through the Paycheck Protection Program pursuant to the Coronavirus Aid, Relief, and Economic Security Act, which the Debtor used to fund payroll and employee benefits prior to the Petition Date, and (iii) certain obligations to current and former employees, including, but not limited to, severance obligations.

3.2 Events Leading to Chapter 11

Prior to the Petition Date, the Debtor's business remained almost entirely in the "pre-revenue" stage of development. Since inception, the Debtor relied primarily on equity capital and advances under its agreements with Otsuka to finance its operations. Additionally, prior to the Petition Date, the Debtor and Otsuka engaged in discussions to attempt to resolve certain issues in connection with the Expanded Collaboration Agreement.

Leading up to the fourth quarter of 2019, the Debtor experienced a severe liquidity crisis. This liquidity crisis prompted the Debtor to furlough nearly all of its employees for over two weeks and commence preparations for a potential Chapter 11 filing in November 2019. In addition, the Debtor experienced several events of default under the Prepetition Security Agreement.

In the midst of this crisis, the Debtor retained Lawrence R. Perkins as Chief Restructuring Officer⁵ and his firm SierraConstellation Partners, LLC ("Sierra"). Sierra was able to negotiate a framework with Otsuka and the Prepetition Lender that allowed the Debtor to bring back its employees and continue to operate. This framework encompassed: (i) amended and restated terms for the Expanded Collaboration Agreement effective as of December 30, 2019 (the "A&R ECA"), whereby Otsuka agreed to make certain payments and advances to the Debtor in installments (subject to the Debtor's satisfaction of certain milestones) totaling approximately \$90 million and (ii) forbearance from the Prepetition Lender, which culminated in a Second Limited Forbearance Agreement effective as of December 30, 2019, whereby the Prepetition Lender agreed to forbear in return for, *inter alia*, certain repayments to the Prepetition Lender.

Although Otsuka's payments and advances and the repayment schedule for the Prepetition Lender were designed to provide the Debtor with some excess working capital (net of repayments to the Prepetition Lender), the Debtor anticipated that it would need additional funding in order to support its operations through the final installment payment due in July 2020 and beyond. The Debtor and its professionals made a diligent effort throughout the first quarter of 2020 to secure additional funding from a number of sources. Despite having several promising opportunities, the onset of the COVID-19 pandemic created significant uncertainty in the capital markets and frustrated the Debtor's efforts.

In April, the Debtor determined that making the full April installment payment to the Prepetition Lender would not leave the Debtor with sufficient cash to operate on a go-forward basis. The Debtor therefore embarked on a simultaneous effort to (a) negotiate with the Prepetition Lender a modification of the due dates for the April installment payment and the final installment due in July 2020, (b) explore with Otsuka the potential to accelerate a portion of a milestone payment due in July, and (c) bring to market a formal financing/sale process with the assistance of an investment banker.

⁵ On February 6, 2020, Mr. Perkins was appointed Interim Chief Executive Officer of the Debtor.

After an interview process, the Debtor selected and retained Raymond James & Associates, Inc. (“Raymond James”) as its investment banker effective as of May 5, 2020 to conduct an extensive marketing process seeking financing and/or a sale opportunity.⁶

While the Raymond James marketing process was ongoing, the Debtor successfully negotiated another forbearance with the Prepetition Lender and the Debtor also successfully negotiated a modification to the A&R ECA whereby Otsuka agreed to accelerate certain of the payments under the A&R ECA to the Debtor. These agreements provided the Debtor with sufficient liquidity to fund operations through approximately mid-August, in order to facilitate the Raymond James marketing process. Throughout the weeks leading up to the Petition Date, the Debtor consulted frequently with its advisors, key stakeholders and board of directors to determine the course of action that would most likely maximize value for all of the Debtor’s stakeholders.

Unfortunately, prevailing market conditions made it very difficult for parties to complete sufficient diligence to submit an indication of interest by June 10. Although Raymond James received significant and ongoing interest from multiple parties, no indications of interest were received by the June 10 deadline.

In light of all of these circumstances, and after having explored multiple options and carefully considering the alternatives, the Debtor’s board of directors, in consultation with its management and the Debtor’s advisors, made the difficult decision to file for chapter 11 protection in order to preserve the Debtor’s Assets and conduct a sale process or other transaction, all in an effort to maintain continuity of business operations (including the Debtor’s TennCare initiative) and maximize going concern value for the benefit of the Debtor’s creditors and equity stakeholders.

3.3 The Chapter 11 Case

(a) Generally

As set forth above, on the Petition Date, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. The commencement of the Chapter 11 Case created an estate that is composed of all of the legal and equitable interests of the Debtor as of that date. The Bankruptcy Code provides that the Debtor may continue to operate its business and remain in possession of its property as a “debtor in possession.” Since the Petition Date, the Debtor continued to operate its business and manage its properties as debtor and debtor in possession.

On June 29, 2020, the U.S. Trustee appointed the Committee. No trustee or examiner has been appointed in the Chapter 11 Case.

The filing of the Debtor’s bankruptcy petition on the Petition Date triggered the immediate imposition of the automatic stay under section 362 of the Bankruptcy Code, which, with limited exceptions, enjoins all collection efforts and actions by Creditors, the enforcement of liens against property of the Debtor and both the commencement and the continuation of prepetition litigation

⁶ Further information regarding the Raymond James’ marketing process is set forth in detail in the declarations of Geoffrey Richards in support of Debtor’s Sale Motion. See Docket Nos. 55, 188.

against the Debtor. With certain limited exceptions and/or modifications as permitted by order of the Bankruptcy Court, the automatic stay will remain in effect from the Petition Date until the Effective Date of this Plan.

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

Commencing on the Petition Date, the Debtor filed the following “first-day” motions and applications designed to ease the Debtor’s transition into chapter 11, maximize the value of the Assets, and minimize the effects of the commencement of the Chapter 11 Case (collectively, the “First Day Motions”):

- i. *Debtor’s Motion for Interim and Final Orders Pursuant to 11 U.S.C. §§ 105(a), 363, 507(a), 541, 1107(a) and 1108, and Fed. R. Bankr. P. 6003 and 6004, to, Inter Alia, (I) Authorize, But Not Direct, the Debtor to Pay Prepetition Wages, Compensation and Employee Benefits; (II) Authorize, But Not Direct, the Debtor to Continue Certain Employee Benefit Programs in the Ordinary Course; (III) Authorize all Banks to Honor Prepetition Checks For Payment Of Prepetition Employee Obligations; and (IV) Grant Other Related Relief [Docket No. 3] (the “Wages and Benefits Motion”);*
- ii. *Debtor’s Motion for Interim and Final Orders Pursuant to 11 U.S.C. §§ 105(A) and 366 (I) Approving Debtor’s Proposed Form of Adequate Assurance of Payment, (II) Establishing Procedures for Resolving Objections by Utility Companies, and (III) Prohibiting Utility Companies From Altering, Refusing Or Discontinuing Service [Docket No. 4] (the “Utilities Motion”);*
- iii. *Debtor’s Motion for Interim and Final Orders Authorizing Debtor To (I) Maintain Existing Insurance Policies and Pay all Obligations Arising Thereunder; and (II) Renew, Revise, Extend, Supplement or Enter Into New Insurance Policies Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 1107 and 1108, and Fed. R. Bankr. P. 6003 and 6004 [Docket No. 5] (the “Insurance Motion”);*
- iv. *Debtor’s Application for Authorization to Employ and Retain Kurtzman Carson Consultants LLC as Claims and Noticing Agent Effective as of the Petition Date [Docket No. 6] (the “Claims Agent Application”);*
- v. *Debtor’s Motion Interim and Final Orders (A) Authorizing the Debtor to (I) Continue to Operate Its Cash Management System, (II) Honor Certain Prepetition Obligations Related Thereto and (III) Maintain Existing Business Forms; (B) Authorizing the Debtor’s Bank to Honor All Related Payment Requests and (C) Granting Related Relief [Docket No. 7] (the “Cash Management Motion”);*
- vi. *Debtor’s Motion For Entry of Interim and Final Orders (I) Authorizing Debtor to Use Cash Collateral, (II) Granting Adequate Protection to*

Secured Lender, (III) Scheduling Final Hearing, and (IV) Granting Related Relief [Docket No. 8] (the “Cash Collateral Motion”).

On June 18, 2020, the Bankruptcy Court entered orders (a) approving the relief requested in the Claims Agent Application [Docket No. 43] on a final basis, and (b) approving the relief requested in the Wages and Benefits Motion, Utilities Motion, Insurance Motion, Cash Management Motion on interim bases. *See* Docket Nos. 40, 41, 42, 44.

On July 10, 2020, the Bankruptcy Court entered orders approving the relief requested in the Utilities Motion, Insurance Motion, Wages and Benefits Motion, Cash Management Motion and on final bases. *See* Docket Nos. 104, 105, 113, 114.

On July 14, 2020, the Bankruptcy Court entered an order approving the relief requested in the Cash Collateral Motion on a final basis. *See* Docket No. 124.

(c) Retention of Professional Advisors

The Bankruptcy Court authorized the Debtor to retain and employ:

- Goodwin Procter LLP as its lead restructuring counsel [Docket No. 110; entered July 10, 2020];
- Potter Anderson & Corroon LLP as its Delaware counsel [Docket No. 109; entered on July 10, 2020];
- Sierra, and designating Lawrence R. Perkins as Interim Chief Executive Officer [Docket No. 108; entered on July 10, 2020];
- Raymond James as investment banker [Docket No. 123; entered on July 14, 2020];
- Kurtzman Carson Consultants LLC as the Debtor’s administrative advisor [Docket No. 234; entered on August 21, 2020]; and certain professionals utilized by the Debtor prior to the Petition Date in the ordinary course of business, pursuant to an order entered on July 10, 2020. *See* Docket No. 112.

(d) Assumption of Prepetition Retention Bonus Agreements

On July 6, 2020 the Bankruptcy Court authorized the Debtor to assume and make payments under certain prepetition Retention Bonus Agreements with 89 of its employees [Docket No. 87]. The Debtor made the payments on or about July 7, 2020.

(e) Rejection of Lease Agreement with Westport Office Park, LLC

On August 10, 2020, the Bankruptcy Court authorized the Debtor to reject that certain Lease Agreement, dated December 7, 2006 (as amended from time to time, the “Lease”) with Westport Office Park, LLC, covering certain space at 2400 and 2600 Bridge Parkway,

Redwood City, California 94065 (the “Premises”). The Debtor used the Premises as its corporate headquarters prior to the Sale.

(f) ***The Sale of Substantially All of the Debtor’s Assets***

Prior to and after the Petition Date, the Debtor had discussions with Otsuka and Otsuka America Pharmaceutical, Inc. (“OAPI”), a subsidiary of Otsuka, concerning a potential bid for substantially all of the Debtor’s Assets. Shortly after the Petition Date, the Debtor and OAPI reached an agreement in principle on the terms of the bid (the “Stalking Horse Bid”).

On June 23, 2020, the Debtor filed the Sale Motion along with a term sheet setting forth the terms of the Stalking Horse Bid, and on July 10, 2020, the Debtor and OAPI entered into the Asset Purchase Agreement for the sale of substantially all of the Debtor’s Assets, including causes of action; *provided* that the Purchaser is prohibited from pursuing any such causes of action (except as a defense, counterclaim, or cross-claim in any litigation commenced against the Purchaser). The Asset Purchase Agreement provides for the Purchaser’s payment of \$15 million (subject to the Holdback (as defined below)), *plus* the assumption of certain liabilities.

The Asset Purchase Agreement provides for a holdback (the “Holdback”) from the purchase price in the amount of \$1,500,000.00 (the “Holdback Amount”) which shall be held in an Escrow Account (as defined in the Asset Purchase Agreement) for a period of up to ninety (90) days commencing on the Closing Date (the “Holdback Period”). The release of the Holdback Amount to the Debtor is subject to the satisfaction or waiver of the following conditions by or before the expiration of the Holdback Period: (i) no Environmental Claim (as defined in the Asset Purchase Agreement) concerning the Purchased Assets or Assumed Liabilities (as defined in the Asset Purchase Agreement) shall have existed as of the Closing or arisen during the Holdback Period, other than those expressly assumed by the Purchaser; and (ii) a chapter 11 plan, in a form reasonably acceptable to the Purchaser (as to provisions affecting Purchaser), providing for certain releases shall have been confirmed by the Bankruptcy Court. *See* Asset Purchase Agreement, § 3.5.

On July 14, 2020, the Bankruptcy Court entered the Bidding Procedures Order approving the proposed Bidding Procedures (as defined in the Bidding Procedures Order) and other relief requested in the Sale Motion. Pursuant to the Bidding Procedures Order, the bid deadline was August 4, 2020 at 5:00 p.m., the auction was scheduled for August 6, 2020 at 10:00 a.m. and the sale hearing was scheduled for August 11, 2020 at 11:30 a.m.

Raymond James and the Debtor engaged with multiple parties regarding an overbid but, unfortunately, none were received by the August 4 bid deadline and, pursuant to the Bidding Procedures, the auction was cancelled and the Purchaser was deemed the successful bidder.⁷

On August 6, 2020, the Ad Hoc Committee filed the *Objection of the Ad Hoc Committee of Equity Security Holders to Debtors’ Sale of Substantially All of its Assets* (the

⁷ *See Notice of (I) Cancellation of Auction and (II) Designation of the Stalking Horse Bidder as the Successful Bidder* [Docket No. 170].

“Ad Hoc Objection”) [Docket No. 173] objecting to the proposed Sale. The Debtor and other parties in interest, including the Committee, the Prepetition Lender and Purchaser, responded to the Ad Hoc Objection and supported approval of the Sale. *See* Docket Nos. 189, 195, 218.

Following an evidentiary hearing, on August 20, 2020, the Bankruptcy Court overruled the Ad Hoc Objection and entered the Sale Order approving the Sale to the Purchaser, free and clear of liens, claims and encumbrances, other than certain permitted encumbrances and assumed liabilities pursuant to the Sale Order and Asset Purchase Agreement. *See* Docket No. 227.

On August 20, 2020, the Sale closed in accordance with the terms of the Sale Order and the Asset Purchase Agreement.⁸ In accordance with the Cash Collateral Orders and the Sale Order, certain of the proceeds of the Sale were paid to the Prepetition Lender to satisfy all monetary obligations of the Debtor to the Prepetition Lender. As set forth in the Sale Order, pursuant to an agreement between the Prepetition Lender and the Committee, the Prepetition Lender agreed to reduce its postpetition interest rate to 10% per annum (rather than the contractual default rate of 19% per annum that was in effect) and cap the amount of the reimbursable fees and expenses of its professionals. In exchange, the Challenge Period (as defined in the Cash Collateral Orders) was deemed to have expired and all potential Challenges (as defined in the Cash Collateral Orders) against the Prepetition Lender were deemed to be waived and released. In addition, in accordance with the Sale Order, the Debtor and the Prepetition Lender executed a general mutual release.

The remaining proceeds of the Sale received from the Purchaser at the Closing plus the Debtor's cash on hand represent the majority of the Assets being used to fund this Plan.

Additionally, the Debtor and the Purchaser are currently parties to a transition services agreement, entered into pursuant to the Sale Order. The Debtor's and Purchaser's limited duties under the transition services agreement run through the earliest of certain events, including but not limited to (a) one hundred and twenty (120) days from the Closing Date; (b) the Effective Date of the Plan; and (c) the date the agreement is terminated, subject to the Debtor's and Purchaser's rights to extend the term for a period of 15 additional days in accordance with the terms thereof. The Debtor's remaining duties under the transition services agreement are minimal and in the judgment of Debtor's management are unlikely to impose material cost on the Estate, the Post-Effective Date Debtor or the Liquidating Trust or delay Consummation of the Plan. Additionally, under the transition services agreement, the Purchaser has agreed to provide the Debtor, at nominal cost to the Estate, with certain back-office functionality that the Debtor's management believes will be helpful to the Debtor's ability to reconcile any Administrative Claims and otherwise to implement the terms of the Plan.

⁸ The TennCare initiative and associated agreements were not transferred to the Purchaser as part of the Sale. As of the date of this combined Disclosure Statement and Plan, the Debtor continues to explore a potential transaction involving TennCare. To the extent that a transaction is not completed prior to the Effective Date, it is not anticipated that the Debtor or Liquidating Trustee will continue to pursue such a transaction.

(g) *Schedules and Bar Dates*

On July 27, 2020, the Debtor Filed its Schedules. *See* Docket No. 145. Among other things, the Schedules set forth the Claims of known or putative Creditors against the Debtor as of the Petition Date, based upon the Debtor's books and records.

On August 7, 2020, the Bankruptcy Court entered the Bar Date Order establishing procedures and setting Bar Dates for Filing proofs of Claim or requests for payment of Administrative Claims against the Debtor and approving the form and manner of the notice of the Bar Date Order. Pursuant to the Bar Date Order the Bankruptcy Court established the following Bar Dates:⁹

- September 25, 2020, at 5:00 p.m. (prevailing Eastern Time) as the final date and time for each entity (including, without limitation, individuals, partnerships, corporations, joint ventures, and trusts), other than any governmental units, to file a Proof of Claim on account of a prepetition claim, including 503(b)(9) Claims, subject to certain exceptions as set forth in the Bar Date Order;
- December 14, 2020 at 5:00 p.m. (prevailing Eastern Time) as the final date and time for each Governmental Units to file Proofs of Claim on account of a prepetition claims;
- with respect to a Rejection Damages Claim (as defined in the Bar Date Order), the later of (a) September 25, 2020 at 5:00 p.m. (prevailing Eastern Time) and (b) (30) days after the effective date of the rejection of an executory contract or unexpired lease as established in the Bankruptcy Court order authorizing such rejection;
- with respect to any scheduled Claim that is amended by the Debtor's amendment of, or supplement to, the Schedules, the later of (a) September 25, 2020 at 5:00 p.m. (prevailing Eastern Time) and (b) (30) days after the date notice is given regarding any such amendment or supplement; and
- September 25, 2020, at 5:00 p.m. (prevailing Eastern Time) as the final date and time for any person or entity to file a request for payment of Administrative Claims (excluding 503(b)(9) Claims and other Administrative Claims that are specifically exempted pursuant to the Bar Date Order) that arose on or prior to August 15, 2020, subject to certain exceptions as set forth in the Bar Date Order.

Notice of the Bar Date Order was published in the national edition of *New York Times* and a notice of the Bar Date Order and related procedures and a proof of claim form were

⁹ The descriptions in this section of the Bar Date Order and deadlines established thereby is intended to be a summary. All parties should review the Bar Date Order in its entirety. In the event of any inconsistency between this summary and the Bar Date Order, the Bar Date Order shall control.

served on, among other parties, all Creditors and potential Creditors and other parties appearing in the Debtor's Creditor matrix.

As described in detail below, the Plan contemplates the establishment of a Final Administrative Claim Bar Date, pursuant to the Confirmation Order.

The projected recoveries set forth in the Plan are based on certain assumptions, including the Debtor's estimates of the Claims that will eventually be Allowed in various Classes. There is no guarantee that the ultimate amount of each of such categories of Claims will correspond to the Debtor's estimates. The Debtor or the Liquidating Trustee, as applicable, and their professionals will investigate Claims filed against the Debtor to determine the validity of such Claims. The Debtor or the Liquidating Trustee, as applicable, may file objections to Claims that are filed in improper amounts or classifications, or are otherwise subject to objection under the Bankruptcy Code or other applicable law.

(h) The Wind-down of the Estate

Following the Sale, the Debtor is focused principally on winding down its remaining operations, affairs and business, including the final activities necessary in connection with the transition services agreement with the Purchaser. This combined Disclosure Statement and Plan provides for the Assets, to the extent not Purchased Assets or already liquidated, to be liquidated over time and the proceeds thereof to be distributed to Holders of Allowed Claims in accordance with the terms of the Plan and the treatment of Allowed Claims described more fully herein. The Liquidating Trustee will effect such liquidation and distributions. The Debtor will be dissolved as soon as practicable after the Effective Date.

ARTICLE IV

CONFIRMATION AND VOTING PROCEDURES

4.1 Confirmation Procedure. The Solicitation Procedures Order, among other things, conditionally approves the combined Disclosure Statement and Plan for solicitation purposes only and authorizes the Debtor to solicit votes to accept or reject the Plan. The Confirmation Hearing has been scheduled for November 16, 2020 at 11:00 a.m. (prevailing Eastern Time) at the Bankruptcy Court, 824 North Market Street, 6th Floor, Courtroom 1, Wilmington, Delaware 19801 to consider (a) final approval of the Disclosure Statement as providing adequate information pursuant to Bankruptcy Code section 1125 and (b) confirmation of the Plan pursuant to Bankruptcy Code section 1129. The Confirmation Hearing may be adjourned from time to time by the Debtor without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing or by filing a notice with the Bankruptcy Court.

4.2 Procedure for Objections. Any objection to final approval of the combined Disclosure Statement and Plan as providing adequate information pursuant to Bankruptcy Code section 1125 or confirmation of the Plan must be made in writing and filed with the Bankruptcy Court and served on (i) counsel to the Debtor, (a) Goodwin Procter LLP, 620 Eighth Ave., New York, NY 10018 (Attn: Nathan A. Schultz (nschultz@goodwinlaw.com), Barry Z. Bazian (bbazian@goodwinlaw.com)) and (b) Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: L. Katherine Good (kgood@potteranderson.com));

(ii) counsel to the Committee, A.M. Saccullo Legal, LLC, 27 Crimson King Dr., Bear, DE 19701 (Attn: Anthony Saccullo (ams@saccullolegal.com)); and (iii) Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attn: Benjamin A. Hackman (Benjamin.A.Hackman@usdoj.gov)) (collectively, the “Objection Recipients”); in each case, by no later than November 9, 2020 at 5:00 p.m. (prevailing Eastern Time). Unless an objection is timely filed and served, it may not be considered by the Bankruptcy Court at the Confirmation Hearing.

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

4.4 Classification of Claims and Interests

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

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

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

The Debtor believes that the Plan has classified all Claims and Interests in compliance with the provisions of Bankruptcy Code section 1122 and applicable case law. It is possible that a Holder of a Claim or Interest may challenge the Debtor’s classification of Claims or Interests and that the Bankruptcy Court may find that a different classification is required for the Plan to be confirmed. If such a situation develops, the Debtor intends, in accordance with the terms of the Plan, to make such permissible modifications to the Plan as may be necessary to permit its

confirmation. Any such reclassification could adversely affect Holders of Claims by changing the composition of one or more Classes and the vote required of such Class or Classes for approval of the Plan.

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

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

The classification of Claims and Interests and the nature of distributions to members of each Class are summarized herein. The Debtor believes that the consideration, if any, provided under the Plan to Holders of Claims reflects an appropriate resolution of their Claims taking into account the differing nature and priority (including applicable contractual subordination) of such Claims and Interests. The Bankruptcy Court must find, however, that a number of statutory tests are met before it may confirm the Plan. Many of these tests are designed to protect the interests of Holders of Claims or Interests who are not entitled to vote on the Plan, or do not vote to accept the Plan, but who will be bound by the provisions of the Plan if it is confirmed by the Bankruptcy Court.

4.5 Impaired Claims or Interests

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

Under the Plan, Holders of Claims in Class 3 are Impaired and are entitled to vote on the Plan. Under the Plan, Holders of Claims in Class 4 are Impaired and will not receive or retain any

property under the Plan on account of such Interests and, therefore, are not entitled to vote on the Plan and instead are deemed to reject the Plan. Under the Plan, Holders of Claims in Classes 1 and 2 are Unimpaired and, therefore, not entitled to vote on the Plan and instead are deemed to accept the Plan.

ACCORDINGLY, A BALLOT FOR ACCEPTANCE OR REJECTION OF THE PLAN IS BEING PROVIDED ONLY TO HOLDERS OF CLAIMS IN CLASS 3.

4.6 Confirmation Without Necessary Acceptances; Cramdown

In the event that any impaired class of claims or interests does not accept a plan, a debtor nevertheless may move for confirmation of the plan. A plan may be confirmed, even if it is not accepted by all impaired classes, if the plan has been accepted by at least one impaired class of claims, and the plan meets the “cramdown” requirements set forth in Bankruptcy Code section 1129(b). Bankruptcy Code section 1129(b) requires that a court find that a plan (a) “does not discriminate unfairly” and (b) is “fair and equitable,” with respect to each non-accepting impaired class of claims or interests. Here, because Holders of Interests in Class 4 are deemed to reject the Plan, the Debtor will seek confirmation of the Plan from the Bankruptcy Court by satisfying the “cramdown” requirements set forth in Bankruptcy Code section 1129(b). The Debtor believes that such requirements are satisfied as set forth herein.

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

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

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

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

(c) Interests. Either (i) each holder of an equity interest will receive or retain under the plan property of a value equal to the greatest of the fixed liquidation preference to which such holder is entitled, the fixed redemption price to which such holder is entitled or the value of the interest or (ii) the holder of an interest that is junior to the nonaccepting class will not receive or retain any property under the plan. No Holder of a Claim or Interest junior to those in Class 4 is entitled to receive any property under the Plan.

As discussed above, the Debtor believes that the distributions provided under the Plan satisfy the absolute priority rule, where required.

4.7 Feasibility

Bankruptcy Code section 1129(a)(11) 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 such liquidation or reorganization is proposed in the Plan). Inasmuch as the Assets have been, or will be, liquidated and the Plan provides for the Distribution of all of the Cash proceeds of the Assets to Holders of Claims that are Allowed in accordance with the Plan, for purposes of this test, the Debtor has analyzed the ability of the Liquidating Trust to meet its obligations under the Plan. Based on the Debtor's analysis, the Liquidating Trust will have sufficient assets to accomplish its tasks under the Plan. Therefore, the Debtor believes that the liquidation pursuant to the Plan will meet the feasibility requirements of the Bankruptcy Code.

4.8 Best Interests Test and Liquidation Analysis

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

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

Because the Plan is a liquidating plan, the "liquidation value" in the hypothetical chapter 7 liquidation analysis for purposes of the "best interests" test is substantially similar to the estimates

of the results of the chapter 11 liquidation contemplated by the Plan. However, the Debtor believes that in a chapter 7 liquidation, there would be additional costs and expenses that the Estate would incur as a result of, *inter alia*, the appointment of a new party to serve as chapter 7 trustee and the likely retention of new professionals, all of whom would need to expend time and incur expense getting up to speed regarding the Estate and the Claims to be adjudicated.

The costs of liquidation under chapter 7 of the Bankruptcy Code would include the compensation of a chapter 7 trustee, as well as the costs of counsel and other professionals retained by the chapter 7 trustee. The Debtor believes such amount would exceed the amount of expenses that would be incurred in implementing the Plan and winding up the affairs of the Debtor. Conversion also would likely delay the liquidation process and ultimate distribution of the Assets. The Estate would also be obligated to pay all unpaid expenses incurred by the Debtor during the Chapter 11 Case (such as compensation for professionals) that are allowed in the chapter 7 case.

Accordingly, the Debtor believes that Holders of Allowed Claims would receive less than anticipated under the Plan if the Chapter 11 Case was converted to a chapter 7 case, and therefore, the classification and treatment of Claims and Interests in the Plan complies with Bankruptcy Code section 1129(a)(7).

4.9 Acceptance of the Plan

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

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

IF YOU ARE ENTITLED TO VOTE ON THE PLAN, YOU ARE URGED TO COMPLETE, DATE, SIGN, AND PROMPTLY MAIL THE BALLOT YOU RECEIVE. PLEASE BE SURE TO COMPLETE ALL BALLOT ITEMS PROPERLY AND LEGIBLY. IF YOU ARE A HOLDER OF A CLAIM ENTITLED TO VOTE ON THE PLAN AND YOU DID NOT RECEIVE A BALLOT, YOU RECEIVED A DAMAGED BALLOT, OR YOU LOST YOUR BALLOT, OR IF YOU HAVE ANY QUESTIONS CONCERNING THE PLAN OR PROCEDURES FOR VOTING ON THE PLAN, PLEASE CONTACT THE VOTING AGENT BY CALLING (866) 967-1788 OR, IF CALLING FROM OUTSIDE THE UNITED STATES OR CANADA, (310) 751-2688, OR EMAILING PROTEUSINFO@KCCLLC.COM. THE VOTING AGENT IS NOT AUTHORIZED TO, AND WILL NOT, PROVIDE LEGAL ADVICE.

HOLDERS OF CLAIMS IN CLASS 3 WHO DO NOT WISH TO PROVIDE THE RELEASES SET FORTH IN SECTION 14.1(c) HEREIN MUST AFFIRMATIVELY INDICATE SO BY EITHER VOTING TO REJECT THE PLAN OR CHECKING THE "OPT-OUT" BOX ON THEIR BALLOT.

PLEASE BE ADVISED THAT ANY HOLDER OF CLAIMS IN CLASS 3 WHO VOTES TO ACCEPT THE PLAN OR DOES NOT VOTE SHALL BE DEEMED TO HAVE

CONSENTED TO THE RELEASES SET FORTH IN SECTION 14.1(c) HEREIN UNLESS SUCH HOLDER AFFIRMATIVELY MAKES THE OPT-OUT ELECTION ON ITS BALLOT.

ARTICLE V
CERTAIN RISK FACTORS TO BE CONSIDERED PRIOR TO VOTING

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

5.1 The Plan May Not Be Accepted

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

5.2 The Plan May Not Be Confirmed

Even if the Debtor receives the requisite acceptances, there is no assurance that the Bankruptcy Court, which may exercise substantial discretion as a court of equity, will confirm the Plan. Even if the Bankruptcy Court determined that the combined Disclosure Statement and Plan and the balloting procedures and results were appropriate, the Bankruptcy Court could still decline to confirm the Plan if it finds that any of the statutory requirements for confirmation had not been met. Moreover, there can be no assurance that modifications to the combined Disclosure Statement and Plan will not be required for Confirmation or that such modifications would not necessitate the re-solicitation of votes. If the Plan is not confirmed, it is unclear what distributions Holders of Claims or Interests ultimately would receive with respect to their Claims or Interests in a subsequent plan of liquidation.

If the Plan is not confirmed, the Plan will need to be revised and it is unclear whether a chapter 11 reorganization or liquidation of the Debtor's assets could be implemented and what distribution the Holders of Allowed Claims would receive. If an alternative could not be agreed to, it is possible that the Debtor would have to liquidate its remaining Assets in chapter 7, in which case it is likely that the Holders of Allowed Claims would receive less favorable treatment than they would receive under the Plan. There can be no assurance that the terms of any such alternative would be similar to or as favorable to the Debtor's creditors as those proposed in the Plan.

5.3 Distributions to Holders of Allowed Claims under the Plan May Be Inconsistent with Projections

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

5.4 Reductions to Estimated Creditor Recoveries

The Allowed amount of Claims in any Class could be greater than projected, which, in turn, could cause the amount of distributions to creditors in such Class to be reduced substantially. The amount of cash realized from the liquidation of the Debtor's remaining Assets could be less than anticipated, which could cause the amount of distributions to creditors to be reduced substantially.

5.5 The Debtor Might Not Obtain the Holdback Amount

As described above, pursuant to the Asset Purchase Agreement, the Holdback Amount (*i.e.*, \$1,500,000.00) will be released to the Debtor only upon the satisfaction of certain conditions as set forth in the Asset Purchase Agreement. There can be no assurance that the Debtor will satisfy such conditions or that the Holdback Amount will be released to the Debtor. If the Holdback Amount is not released to the Debtor, the amount of distributions to creditors will be reduced substantially.

5.6 Objections to Classification of Claims

Bankruptcy Code section 1122 requires that the Plan classify Claims and Interests. The Bankruptcy Code also provides that the Plan may place a Claim or Interest in a particular Class only if such Claim or Interest is substantially similar to the other Claims or Interests of such Class. The Debtor believes that all Claims and Interests have been appropriately classified in the Plan. To the extent that the Bankruptcy Court finds that a different classification is required for the Plan to be confirmed, the Debtor would seek to (i) modify the Plan to provide for whatever classification might be required for Confirmation and (ii) use the acceptances received from any Holder of Claims pursuant to this solicitation for the purpose of obtaining the approval of the Class or Classes of which such Holder ultimately is deemed to be a member. Any such reclassification of Claims, although subject to the notice and hearing requirements of the Bankruptcy Code, could adversely affect the Class in which such Holder was initially a member, or any other Class under the Plan, by changing the composition of such Class and the vote required for approval of the Plan. There can be no assurance that the Bankruptcy Court, after finding that a classification was inappropriate and requiring a reclassification, would approve the Plan based upon such reclassification. Except to the extent that modification of classification in the Plan requires re-solicitation, the Debtor will,

in accordance with the Bankruptcy Code and the Bankruptcy Rules, seek a determination by the Bankruptcy Court that acceptance of the Plan by any Holder of Claims pursuant to this solicitation will constitute a consent to the Plan's treatment of such Holder, regardless of the Class as to which such Holder is ultimately deemed to be a member. The Debtor believes that under the Bankruptcy Rules, it would be required to resolicit votes for or against the Plan only when a modification adversely affects the treatment of the Claim or Interest of any Holder.

The Bankruptcy Code also requires that the Plan provide the same treatment for each Claim or Interest of a particular Class unless the Holder of a particular Claim or Interest agrees to a less favorable treatment of its Claim or Interest. The Debtor believes that the Plan complies with the requirement of equal treatment. To the extent that the Bankruptcy Court finds that the Plan does not satisfy such requirement, the Bankruptcy Court could deny confirmation of the Plan. Issues or disputes relating to classification and/or treatment could result in a delay in the confirmation and consummation of the Plan and could increase the risk that the Plan will not be consummated.

5.7 Failure to Consummate the Plan

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

5.8 Plan Releases May Not Be Approved

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

5.9 Certain Tax Considerations

The following discussion summarizes certain U.S. federal income tax considerations relevant to the implementation of the Plan to the Debtor and to holders of certain Claims. This discussion does not address the U.S. federal income tax consequences to (i) creditors whose Claims are unimpaired or otherwise entitled to payment in full in cash under the Plan, (ii) public entities or Governmental Units, including the U.S. Government, states, municipalities, and Native American Tribes, or (iii) holders who are deemed to reject the Plan, such as holders of equity interests.

The discussion of U.S. federal income tax consequences below is based on the Internal Revenue Code, Treasury regulations, judicial authorities, published positions of the IRS, and other applicable authorities, all as in effect on the date of this Plan and Disclosure Statement and all of which are subject to change or differing interpretations, possibly with retroactive effect. The U.S. federal income tax consequences of the Plan are complex and subject to significant uncertainties. The Debtor has not requested an opinion of counsel or a ruling from the IRS with respect to any of the tax aspects of the Plan. No assurance can be given that the IRS will not take a position contrary to the description of U.S. federal income tax consequences of the Plan described below.

This discussion does not address non-U.S., state, or local tax consequences of the Plan, nor does it purport to address the U.S. federal income tax consequences of the Plan to special classes of taxpayers (e.g., public entities and Governmental Units (including the U.S. Government, states, municipalities, and Native American Tribes), foreign taxpayers, small business investment companies, regulated investment companies, real estate investment trusts, banks and certain other financial institutions, insurance companies, tax-exempt organizations, retirement plans, individual retirement and other tax-deferred accounts, holders that are, or hold Claims through, S corporations, partnerships, or other pass-through entities for U.S. federal income tax purposes, persons whose functional currency is not the U.S. dollar, dealers in securities or foreign currency, traders that mark-to-market their securities, persons subject to the alternative minimum tax or the “Medicare” tax on unearned income, persons who use the accrual method of accounting and report income on an “applicable financial statement,” and persons holding Claims that are part of a straddle, hedging, constructive sale, or conversion transaction). In addition, this discussion does not address U.S. federal taxes other than income taxes, nor does it address the Foreign Account Tax Compliance Act.

The following discussion generally assumes that the Plan implements the liquidation of the Debtor for U.S. federal income tax purposes (including by way of distributions to the Liquidating Trust), and that all distributions by the Debtor will be taxed accordingly. Additionally, this discussion assumes that (i) the various arrangements to which the Debtor is a party will be respected for U.S. federal income tax purposes in accordance with their form and (ii) except if otherwise indicated, the Claims are held as “capital assets” (generally, property held for investment) within the meaning of section 1221 of the Internal Revenue Code.

The following discussion of certain U.S. federal income tax consequences is for general informational purposes only and is not a substitute for careful tax planning and advice based upon a taxpayer’s individual circumstances. Each holder of a Claim or Interest is urged to consult its own tax advisor for the U.S. federal, state, local, and other tax consequences applicable under the Plan.

(a) ***Consequences to Holders of Allowed Class 3 Claims.*** Pursuant to the Plan, each Holder of an Allowed Claim in Class 3 will receive, in full and final satisfaction of its Claim, a portion of the Liquidating Trust Interests, which will entitle such Holder to receive its pro rata share of the Distribution Proceeds.

As discussed below in Section 9.8—“U.S. Federal Income tax Treatment of the Liquidating Trust”, each Holder of an Allowed Claim that receives a beneficial interest in the Liquidating Trust will be treated for U.S. federal income tax purposes as directly receiving, and as a direct owner of, an undivided interest in the assets transferred to the Liquidating Trust and subject to any portion(s) of the Liquidating Trust being treated as a “disputed ownership fund” for U.S. federal income tax purposes. In general, a Holder of an Allowed Claim in Class 3 should in most, but not all circumstances, recognize gain or loss with respect to its Allowed Claim in an amount equal to the difference between the “amount realized” by such Holder in exchange for its Claim and such Holder’s adjusted tax basis in the Claim. The “amount realized” for this purpose should generally equal the fair market value of the Holder’s undivided interest in the assets transferred to the Liquidating Trust and treated as received for U.S. federal income tax purposes under the Plan in respect of such Holder’s Claim.

Pursuant to the Plan, the Liquidating Trust will, in good faith, value the assets transferred thereto, and all parties to the Liquidating Trust (including holders of Allowed Claims receiving interests therein) must consistently use such valuation for all U.S. federal income tax purposes. The amount of cash or other property received in respect of an Allowed Claim for accrued but unpaid interest will be taxed as ordinary income, except to the extent previously included in income by a holder under its method of accounting.

After the date of transfer of assets to the Liquidating Trust, a holder's share of any collections received on the assets of the Liquidating Trust (other than as a result of the subsequent disallowance of Disputed Claims or the reallocation of undeliverable distributions) should not be included, for U.S. federal income tax purposes, in the holder's amount realized in respect of its Allowed Claim but should be separately treated as amounts realized in respect of such holder's ownership interest in the underlying assets of the Liquidating Trust.

In the event of the subsequent disallowance of any Disputed Claim, it is possible that a holder of a previously Allowed Claim may receive additional distributions in respect of its Claim. Accordingly, it is possible that the recognition of any loss realized by a holder with respect to an Allowed Claim may be deferred until all Claims are Allowed or Disallowed. Alternatively, it is possible that a holder will have additional gain in respect of any additional distributions received.

If gain or loss is recognized, such gain or loss may be long-term capital gain or loss if the Allowed Claim disposed of is a capital asset in the hands of the holder and has been held for more than one year. Each holder of an Allowed Claim should consult its own tax advisor to determine whether gain or loss recognized by such holder will be long-term capital gain or loss and the specific tax effect thereof on such holder. The character of any gain or loss depends on a variety of factors, including, among other things, the origin of the holder's Allowed Claim, when the holder receives payment (or is deemed to receive payment) in respect of such Allowed Claim, whether the holder reports income using the accrual or cash method of tax accounting, whether the holder acquired its Allowed Claim at a discount, whether the holder has taken a bad debt deduction with respect to such Allowed Claim, and/or whether (as intended and herein assumed) the Plan implements the liquidation of the Debtor for U.S. federal income tax purposes.

In general, a holder's aggregate tax basis in its undivided interest in the Liquidating Trust's assets (subject to any portion(s) of the Liquidating Trust being treated as a "disputed ownership fund" for U.S. federal income tax purposes) will equal the fair market value of such interest as of the Effective Date, and a holder's holding period generally will begin on the day following the Effective Date.

In general, to the extent any amount received (whether cash or other property) by a Holder of a debt instrument is received in satisfaction of interest that accrued during its holding period, such amount will be taxable to the Holder as ordinary interest income (if not previously included in the holder's gross income under the holder's normal method of accounting). Conversely, a holder generally recognizes a deductible loss to the extent any accrued interest was previously included in its gross income and is not paid in full.

Pursuant to Section 10.11 of the Plan below, except as otherwise required by law (as reasonably determined by the Liquidating Trustee), distributions in respect of any Allowed Claim

shall be allocated first to the principal amount of such Allowed Claim (as determined for U.S. federal income tax purposes) and, thereafter, to the remaining portion of such Allowed Claim, if any. However, there is no assurance that such allocation would be respected by the IRS for U.S. federal income tax purposes. You are urged to consult your own tax advisor regarding the allocation of consideration received under the Plan, as well as the deductibility of accrued but unpaid interest and the character of any loss claimed with respect to accrued but unpaid interest previously included in gross income for U.S. federal income tax purposes.

(b) ***Withholding Tax Requirements.*** All distributions to holders of Allowed Claims under the Plan are subject to any applicable tax withholding, including employment tax withholding. Under U.S. federal income tax law, interest, dividends, and other reportable payments may, under certain circumstances, be subject to “backup withholding” at the then applicable withholding rate (currently 24%). Backup withholding generally applies if the holder fails to furnish its social security number or other taxpayer identification number, furnishes an incorrect taxpayer identification number, (c) fails properly to report interest or dividends, or (d) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the tax identification number provided is its correct number and that it is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions. Holders of Allowed Claims are urged to consult their own tax advisors regarding the Treasury Regulations governing backup withholding and whether the transactions contemplated by the Plan would be subject to these Treasury Regulations.

In addition, Treasury Regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer’s claiming a loss in excess of specified thresholds. Holders are urged to consult their tax advisors regarding these Treasury Regulations and whether the transactions contemplated by the Plan would be subject to these Treasury Regulations and require disclosure on the holder’s tax returns.

THE FOREGOING TAX SUMMARY HAS BEEN PROVIDED FOR GENERAL INFORMATIONAL PURPOSES ONLY. THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. NOTHING HEREIN SHALL CONSTITUTE TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER’S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, HOLDERS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS ABOUT THE UNITED STATES FEDERAL, STATE AND LOCAL, AND APPLICABLE FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

ARTICLE VI

TREATMENT OF UNCLASSIFIED CLAIMS

6.1 Administrative Claims. Except as otherwise set forth in this Article VI, or as soon as practicable after the Final Administrative Claim Bar Date, each Holder of an Allowed Administrative Claim shall receive in exchange for such Allowed Administrative Claim: (i) Cash

equal to the amount of such Allowed Administrative Claim; or (ii) such other treatment as to which the Debtor or the Liquidating Trust, as applicable, and the Holder of such Allowed Administrative Claim shall have agreed upon in writing.

(a) **Final Administrative Claim Bar Date.** Holders of Administrative Claims, other than 503(b)(9) Claims,¹⁰ Initial Administrative Claims¹¹ and Professional Fee Claims, accruing through and including the Effective Date (“*Final Administrative Claims*”), shall file with the Bankruptcy Court and serve on counsel to the Debtor and counsel to the Liquidating Trust requests for payment, in writing, together with supporting documents, substantially complying with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, so as to actually be received on or before the Final Administrative Claim Bar Date. The Effective Date Notice shall set forth the Final Administrative Claim Bar Date and shall constitute notice of such Bar Date. Absent further Bankruptcy Court order, any Final Administrative Claim not filed by the Final Administrative Claim Bar Date shall be deemed waived and the Holder of such Final Administrative Claim shall be forever barred from receiving payment on account thereof.

(b) **Objections by the Liquidating Trust.** Objections to requests for payment of Administrative Claims, other than requests for payment of Professional Fee Claims, must be Filed and served on the requesting party by the Claims Objection Deadline.

(c) **Professional Fee Claims.** All applications for allowance and payment of Professional Fee Claims shall be Filed on or before the Professional Fee Claims Bar Date. If an application for a Professional Fee Claim is not Filed by the Professional Fee Claims Bar Date, such Professional Fee Claim shall be deemed waived and the Holder of such Claim shall be forever barred from receiving payment on account thereof. The Effective Date Notice shall set forth the Professional Fee Claims Bar Date and shall constitute notice of such Bar Date. Objections to any Professional Fee Claims must be Filed and served on the Liquidating Trust and the requesting party by no later than twenty-one (21) days after service of the applicable final application for allowance and payment of Professional Fee Claims. Allowed Professional Fee Claims shall be paid in full, in Cash, in such amounts as are Allowed by the Bankruptcy Court upon the earlier of (i) the Effective Date or (ii) five (5) Business Days following the date upon which an order relating to any such Allowed Professional Fee Claim is entered, and in each case, as soon as reasonably practicable thereafter.

(d) **U.S. Trustee Fees.** All fees payable on or before the Effective Date, pursuant to United States Code title 28 section 1930, shall be paid in full in Cash by the Debtor on or before the Effective Date. All fees payable after the Effective Date shall be paid in full in cash by the Liquidating Trust until the Chapter 11 Case is converted, dismissed, or closed, whichever occurs first. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file a request for Administrative Claims.

6.2 Prepetition Loan Claims. As of August 20, 2020, all outstanding Prepetition Loan Claims have been paid or otherwise satisfied in full.

¹⁰ All 503(b)(9) Claims are subject to the General Bar Date (as defined in the Bar Date Order).

¹¹ All Initial Administrative Claims are subject to the Initial Administrative Claim Bar Date.

6.3 Priority Tax Claims. Within the time period provided in Article X of the Plan, each Holder of an Allowed Priority Tax Claim shall receive in exchange for such Allowed Priority Tax Claim: (i) Cash equal to the amount of such Allowed Priority Tax Claim; or (ii) such other treatment as to which the Debtor (in consultation with the Committee) or the Liquidating Trust, as applicable, and the Holder of such Allowed Priority Tax Claim shall have agreed upon in writing.

ARTICLE VII

TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS

Unless the Holder of an Allowed Claim and the Debtor (in consultation with the Committee) or the Liquidating Trust, as applicable, agree to a different treatment, each Holder of an Allowed Claim shall receive the following Distributions in accordance with Article X of the Plan:

7.1 Class 1: Priority Non-Tax Claims. Each Holder of an Allowed Priority Non-Tax Claim shall receive in exchange for such Allowed Priority Non-Tax Claim upon the earlier of (i) the Effective Date or (ii) the date upon which such Priority Non-Tax Claim is Allowed, and in each case, as soon as reasonably practicable: (A) Cash equal to the amount of such Allowed Priority Non-Tax Claim; or (B) such other treatment which the Debtor (in consultation with the Committee) or the Liquidating Trust, as applicable, and the Holder of such Allowed Priority Non-Tax Claim have agreed upon in writing.

7.2 Class 2: Other Secured Claims. Each Holder of an Allowed Other Secured Claim shall receive in exchange for such Allowed Other Secured Claim upon the earlier of (i) the Effective Date or (ii) the date upon which such Other Secured Claim is Allowed, and in each case, as soon as reasonably practicable: (A) return of the collateral securing such Allowed Other Secured Claim; or (B) Cash equal to the amount of such Allowed Other Secured Claim; or (C) such other treatment which the Debtor (in consultation with the Committee) or the Liquidating Trust, as applicable, and the Holder of such Allowed Other Secured Claim have agreed upon in writing.

7.3 Class 3: General Unsecured Claims. Each Holder of an Allowed General Unsecured Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed General Unsecured Claim: (A) such Holder's pro rata share of the Liquidating Trust Interests; or (B) such other treatment which the Debtor (in consultation with the Committee) or the Liquidating Trust, as applicable, and the Holder of such Allowed General Unsecured Claim have agreed upon in writing.

7.4 Class 4: Interests. On the Effective Date, all Interests shall be extinguished as of the Effective Date, and owners thereof shall receive no Distribution on account of such Interests.

7.5 Reservation of Rights Regarding Claims and Interests. Except as otherwise explicitly provided in the Plan, nothing shall affect the Debtor's, or as successor-in-interest to the Debtor, the Liquidating Trust's, rights and defenses, both legal and equitable, with respect to any Claims or Interests, including, but not limited to, all rights with respect to legal and equitable defenses to alleged rights of setoff or recoupment.

ARTICLE VIII
ACCEPTANCE OR REJECTION OF THE PLAN

8.1 Class Entitled to Vote. Because Claims in Class 3 are Impaired and Holders thereof will receive or retain property or an interest in property under the Plan, only Holders of Claims in Class 3 shall be entitled to vote to accept or reject the Plan.

8.2 Acceptance by Impaired Classes of Claims or Interests. In accordance with Bankruptcy Code section 1126(c), and except as provided in Bankruptcy Code section 1126(e), an Impaired Class of Claims shall have accepted the Plan if the Plan is accepted by the Holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims in such Class that have timely and properly voted to accept or reject the Plan. In accordance with Bankruptcy Code section 1126(d) and except as provided in Bankruptcy Code section 1126(e), an Impaired Class of Interests shall have accepted the Plan if such Plan is accepted by Holders of at least two-thirds (2/3) in amount of the Allowed Interests in such Class that have timely and properly voted to accept or reject the Plan.

8.3 Presumed Acceptance by Unimpaired Classes. Because Claims in Classes 1 and 2 are Unimpaired pursuant to Bankruptcy Code section 1126(f), Holders of Claims in Classes 1 and 2 are deemed to have accepted the Plan and, therefore, such Holders of Claims are not entitled to vote to accept or reject the Plan.

8.4 Presumed Rejections by Impaired Classes. Because Holders of Interests in Class 4 are not entitled to receive or retain any property under the Plan, pursuant to Bankruptcy Code section 1126(g), such Holders of Interests are presumed to have rejected the Plan and are not entitled to vote to accept or reject the Plan.

8.5 Confirmation Pursuant to Bankruptcy Code Section 1129(b). To the extent that any Impaired Class rejects the Plan or is deemed to have rejected the Plan, the Debtor reserves the right to request confirmation of the Plan, as it may be modified from time to time, under Bankruptcy Code section 1129(b). The Debtor reserves the right to alter, amend, modify, revoke, or withdraw the Plan, the documents submitted in support thereof or any schedule or exhibit, including to amend or modify it to satisfy the requirements of Bankruptcy Code section 1129(b), if necessary.

8.6 Controversy Concerning Impairment. If a controversy arises as to whether any Claim or Interest is Impaired under the Plan, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

8.7 Elimination of Vacant Classes. Any Class of Claims or Interests that does not contain, as of the date of the commencement of the Confirmation Hearing, a Holder of an Allowed Claim or Interest, or a Holder of a Claim temporarily allowed under Bankruptcy Rule 3018, shall be deemed deleted from the Plan for all purposes, including for purposes of determining acceptance of the Plan by such Class under Bankruptcy Code section 1129(a)(8).

ARTICLE IX
IMPLEMENTATION OF THE PLAN AND THE LIQUIDATING TRUST

9.1 Implementation of the Plan. The Plan will be implemented by, among other things, the dissolution of the Debtor, the establishment of the Liquidating Trust, the transfer to the Liquidating Trust of the Liquidating Trust Assets, including, without limitation, all Cash and Retained Causes of Action, and the making of Distributions by the Liquidating Trust in accordance with the Plan and Liquidating Trust Agreement.

9.2 Debtor's Directors and Officers. As of the Effective Date, any director or officer of the Debtor shall be deemed to have resigned automatically without the need for any action or approval and without the need for any company filings, and shall have no continuing obligations to the Debtor following the occurrence of the Effective Date.

9.3 Wind-Up and Dissolution of the Debtor. From and after the Effective Date, the Debtor shall continue in existence pursuant to the terms of this combined Disclosure Statement and Plan. From and after the Effective Date, the Liquidating Trust shall be the sole manager of the Debtor. Upon termination of the Liquidating Trustee or the wind down of the Liquidating Trust, the Debtor shall be deemed dissolved for all purposes and of no further legal existence under any applicable state or federal law, without the need to take any further action or file any plan of dissolution, notice, or application with the Secretary of State of the Delaware or any other authority. On the Effective Date or as soon thereafter as is reasonably practicable, the Liquidating Trustee shall wind-up the affairs of the Debtor and file final tax returns for the Debtor. All company governance activities of the Debtor shall be exercised by the Liquidating Trustee and the Liquidating Trustee shall be authorized and empowered to take or cause to be taken all company actions necessary or appropriate to implement and consummate the Plan. The Liquidating Trust shall bear the cost and expense of the wind-up of the affairs of the Debtor and the cost and expense of the preparation and filing of the final tax returns for the Debtor.

9.4 Creation and Governance of the Liquidating Trust. On the Effective Date, the Debtor and the Liquidating Trustee shall execute the Liquidating Trust Agreement and shall take all steps necessary to establish the Liquidating Trust in accordance with the Plan and the beneficial interests therein, which shall be for the benefit of the Beneficiaries. Additionally, on the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Liquidating Trust all of its rights, title, and interest in and to all of the Liquidating Trust Assets, and in accordance with Bankruptcy Code section 1141, except as specifically provided in the Plan or the Confirmation Order, the Liquidating Trust Assets shall automatically vest in the Liquidating Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Liquidating Trust Interests and the Liquidating Trust Expenses, as provided for in the Plan and the Liquidating Trust Agreement, and Claims required to be paid by the Liquidating Trust pursuant to the Plan with priority over General Unsecured Claims, including, without limitation, Administrative Claims and Professional Fee Claims; and such transfer shall be exempt from any stamp, real estate transfer, other transfer, mortgage reporting, sales, use, or other similar tax. The Liquidating Trustee shall be the exclusive trustee of the Liquidating Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to Bankruptcy Code section 1123(b)(3)(B). The Liquidating Trust shall be governed by the Liquidating Trust Agreement and administered by the Liquidating Trustee. The powers, rights,

and responsibilities of the Liquidating Trustee shall be specified in the Liquidating Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in Section 9 of this Plan. The Liquidating Trust shall hold and distribute the Liquidating Trust Assets in accordance with the provisions of the Plan, the Confirmation Order, and the Liquidating Trust Agreement. Other rights and duties of the Liquidating Trustee and the Beneficiaries shall be as set forth in the Liquidating Trust Agreement. For the avoidance of doubt, after the Effective Date, the Debtor and the Estate shall have no interest in the Liquidating Trust Assets, the transfer of the Liquidating Trust Assets to the Liquidating Trust is absolute, and the Liquidating Trust Assets shall not be held or deemed to be held in trust by the Liquidating Trustee for the benefit of the Debtor or the Estate.

9.5 Purpose of the Liquidating Trust. The Liquidating Trust shall be established pursuant to the Liquidating Trust Agreement for the purpose of: pursuing or liquidating the Liquidating Trust Assets; reconciling and objecting to Claims, as provided for in the Plan; and making Distributions to the Beneficiaries, all in accordance with the provisions of Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business; and any other activity expressly provided for in the Liquidating Trust Agreement, or as may be necessary or required to implement the Plan and the Confirmation Order. For the sake of clarity and the avoidance of doubt, any activity performed under the transition services agreement between the Debtor and the Purchaser will not give rise to the Liquidating Trust being deemed to be conducting any trade or business.

9.6 Liquidating Trustee and Liquidating Trust Agreement. The Liquidating Trust Agreement, as negotiated between the Debtor and the Liquidating Trustee, in consultation with the Committee, generally will provide for, among other things: (i) the payment of the Liquidating Trust Expenses; (ii) the payment of other reasonable expenses of the Liquidating Trust; (iii) the retention by the Liquidating Trust of counsel, accountants, financial advisors, or other professionals (including, without limitation, professionals employed by an Affiliate of the Liquidating Trustee) and the payment of their reasonable compensation; (iv) the investment of Cash by the Liquidating Trust within certain limitations, including those specified in the Plan or the Confirmation Order; (v) the orderly liquidation of the Liquidating Trust Assets; (vi) litigation of any Retained Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Retained Causes of Action; (vii) the prosecution and resolution of objections to Claims; and (viii) the establishment of such Disputed Claim Reserves as the Liquidating Trustee, in its sole discretion, deems reasonable and appropriate. In addition, the Liquidating Trust Agreement shall authorize the Liquidating Trustee to administer the Debtor's tax obligations, including (a) filing tax returns and paying tax obligations, (b) requesting, if necessary, an expedited determination of any unpaid tax liability of the Debtor or the Estate under Bankruptcy Code section 505(b) for all taxable periods of such Debtor ending after the Commencement Date through the liquidation of such Debtor as determined under applicable tax laws, and (c) representing the interest and account of the Debtor or the Estate before any taxing authority in all matters including, without limitation, any action, suit, proceeding or audit.

The Liquidating Trustee, on behalf of the Liquidating Trust, may employ, without further order of the Bankruptcy Court, professionals (including those previously retained by the Debtor or the Committee) to assist in carrying out the Liquidating Trustee's duties under the Plan, the Confirmation Order, and the Liquidating Trust Agreement, and may compensate and reimburse

the reasonable fees and expenses of such professionals without further Order of the Bankruptcy Court from the Liquidating Trust Assets in accordance with the Plan, the Confirmation Order, and the Liquidating Trust Agreement.

The Liquidating Trust Agreement shall provide that the Liquidating Trustee shall be indemnified by and receive reimbursement from the Liquidating Trust Assets against and from any and all loss, liability, expense (including reasonable attorneys' fees), or damage which the Liquidating Trustee incurs or sustains, in good faith and without willful misconduct, gross negligence, or fraud, acting as Liquidating Trustee under or in connection with the Liquidating Trust Agreement.

On and after the Effective Date, the Liquidating Trustee shall have the power and responsibility to do all acts contemplated by the Plan and the Confirmation Order to be done by the Liquidating Trustee and all other acts that may be necessary or appropriate in connection with the disposition of the Liquidating Trust Assets and the distribution of the proceeds thereof, as contemplated by the Plan and the Confirmation Order, and in accordance with the Liquidating Trust Agreement. In all circumstances, the Liquidating Trustee shall act in its reasonable discretion in the best interests of the Beneficiaries pursuant to the terms of the Plan, the Confirmation Order and the Liquidating Trust Agreement.

9.7 Compensation and Duties of Liquidating Trustee. The salient terms of the Liquidating Trustee's employment, including the Liquidating Trustee's duties and compensation, shall be set forth in the Liquidating Trust Agreement. The Liquidating Trustee shall be entitled to reasonable compensation consistent with that of similar functionaries in similar types of bankruptcy cases. The Liquidating Trustee shall also be reimbursed for all documented, actual, reasonable, and necessary out-of-pocket expenses incurred in the performance of his or her duties under the Liquidating Trust Agreement.

9.8 U.S. Federal Income Tax Treatment of the Liquidating Trust

(a) *Grantor Trust.* It is intended that the Liquidating Trust qualify as a grantor trust for U.S. federal income tax purposes, and that the Beneficiaries are treated as grantors of such trust. As described more fully in Article XVI of this combined Disclosure Statement and Plan, the transfer of the Liquidating Trust Assets should be treated for U.S. federal income tax purposes as a transfer to the Beneficiaries, followed immediately by a deemed transfer from such Beneficiaries to the Liquidating Trust, *provided, however*, that the Liquidating Trust Assets will be subject to any post-Effective Date obligations incurred by the Liquidating Trust relating to the pursuit of Liquidating Trust Assets and the administration of the wind-down of the Estate pursuant to the terms of the Plan, the Confirmation Order, and the Liquidating Trust Agreement. Accordingly, the Beneficiaries should be treated for U.S. federal income tax purposes as the grantors and owners of their respective share of the Liquidating Trust Assets. The foregoing treatment should also apply, to the extent permitted by applicable law, for state and local income tax purposes. Subject to Article V of the Plan, as a grantor trust, all items of income, gain, loss, deduction and credit will be included in the income of the Beneficiaries as if such items had been recognized directly by the Beneficiaries in the proportions in which they own beneficial interests in the Liquidating Trust.

No ruling is currently being requested from the IRS concerning the tax status of the Liquidating Trust as a grantor trust. As such, there can be no assurance that the IRS would not take a contrary position to the classification of the Liquidating Trust as a grantor trust. If the IRS were to challenge successfully the grantor trust classification, the U.S. federal income tax consequences to the Liquidating Trust and the holders of Claims could vary from those discussed herein. Certain U.S. federal income tax consequences of the Liquidating Trust or portions thereof being treated as a “disputed ownership fund” are also discussed below.

(b) *Reporting.* The Liquidating Trustee shall comply with all tax reporting requirements and, in connection therewith, the Liquidating Trustee may require Beneficiaries to provide certain tax information as a condition to receipt of Distributions, including, without limitation, filing returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation § 1.671-4(a). Under the guidelines set forth in Revenue Procedure 94-95, 1994-2 C.B. 684 and Treasury Regulation § 1.671-4(a), the Liquidating Trustee will file returns for the Liquidating Trust as a grantor trust; *provided, however*, that the Liquidating Trustee may timely elect to treat any Liquidating Trust Assets (including, without limitation, all Liquidating Trust Assets) as a “disputed ownership fund” governed by Treasury Regulation § 1.468B-9. If a “disputed ownership fund” election is made, all parties (including the Liquidating Trustee and the Beneficiaries) shall report for U.S. federal, state and local income tax purposes consistently with the foregoing.

All taxable income and loss of the Liquidating Trust will be allocated among, and treated as directly earned and incurred by, the holders of beneficial interests in the Liquidating Trust with respect to such holder’s interest in the assets of the Liquidating Trust (and not as income or loss with respect to its prior Claims), with the possible exception of any taxable income and loss allocable to any assets allocable to, or retained on account of, disputed Claims. The character of any income and the character and ability to use any loss would depend on the particular situation of the holder.

The U.S. federal income tax obligations of a holder with respect to its beneficial interest in the Liquidating Trust are not dependent on the Liquidating Trust distributing any cash or other proceeds, subject to any portion(s) of the Liquidating Trust allocable to disputed Claims. Thus, a Holder may incur a U.S. federal income tax liability with respect to its allocable share of the Liquidating Trust’s income even if the Liquidating Trust does not make a concurrent distribution to the holder. In general, other than in respect of cash retained on account of disputed Claims (the subsequent distribution of which still relates to a Holder’s Allowed Claim), a distribution of cash by the Liquidating Trust will not be separately taxable to a beneficiary of the Liquidating Trust since the beneficiary is already regarded for U.S. federal income tax purposes as owning the underlying assets (and was taxed at the time the cash was earned or received by the Liquidating Trust). Holders are urged to consult their tax advisors regarding the appropriate U.S. federal income tax treatment of any subsequent distributions of cash originally retained by the Liquidating Trust on account of disputed Claims.

(c) *Valuation.* Except to the extent definitive guidance from the IRS or a court of competent jurisdiction (including the issuance of applicable Treasury Regulations or the receipt by the Liquidating Trustee of a private letter ruling if the Liquidating Trustee so requests one) indicates that such valuation is not necessary to maintain the treatment of the Liquidating Trust as a liquidating trust for purposes of the Internal Revenue Code and applicable Treasury Regulations,

as soon as reasonably practicable after the Liquidating Trust Assets are transferred to the Liquidating Trust, the Liquidating Trustee shall make a good faith valuation of the Liquidating Trust Assets. Such valuation shall be made available from time to time to all parties to the Liquidating Trust Agreement and to all Beneficiaries, to the extent required if the Liquidating Trustee elects to treat some or all of the Liquidating Trust Assets as a “disputed ownership fund” or relevant to such parties for tax purposes, and shall be used consistently by such parties for all U.S. federal income tax purposes.

(d) *Tax Returns.* In accordance with the provisions of section 6012(b)(3) of the Internal Revenue Code, as amended, the Liquidating Trustee shall cause to be prepared, at the cost and expense of the Liquidating Trust, the income tax returns (federal, state and local) that the Debtor is required to file (to the extent such returns have not already been filed by the Effective Date). The Liquidating Trustee shall timely file each such tax return with the appropriate taxing authority and shall pay out of the Liquidating Trust Assets all taxes due with respect to the period covered by each such tax return.

(e) *Disputed Ownership Fund Election.* The Plan permits the Liquidating Trustee to establish Disputed Claim Reserves. The Liquidating Trustee may also, at the Liquidating Trustee’s sole discretion, file a tax election to treat any or all of the Liquidating Trust Assets, including, but not limited to any Disputed Claim Reserve, as a “disputed ownership fund as described in Treasury Regulation § 1.468B-9 (“Disputed Ownership Fund”) or other taxable entity rather than as a part of the Liquidating Trust for U.S. federal income tax purposes. If such election is made, the Liquidating Trust shall comply with all tax reporting and tax compliance requirements applicable to the Disputed Ownership Fund or other taxable entity, including, but not limited to, the filing of separate income tax returns for the Disputed Ownership Fund or other taxable entity and the payment of any federal, state or local income tax due.

(f) *Attribution of Income.* Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the issuance of applicable Treasury Regulations, the receipt by the Liquidating Trust of a private letter ruling if the Liquidating Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidating Trust), attribution of Liquidating Trust taxable income or loss shall be by reference to the manner in which any economic gain or loss would be borne immediately after a hypothetical liquidating distribution of the remaining Liquidating Trust Assets. The tax book value of the Liquidating Trust Assets for purpose of this paragraph shall equal their fair market value on the date the Liquidating Trust Assets are transferred to the Liquidating Trust, adjusted in accordance with tax accounting principles prescribed by the Internal Revenue Code, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

(g) *Current Basis.* All income of the Liquidating Trust will be subject to tax on a current basis.

(h) *Tax Identification Numbers.* The Liquidating Trustee may require any Beneficiary to furnish to the Liquidating Trustee its Employer or Taxpayer Identification Number as assigned by the Internal Revenue Service or otherwise certify to the Liquidating Trustee’s satisfaction that Distributions to the Beneficiary are exempt from backup withholding. The Liquidating Trustee may condition any Distribution to any Beneficiary upon receipt of such identification number. If

after reasonable inquiry, any Beneficiary fails to provide such identification number to the Liquidating Trustee, the Liquidating Trustee shall deem such Beneficiary's Claim as Disallowed and no Distribution shall be made on account of such Beneficiary's Claim.

(i) *Annual Statements.* The Liquidating Trustee shall annually send to each Beneficiary a separate statement setting forth the Beneficiary's share of items of income, gain, loss, deduction or credit and all such holders shall report such items on their U.S. federal income tax returns; *provided, however*, that such reporting may be modified or withheld in accordance with any Disputed Ownership Fund election on the part of the Liquidating Trustee.

(j) *Notices.* The Liquidating Trust shall distribute such notices to the Beneficiaries as the Liquidating Trustee determines are necessary or desirable.

(k) *Expedited Determination.* The Liquidating Trustee may request an expedited determination of taxes of the Debtor or of the Liquidating Trust, as applicable, under Bankruptcy Code section 505(b) for all tax returns filed for, or on behalf of, the Debtor or the Liquidating Trust for all taxable periods through the dissolution of the Liquidating Trust.

(l) *Withholding.* The Liquidating Trust will comply with all applicable governmental withholding requirements (see section 10.10 of the Plan—"Withholding, Payment and Reporting Requirements with Respect to Distributions," below).

9.9 Abandonment, Disposal, and Destruction of Records. The Liquidating Trustee shall be authorized pursuant to Bankruptcy Code section 554, in its sole discretion, without any further notice to any party or action, order or approval of the Bankruptcy Court, to abandon, dispose of, or destroy in any commercially reasonable manner all originals and/or copies of any documents, books and records, including any electronic records, of the Debtor that are transferred to the Liquidating Trust and which the Liquidating Trustee reasonably concludes are burdensome or of inconsequential value and benefit to the Liquidating Trust.

9.10 Distributions by Liquidating Trust. Following the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Liquidating Trustee shall make continuing efforts to liquidate all Liquidating Trust Assets in accordance with the Plan, the Confirmation Order, and the Liquidating Trust Agreement, *provided* that the timing of all Distributions made by the Liquidating Trust to Beneficiaries shall be at the discretion of the Liquidating Trustee, and, *provided, further*, that Distributions to Beneficiaries may only be made after the Final Administrative Claim Bar Date.

9.11 Cash Investments. Funds in the Liquidating Trust, may, at the discretion of the Liquidating Trustee, be invested in Permitted Investments, *provided, however*, that the scope of any such Permissible Investments shall be limited to include only those investments that a "liquidating trust" within the meaning of Treasury Regulations § 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations or any modification in the IRS guidelines, whether set forth in IRS rulings, revenue procedures, revenue rulings, other IRS pronouncements, or otherwise.

9.12 Dissolution of the Liquidating Trust. The Liquidating Trustee shall be discharged and the Liquidating Trust shall be terminated, at such time as: (a) (i) all Disputed

Claims have been resolved; (ii) all of the Liquidating Trust Assets have been liquidated; (iii) all duties and obligations of the Liquidating Trustee under the Plan, the Confirmation Order, and the Liquidating Trust Agreement have been fulfilled; (iv) all Distributions required under the Plan, the Confirmation Order and the Liquidating Trust Agreement have been made; and (v) the Chapter 11 Case has been closed, or (b) as otherwise provided in the Liquidating Trust Agreement. Upon dissolution of the Liquidating Trust, any remaining Liquidating Trust Assets may be transferred by the Liquidating Trustee to one or more charitable organizations without further Order of the Bankruptcy Court.

9.13 Control Provisions. To the extent there is any inconsistency between the combined Disclosure Statement and Plan and the Confirmation Order as it relates to the Liquidating Trust and the Liquidating Trust Agreement, the terms of the combined Disclosure Statement and Plan and the Confirmation Order shall control. Nothing in this combined Disclosure Statement and Plan shall modify or be deemed to modify in any regard any term or provision of the Cash Collateral Orders related to the Prepetition Loan Claims.

9.14 Limitation of Liability; Indemnification. The Liquidating Trustee may, in connection with the performance of its functions, consult with attorneys, accountants, financial advisors and agents, which consultation may act as a defense for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such persons. Notwithstanding such authority, the Liquidating Trustee shall not be under any obligation to consult with attorneys, accountants, financial advisors or agents, and its determination not to do so shall not result in the imposition of liability, unless such determination is based on willful misconduct, gross negligence or fraud. The Liquidating Trust shall indemnify and hold harmless the Liquidating Trustee and its designees and professionals, and all duly designated agents and representatives thereof (in their capacity as such), from and against and in respect of all liabilities, losses, damages, claims, costs and expenses, including, but not limited to attorneys' fees and costs arising out of or due to such actions or omissions, or consequences of their actions or omissions with respect or related to the performance of their duties or the implementation or administration of the Plan; *provided, however*, that no such indemnification will be made to such persons for such actions or omissions as a result of willful misconduct, gross negligence or fraud.

9.15 Company Action. All matters expressly provided for under this Plan that would otherwise require approval of the equity holders, directors or officers of the Debtor, including but not limited to, the dissolution of the Debtor, shall be deemed to be in effect from and after the Effective Date pursuant to the applicable law of Delaware without any requirement of action by the equity holders, directors or officers of the Debtor.

9.16 Avoidance Actions and Preference Actions. Except as otherwise provided in this Plan, as of the Effective Date, the Debtor, together with any successor or successors in interest and assigns, including, without limitation, the Liquidating Trustee, and any other person or entity that claims or might claim through, on behalf of, or for the benefit of any of the foregoing, shall be deemed to have preserved all Avoidance Actions (other than those comprising Purchased Assets). For the avoidance of doubt, all Preference Actions are hereby waived.

ARTICLE X
PROVISIONS GOVERNING DISTRIBUTIONS

10.1 Distributions for Allowed Claims

Except as otherwise provided herein or as ordered by the Bankruptcy Court, all Distributions to Beneficiaries as of the applicable distribution date shall be made on or as soon as practicable after the applicable distribution date. Distributions on account of Claims that first become Allowed Claims after the applicable distribution date shall be made pursuant to the terms of this Plan and on the day selected by the Liquidating Trustee.

The Liquidating Trustee may accelerate any Distribution date with respect to Distributions other than the initial distribution date if the facts and circumstances so warrant and to the extent not inconsistent with the Plan, the Confirmation Order, or the Liquidating Trust Agreement.

Distributions made as soon as reasonably practicable after the Effective Date or such other date set forth herein shall be deemed to have been made on such date.

10.2 Interest on Claims. Post-petition interest shall not accrue or be paid on Claims, and no Holder of an Allowed Claim shall be entitled to interest accruing on any Claim from and after the Petition Date.

10.3 Distributions by Liquidating Trustee as Disbursement Agent. From and after the Effective Date, the Liquidating Trustee shall serve as the Disbursement Agent under the Plan with respect to Distributions to Holders of Allowed Claims (provided that the Liquidating Trustee may hire professionals or consultants to assist with making disbursements or to act as the Disbursement Agent). The Liquidating Trustee shall cause to be made all Distributions required to be made to such Holders of Allowed Claims pursuant to the Plan and the Liquidating Trust Agreement. The Liquidating Trustee shall not be required to give any bond or surety or other security for the performance of the Liquidating Trustee's duties as Disbursement Agent unless otherwise ordered by the Bankruptcy Court.

10.4 Waterfall. The Liquidating Trustee shall cause the proceeds of the Liquidating Trust Assets as of the Effective Date, net of the Liquidating Trust Expenses, to be distributed to Holders of Allowed Claims as follows (to the extent that such Claims have not been paid by the Debtor on or prior to the Effective Date):

- (a) first, to satisfy all Allowed Administrative Claims;
- (b) second, to satisfy all Allowed Other Secured Claims and Allowed Priority Tax Claims;
- (c) third, to satisfy the Allowed Priority Non-Tax Claims; and
- (d) fourth, to satisfy the General Unsecured Claims.

10.5 Means of Cash Payment. Cash payments under the Plan shall be made, net of any applicable withholding taxes at the option, and in the sole discretion, of the Liquidating Trustee,

by wire, check, or such other method as the Liquidating Trustee deems appropriate under the circumstances. Cash payments to foreign creditors may be made, at the option, and in the sole discretion, of the Liquidating Trustee, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction. Pursuant to Section 10.8 of the Plan, cash payments in the form of checks issued by the Liquidating Trustee shall be null and void if not cashed within ninety (90) days of the date of the issuance thereof and deemed undeliverable Distributions. Following the expiration of ninety (90) days after issuance of such null and void checks, in accordance with Section 10.14 of the Plan, amounts in respect of these undeliverable Distributions shall become unrestricted Liquidating Trust Assets redistributed to the Beneficiaries after reserving as necessary for payment of Liquidating Trust Expenses. Such Holder of an undeliverable Distribution shall be deemed to have forfeited its right to any reserved and future Distributions from the Liquidating Trust and any Liquidating Trust Interests held by such Holder shall be deemed cancelled, and the Claims of such Holder shall be forever barred.

For purposes of effectuating Distributions under the Plan, any Claim denominated in foreign currency shall be converted to U.S. Dollars pursuant to the applicable published exchange rate in effect on the Petition Date.

10.6 Fractional Distributions. Notwithstanding anything in the Plan to the contrary, no payment of fractional cents shall be made pursuant to the Plan. Whenever any payment of a fraction of a cent under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole penny (up or down), with half cents or more being rounded up and fractions less than half of a cent being rounded down.

10.7 De Minimis Distributions. Notwithstanding anything to the contrary contained in the Plan, the Liquidating Trustee shall not be required to distribute, and shall not distribute, Cash or other property to the Holder of any Allowed Claim if the amount of Cash or other property to be distributed on account of such Claim is less than \$100. Any Holder of an Allowed Claim on account of which the amount of Cash or other property to be distributed is less than \$100 shall be forever barred from asserting such Claim against Liquidating Trust Assets.

10.8 Delivery of Distributions; Unclaimed Distributions. All Distributions to Holders of Allowed Claims not made by wire transfer shall be made at the address of such Holder as set forth in the claims register maintained in the Chapter 11 Case (subject to any transfer effectuated pursuant to Bankruptcy Rule 3001(e) or, after the Effective Date, a change of address notification provided by a Holder in a manner reasonably acceptable to the Liquidating Trustee) or, in the absence of a Filed proof of Claim, the Schedules. The responsibility to provide the Liquidating Trustee a current address of a Holder of Claims shall always be the responsibility of such Holder and at no time shall the Liquidating Trustee have any obligation to determine a Holder's current address. Nothing contained in the Plan shall require the Liquidating Trustee to attempt to locate any Holder of an Allowed Claim. Amounts in respect of undeliverable Distributions made by the Liquidating Trustee shall be held in trust on behalf of the Holder of the Claim to which they are payable by the Liquidating Trust until the earlier of the date that such undeliverable Distributions are claimed by such Holder and the date ninety (90) days after the date the undeliverable Distributions were made. Following the expiration of ninety (90) days after the date the undeliverable Distributions were made, the amounts in respect of undeliverable Distributions shall become unrestricted Liquidating Trust Assets redistributed to the Beneficiaries after reserving

as necessary for payment of Liquidating Trust Expenses. Such Holder shall be deemed to have forfeited its right to any reserved and future Distributions from the Liquidating Trust and any Liquidating Trust Interests held by such Holder shall be deemed cancelled, and the Claims of such Holder shall be forever barred.

10.9 Application of Distribution Record Date. At the close of business on the Distribution Record Date, the Debtor's claims register shall be closed, and there shall be no further changes in the record Holders of Claims or Interests. Except in limited instances as may be provided in the Liquidating Trust Agreement, and as may be provided to the extent of applicable law, beneficial interests in the Liquidating Trust shall be non-transferable except upon death of the interest holder or by operation of law. Except as provided herein, the Liquidating Trustee and the Liquidating Trustee's respective agents, successors, and assigns shall have no obligation to recognize any transfer of any Claim or Interest occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record Holders stated on the claims register as of the close of business on the Distribution Record Date irrespective of the number of Distributions to be made under the Plan to such Entities or the date of such Distributions.

10.10 Withholding, Payment and Reporting Requirements With Respect to Distributions. All Distributions under the Plan shall, to the extent applicable, comply with all tax withholding, payment, and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority, and all Distributions shall be subject to any such withholding, payment, and reporting requirements. The Liquidating Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment, and reporting requirements. Furthermore, any Distribution on account of a Claim that the Liquidating Trustee determines is required to be subject to withholding shall be reduced on a dollar-for-dollar basis by the amount of such required withholding prior to payment by the Liquidating Trust of such Distribution. The Liquidating Trustee may require, in the Liquidating Trustee's sole and absolute discretion and as a condition to the receipt of any Distribution, that the Holder of an Allowed Claim complete and return to the Liquidating Trust the appropriate Form W-8 or Form W-9, as applicable, to each Holder. Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such Distribution, and including, in the case of any Holder of a Disputed Claim that has become an Allowed Claim, any tax obligation that would be imposed upon the Liquidating Trust in connection with such Distribution, and (b) no Distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements reasonably satisfactory to the Liquidating Trustee for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon the Liquidating Trust in connection with such Distribution.

10.11 Allocation of Distributions for Tax Purposes. For U.S. federal income tax purposes, distributions in full or partial satisfaction of a Holder's Allowed Claim shall be allocated first to the principal amount (as determined for U.S. federal income tax purposes) of such Allowed Claim, until paid in full, with any excess allocated to the remainder of such Claim. However, there is no assurance that the IRS will respect such allocation for U.S. federal income tax purposes.

10.12 Setoffs. The Liquidating Trust may, but shall not be required to, set off against any Claim or any Allowed Claim, and the payments or other Distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever that the Debtor or the Liquidating Trust may have against the Holder of such Claim; *provided, however*, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Liquidating Trust of any such claim that it may have against such Holder.

10.13 No Distribution in Excess of Allowed Amounts. Notwithstanding anything to the contrary herein, no Holder of an Allowed Claim shall receive in respect of such Claim any Distribution of a value as of the Effective Date in excess of the Allowed amount of such Claim.

10.14 Allocation of Distributions. The Liquidating Trustee may, in the Liquidating Trustee's sole discretion, make Distributions jointly to any Holder of an Allowed Claim and any other Entity who has asserted, or whom the Liquidating Trustee has determined to have, an interest in such Allowed Claim; *provided, however*, that the Liquidating Trust shall provide notice of such Distribution to any Holder of an Allowed Claim or other Entity that has asserted an interest in such Claim.

10.15 Forfeiture of Distributions. If the Holder of an Allowed Claim fails to cash a check payable to it within the time period set forth in Section 10.5, fails to claim an undeliverable Distribution within the time limit set forth in Section 10.8, or fails to complete and return to the Liquidating Trust the appropriate Form W-8 or Form W-9 within one hundred twenty (120) days of the request by the Liquidating Trust (which request may be made via any means of communication, including, without limitation via email) for the completion and return to it of the appropriate form pursuant to Section 10.10, then such Holder shall be deemed to have forfeited its right to any reserved and future Distributions from the Liquidating Trust and any Liquidating Trust Interests held by such Holder shall be deemed cancelled, and such Holder no longer be a Beneficiary, and the Claims of such Holder shall be forever barred. The forfeited Distributions shall become unrestricted Liquidating Trust Assets and shall be redistributed to the Beneficiaries after reserving as necessary for payment of Liquidating Trust Expenses and otherwise in compliance with the Plan and the Liquidating Trust Agreement. In the event the Liquidating Trustee determines that any such amounts are too small in total to redistribute cost-effectively to the Beneficiaries, the Liquidating Trustee may instead donate them to a charitable organization(s) free of any restrictions thereon, notwithstanding any federal or state escheat laws to the contrary and without further Order from the Bankruptcy Court.

ARTICLE XI

PROVISIONS FOR CLAIMS OBJECTIONS AND ESTIMATION OF CLAIMS

11.1 Claims Administration Responsibility. Except as otherwise specifically provided in the Plan, the Confirmation Order, or the Liquidating Trust Agreement, after the Effective Date, the Liquidating Trustee on behalf of the Liquidating Trust shall have the authority (a) to file, withdraw, or litigate to judgment objections to Claims, (b) to settle, compromise, or Allow any Claim or Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court, (c) to amend the Schedules in accordance with the Bankruptcy Code; *provided, however*, that the Liquidating Trustee shall not, without an Order of the Bankruptcy Court, amend the Schedules to mark as contingent any Claim of an employee, officer or director

of the Debtor, and (d) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court. Any agreement entered into by the Liquidating Trustee (acting in accordance with the terms of the Liquidating Trust Agreement) on behalf of the Liquidating Trust with respect to the Allowance of any Claim shall be conclusive evidence and a final determination of the Allowance of such Claim, *provided, however*, that the United States Trustee for the District of Delaware's rights to object to Administrative Claims and Professional Fee Claims are reserved.

11.2 Claims Objections. All objections to Claims (other than Professional Fee Claims) shall be Filed by the Liquidating Trustee on or before the Claims Objection Deadline, which date may be extended by the Bankruptcy Court upon a motion filed by the Liquidating Trustee on or before the Claims Objection Deadline with notice only to those parties entitled to notice in the Chapter 11 Case pursuant to Bankruptcy Rule 2002 as of the filing of such motion. If a timely objection has not been Filed to a proof of Claim or the Schedules have not been amended with respect to a Claim that was scheduled by the Debtor but was not set forth in the Schedules by the Debtor as contingent, unliquidated, or disputed, then the Claim to which the proof of Claim or the Claim set forth in the Schedules relates will be treated as an Allowed Claim.

11.3 Estimation of Contingent or Unliquidated Claims. Except as specifically provided for in the Liquidating Trust Agreement, the Liquidating Trustee may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to Bankruptcy Code section 502(c), regardless of whether the Debtor has previously 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 Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event the Bankruptcy Court so estimates any contingent or unliquidated Claim, that estimated amount shall constitute the Allowed amount of such Claim. All of the aforementioned Claims objection, estimation, and resolution procedures are cumulative and are not necessarily exclusive of one another.

11.4 Distributions on Account of Disputed Claims. Distributions may be made on account of an undisputed portion of a Disputed Claim. The Liquidating Trustee shall, on the applicable distribution date, make Distributions on account of any Disputed Claim (or portion thereof) that has become an Allowed Claim. Such Distributions shall be based upon the Distributions that would have been made to the Holder of such Claim under the Plan if such Claim had been an Allowed Claim on the Effective Date in the amount ultimately Allowed.

11.5 Amendments to Claims. On or after the Effective Date, a Claim may not be filed or amended to increase liability or to assert new liabilities without the prior authorization of the Bankruptcy Court or the Liquidating Trustee, and any such new or amended Claim filed without prior authorization shall be deemed Disallowed in full without any further action.

11.6 Claims Paid and Payable by Third Parties. A Claim shall be Disallowed without an Objection thereto having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not the Debtor or the Liquidating Trust. Distributions under the Plan shall be made on account of any Allowed Claim that is payable

pursuant to one of the Insurance Contract(s) solely up to the amount of the portion of such Allowed Claim that is (i) within the self-insured retention under such Insurance Contract(s) and/or (ii) in excess of any aggregate limits under such Insurance Contract(s). No Entity shall have any other recourse against the Debtor, the Estate, the Liquidating Trust, or any of their respective properties or assets on account of a self-insured retention under an Insurance Contract; *provided, however*, that, except as otherwise required under the applicable Insurance Contracts and applicable non-bankruptcy law, an Insurer shall not be obligated to pay amounts within any self-insured retention or other self-insured layer.

11.7 Adjustment to Claims Without Objection. Any Claim that has been paid or otherwise satisfied may be designated on the Claims Register as such at the direction of the Liquidating Trustee by the Filing of a Notice of Satisfaction by the Liquidating Trustee, and without any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE XII

EXECUTORY CONTRACTS

12.1 Executory Contracts Deemed Rejected. On the Effective Date, all Executory Contracts, other than the Purchased Assets, are hereby deemed rejected as of the Effective Date in accordance with, and subject to, the provisions and requirements of Bankruptcy Code sections 365 and 1123, except to the extent: (a) the Debtor previously has assumed, assumed and assigned or rejected such Executory Contract, or (b) prior to the Effective Date, the Debtor has Filed a motion to assume, assume and assign, or reject an Executory Contract on which the Bankruptcy Court has not ruled. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of all rejections of Executory Contracts pursuant to this Article and Bankruptcy Code sections 365(a) and 1123.

If the rejection by the Debtor, under this combined Disclosure Statement and Plan, of an Executory Contract gives rise to a Claim for rejection damages in accordance with section 502(g) of the Bankruptcy Code (a “Rejection Damages Claim”), a proof of Claim must be filed in accordance with the procedures set forth in the Bar Date Order with respect to Rejection Damages Claims by the Rejection Damages Claim Bar Date.

12.2 Asset Purchase Agreement and Related Agreements. To the extent executory, any asset purchase agreement, transition service agreements, and any other agreements between the Debtor and the Purchaser related to the Sale are hereby be deemed assumed.

ARTICLE XIII

CONFIRMATION AND CONSUMMATION OF THE PLAN

13.1 Conditions Precedent to the Effective Date. Each of the following is a condition precedent to the occurrence of the Effective Date:

(a) the Confirmation Order shall have become a Final Order in full force and effect with no stay thereof then in effect;

(b) all actions, documents, and agreements necessary to implement this combined Disclosure Statement and Plan, including, without limitation, all actions, documents, and

agreements necessary to implement any transactions contemplated under this combined Disclosure Statement and Plan, including the Liquidating Trust Agreement, shall have been effectuated or executed;

(c) the absence of any pending or threatened government action or any law that has the effect of or actually does prevent Consummation of any transaction contemplated under this combined Disclosure Statement and Plan;

(d) the Liquidating Trust shall have been established and the Liquidating Trust Assets shall have been transferred to and vested in the Liquidating Trust free and clear of all Claims and Interests, except as specifically provided in the Plan, the Confirmation Order, and the Liquidating Trust Agreement; and

(e) the Disputed Claim Reserve and Liquidating Trust Operating Reserve shall have been established and funded at the discretion of the Liquidating Trustee and in accordance with the terms of this combined Disclosure Statement and Plan.

13.2 Notice of Effective Date. On or before five (5) Business Days after the Effective Date, the Debtor or the Liquidating Trustee shall mail or cause to be mailed to all Holders of Claims a notice that informs such Entities of (a) the occurrence of the Effective Date, (b) notice of the Final Administrative Claim Bar Date, the Rejection Damages Claim Bar Date and Professional Fee Claim Bar Date, and (c) such other matters as the Debtor, in consultation with the Liquidating Trustee or the Liquidating Trustee alone, if after the Effective Date, deems appropriate or as may be ordered by the Bankruptcy Court.

13.3 Waiver of Conditions Precedent to the Effective Date. With the consent of the Committee, the Debtor may at any time, without notice or authorization of the Bankruptcy Court, waive in writing any or all of the conditions precedent to the Effective Date set forth in this Article, whereupon the Effective Date shall occur without further action by any Entity, *provided, however*, that (i) the condition specified in section 13.1(a) may not be waived. The Debtor reserves the right to assert that any appeal from the Confirmation Order shall be moot after the Effective Date of the Plan.

13.4 Effect of Non-Occurrence of Effective Date. If each of the conditions specified in this Article have not been satisfied or waived in the manner provided herein within ninety (90) calendar days after the Confirmation Date (or such later date as may be agreed to by the Debtor and the Committee), then: (i) the Confirmation Order shall be vacated and of no further force or effect; (ii) no Distributions under the Plan shall be made; (iii) the Debtor and all Holders of Claims against or Interests in the Debtor shall be restored to the status quo as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred; and (iv) all of the Debtor's obligations with respect to Claims and Interests shall remain unaffected by the Plan and nothing contained herein shall be deemed to constitute a waiver or release of any Claims by or against the Debtor or any other Entity or to prejudice in any manner the rights of the Debtor or any Entity in any further proceedings involving the Debtor, and the Plan shall be deemed withdrawn. Upon such occurrence, the Debtor shall File a written notification with the Bankruptcy Court and serve it upon such parties as the Bankruptcy Court may direct.

ARTICLE XIV
EFFECTS OF CONFIRMATION

14.1 Exculpation, Releases, and Injunctions

Nothing contained in Section 14.1 of the Plan shall prohibit the Holder of a Claim from litigating its right to seek to have such Claim declared an Allowed Claim and paid in accordance with the Distribution provisions of the Plan, or enjoin or prohibit the enforcement by the Holder of such Claim of any of the obligations of the Liquidating Trustee under the Plan. The exculpations, releases, and injunctions provided for in Section 14.1 of the Plan shall be effective upon the Effective Date.

(a) **Exculpation and Limitation of Liability.** Notwithstanding any other provision of the Plan, the Exculpated Parties shall not have or incur any liability to, or be subject to any right of action by, any Holder of a Claim or an Interest, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or agents acting in such capacity, or Affiliates, or any of their successors or assigns, for any act or omission occurring on or after the Petition Date and before the Effective Date relating to, in any way, or arising from (i) the Chapter 11 Case, (ii) formulating, negotiating or implementing the combined Disclosure Statement and Plan or any contract, instrument, release or other agreement or document created or entered into in connection with the combined Disclosure Statement and Plan; (iii) the Sale; (iv) any other postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring, sale or liquidation of the Debtor; (v) the solicitation of acceptances of the Plan, the pursuit of confirmation of the Plan, the Confirmation of the Plan, the Consummation of the Plan or (vi) the administration of the Plan or the property to be distributed under the Plan, except for their gross negligence or willful misconduct as determined by a Final Order, and in all respects shall be entitled to reasonably rely upon the advice of counsel and other retained professionals with respect to their duties and responsibilities under the Plan. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations and any other applicable law or rules protecting the Exculpated Parties from liability. The Confirmation Order shall serve as a permanent injunction against any Entity seeking to enforce any claim or cause of action against the Exculpated Parties that has been exculpated pursuant to Section 14.1(a) of the Plan.

(b) **Releases by the Debtor.** Except as otherwise expressly provided in the Plan or the Confirmation Order, on the Effective Date, for good and valuable consideration, the Debtor, on its own behalf and as a representative of the Estate, to the fullest extent permitted under applicable law, shall, and shall be deemed to, completely and forever release, waive, void, extinguish and discharge unconditionally, each and all of the Released Parties of and from any and all Claims, Causes of Action, interests, obligations, suits, judgments, damages, debts, rights, remedies, set offs, and liabilities of any nature whatsoever, whether liquidated or unliquidated, fixed or Contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, tort, contract, or otherwise, that are or may be based in whole or part on any act, omission, transaction, event, occurrence, or other circumstance, whether direct or derivative, taking place or existing on or prior to the Effective Date (including prior to the Petition Date) in connection with or

related to the Debtor or its operations, its Assets, the Estate, or the Chapter 11 Case, that may be asserted by or on behalf of the Debtor or its Estate, against any of the Released Parties.

(c) **Consensual Third-Party Releases by Holders of Claims and Interests.** As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Releasing Parties shall be deemed to forever release, waive and discharge the Released Parties of all claims, obligations, suits, judgments, damages, demands, debts, rights, remedies, causes of action and liabilities of any nature whatsoever in connection with or related to the Debtor, the Chapter 11 Case, or the combined Disclosure Statement and Plan, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or hereafter arising, in law, equity, or otherwise that are or may be based in whole or in part upon any act, omission, transaction, event, or other occurrence taking place or existing on or prior to the Effective Date (other than the rights of Holders of Allowed Claims to enforce the obligations under the Confirmation Order and the Plan); *provided, however*, that nothing in this section shall operate as a release, waiver or discharge of any causes of action or liabilities arising out of gross negligence, willful misconduct, fraud, or criminal acts of any such Released Party as determined by a Final Order.

(d) **Non-Discharge of the Debtor; Injunction.** In accordance with Bankruptcy Code section 1141(d)(3), the Plan does not discharge the Debtor. Bankruptcy Code section 1141(c) nevertheless provides, among other things, that the property dealt with by the Plan is free and clear of all Claims and Interests against the Debtor. As such, no Entity holding a Claim against the Debtor may receive any payment from, or seek recourse against, any assets that are to be distributed under the Plan other than assets required to be distributed to that Entity under the Plan. Distributions to any such Holder of any such Claim shall be as expressly set forth in the Plan. All parties are precluded from asserting against any property to be distributed under the Plan any Claims, rights, Causes of Action, liabilities, or Interests based upon any act, omission, transaction, or other activity that occurred before the Effective Date except as expressly provided in the Plan or the Confirmation Order.

Except as otherwise expressly provided for in the Plan or in obligations issued pursuant to the Plan, all Entities are permanently enjoined, on and after the Effective Date, on account of any Claim or Interest, from:

- (1) commencing or continuing in any manner any action or other proceeding of any kind against any of the Estate, the Liquidating Trust, their successors and assigns, and any of their assets and properties;
- (2) enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against the Estate, the Liquidating Trust, their successors and assigns, and any of their assets and properties;
- (3) creating, perfecting or enforcing any encumbrance of any kind against the Estate, the Liquidating Trust, their successors and assigns, and any of their assets and properties;

- (4) asserting any right of setoff or subrogation of any kind against any obligation due from the Estate, the Liquidating Trust or their successors and assigns, or against any of their assets and properties, except to the extent a right to setoff or subrogation is asserted with respect to a timely filed proof of Claim; or
- (5) commencing or continuing in any manner any action or other proceeding of any kind in respect of any Claim or Interest or Cause of Action released under Article XIV of the Plan.

Any Entity injured by any willful violation of such injunction may seek actual damages and, in appropriate circumstances, may seek punitive damages from the willful violator.

14.2 Waiver of Statutory Limitations on Releases. Each Entity providing the releases set forth in Section 14.1 above expressly acknowledges that although ordinarily a general release may not extend to Claims or causes of action that the Releasing Party does not know or suspect to exist in its favor, which if known by it may have materially affected its settlement with the party released, they have carefully considered and taken into account in determining to enter into the above releases the possible existence of such unknown losses or claims. Without limiting the generality of the foregoing, each Releasing Party expressly waives any and all rights conferred upon it by any statute or rule of law which provides that a release does not extend to claims which the claimant does not know or suspect to exist in its favor at the time of providing the release, which if known by it may have materially affected its settlement with the Released Party. The releases contained in this combined Disclosure Statement and Plan are effective regardless of whether those released matters are presently known, unknown, suspected or unsuspected, foreseen or unforeseen.

14.3 Term of Bankruptcy Injunction or Stays. All injunctions or stays provided for in the Chapter 11 Case under Bankruptcy Code sections 105 or 362, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the closing of the Chapter 11 Case.

14.4 U.S. Securities and Exchange Commission. Notwithstanding any language to the contrary contained in this combined Disclosure Statement and Plan and/or the Confirmation Order, no provision contained herein or therein shall (i) preclude the U.S. Securities and Exchange Commission (the “SEC”) from enforcing its police or regulatory powers; or (ii) enjoin, limit, impair or delay the SEC from commencing or continuing any claims, causes of action, proceedings or investigations against any nondebtor person or nondebtor entity in any forum.

ARTICLE XV

RETENTION OF JURISDICTION

15.1 Exclusive Jurisdiction of Bankruptcy Court. Pursuant to Bankruptcy Code sections 105(a) and 1142, and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Case and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

(a) allow, disallow, determine, subordinate, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest (whether filed before or after the Effective Date and whether or not Contingent, Disputed or unliquidated or for contribution, indemnification or reimbursement), including the compromise, settlement and resolution of any request for payment of any Claims or Interests, the resolution of any Objections to the allowance or priority of Claims or Interests and to hear and determine any other issue presented hereby or arising hereunder, including during the pendency of any appeal relating to any Objection to such Claim or Interest to the extent permitted under applicable law;

(b) grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the Effective Date;

(c) hear and determine any and all adversary proceedings, motions, applications, and contested or litigated matters, including, but not limited to, all Retained Causes of Action, and consider and act upon the compromise and settlement of any Claim or Interest, or Retained Cause of Action;

(d) determine and resolve any matters related to the assumption, assumption and assignment or rejection of any Executory Contract to which the Debtor is a party or with respect to which the Debtor may be liable, and to hear, determine and, if necessary, liquidate any Claims arising therefrom;

(e) ensure that all Distributions to Holders of Allowed Claims under the Plan and the performance of the provisions of the Plan are accomplished as provided herein and resolve any issues relating to Distributions to Holders of Allowed Claims pursuant to the provisions of the Plan;

(f) construe, take any action and issue such orders, prior to and following the Confirmation Date and consistent with Bankruptcy Code section 1142, as may be necessary for the enforcement, implementation, execution and Consummation of the Plan and all contracts, instruments, releases, other agreements or documents created in connection with the Plan, including, without limitation, the Disclosure Statement and the Confirmation Order, for the maintenance of the integrity of the Plan in accordance with Bankruptcy Code sections 524 and 1141 following the occurrence of the Effective Date;

(g) determine and resolve any cases, controversies, suits or disputes that may arise in connection with the Consummation, interpretation, implementation or enforcement of the Plan (and all exhibits and schedules to the Plan) or the Confirmation Order, including the releases and injunction provisions set forth in and contemplated by the Plan or the Confirmation Order, or any entity's rights arising under or obligations incurred in connection therewith;

(h) modify the combined Disclosure Statement and Plan or the Confirmation Order before or after the Effective Date, pursuant to Bankruptcy Code section 1127, as well as any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the

Confirmation Order or any contract, instrument, release, or other agreement or document created in connection with the combined Disclosure Statement and Plan or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan, to the extent authorized by the Bankruptcy Code and the Plan;

(i) 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 Consummation, implementation or enforcement of the Plan or the Confirmation Order;

(j) enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;

(k) determine any other matters that may arise in connection with or relating to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, or other agreement or document created in connection with the combined Disclosure Statement and Plan or the Confirmation Order;

(l) determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(m) hear and determine matters concerning state, local and federal taxes in accordance with Bankruptcy Code sections 346, 505 and 1146;

(n) enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Case;

(o) determine and resolve controversies related to the Estate, the Debtor, or the Liquidating Trust from and after the Effective Date;

(p) hear and determine any other matter relating to the combined Disclosure Statement and Plan; and

(q) enter a final decree closing the Chapter 11 Case.

ARTICLE XVI

MISCELLANEOUS PROVISIONS

16.1 Modification of the Plan. The Debtor, with the prior written consent of the Committee, may alter, amend, or modify the Plan or any exhibits or schedules hereto under Bankruptcy Code section 1127(a) at any time prior to or after the Confirmation Date but prior to the substantial Consummation of the Plan, *provided, however*, that any such alteration, amendment or modification does not materially and adversely affect the treatment of Holders of Claims or Interests under the Plan. Any Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, or modified, if the proposed alteration, amendment, or modification does not materially and adversely change the treatment of the Claim of such Holder.

16.2 Revocation, Withdrawal, or Non-Confirmation of the Plan. The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Hearing. If the Plan is revoked or withdrawn prior to the Confirmation Hearing, or if the Plan is not confirmed by the Bankruptcy Court, then:

(a) the Plan shall be null and void in all respects, and

(b) nothing contained in the combined Disclosure Statement and Plan shall (i) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtor or any other Entity, (ii) prejudice in any manner the rights of the Debtor or any other Entity, or (iii) constitute an admission of any sort by the Debtor or any other Entity.

16.3 Binding Effect. Except as otherwise provided in Bankruptcy Code section 1141(d)(3) and subject to the occurrence of the Effective Date, on and after the Confirmation Date, the provisions of the Plan shall bind any Holder of a Claim against, or Interest in, the Debtor and such Holder's respective successors and assigns, whether or not the Claim or Interest of such Holder is Impaired under the Plan and whether or not such Holder has accepted the Plan.

16.4 Subordination Rights. The classification and manner of satisfying all Claims and the respective Distributions and treatments hereunder take into account and/or conform to the relative priority and rights of the Claims in each Class in connection with the contractual, legal and equitable subordination rights relating thereto, whether arising under contract, general principles of equitable subordination, Bankruptcy Code section 510(b) or otherwise. All subordination rights that a Holder of a Claim may have with respect to any Distribution to be made under the Plan shall be implemented through the Plan, and all actions by such Holder of a Claim related to the enforcement of such subordination rights shall be enjoined permanently. The provisions of any contractual or structural subordination of Claims shall remain enforceable by the Liquidating Trustee on behalf of the Estate after the occurrence of the Effective Date. Without limitation hereunder, the Liquidating Trustee, on behalf of the Estate, may likewise enforce any right of the Debtor or the Estate to equitably or otherwise subordinate Claims under Bankruptcy Code section 510, which rights are deemed transferred to, remain and are preserved in the Liquidating Trust, except as otherwise expressly set forth herein or as expressly provided in a Final Order of the Bankruptcy Court in the Chapter 11 Case.

16.5 Severability of Plan Provisions. If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, at the request of the Debtor, 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 shall remain in full force and effect and shall 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 be altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

16.6 Payment of Statutory Fees; Filing of Quarterly Reports. Notwithstanding any other provision of this Plan to the contrary, all U.S. Trustee Fees then due and owing, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid in full in Cash on or before the Effective Date. On and after the Effective Date, the Liquidating Trust shall file with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the U.S. Trustee for the Debtor until the Chapter 11 Case is closed, dismissed, or converted. All U.S. Trustee Fees that arise after the Effective Date shall be paid by the Liquidating Trust in full in Cash when due. The Liquidating Trust shall have the obligation to pay U.S. Trustee Fees pursuant to United States Code title 28 section 1930 for the Debtor until the Chapter 11 Case is closed, dismissed, or converted. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of Claim with respect to U.S. Trustee Fees.

16.7 Dissolution of the Committee. The Committee shall dissolve on the Effective Date and the members of such Committee shall be released and discharged from all further rights and duties arising from or related to the Chapter 11 Case, except with respect to, and to the extent of any applications for Professional Fee Claims or expense reimbursements for members of such Committee. The Committee and its retained Professionals may also participate in any appeal pending as of the Effective Date or filed thereafter, the outcome of which could affect the treatment of prepetition unsecured creditors (including Holders of Allowed Priority Claims and 503(b)(9) 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 that could affect the treatment of prepetition unsecured creditors. The Professionals retained by the Committee shall not be entitled to assert any Administrative Claims nor shall they have an Allowed Administrative Claims for any services rendered or expenses incurred after the Effective Date except in respect of the preparation and prosecution of any Filed fee application and participation in any appeals.

16.8 Exemption from Section 1146. Pursuant to Bankruptcy Code section 1146(a), under the Plan, (i) the issuance, distribution, transfer or exchange of any debt, equity security or other interest in the Debtor; or (ii) the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be taxed under any law imposing a stamp tax or similar tax. To the maximum extent permitted pursuant to Bankruptcy Code section 1146(a), any transfers of property pursuant hereto (including to the Liquidating Trust and by the Liquidating Trustee pursuant to the Liquidating Trust Agreement) 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, sales or use 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 any of the foregoing instruments or other documents pursuant to such transfers of property without the payment of any such tax, recordation fee, or governmental assessment. All subsequent issuances, transfers or exchanges of securities, or the making or delivery of any instrument of transfer by the Debtor in the Chapter 11 Case or by the Liquidating Trustee shall be deemed to be or have been done in furtherance of the Plan.

16.9 Closing of Chapter 11 Case; Caption Change. As of the Effective Date, the Liquidating Trustee may submit separate orders to the Bankruptcy Court under certification of counsel changing the caption of the Chapter 11 Case. Nothing in the Plan shall authorize the closing of any case *nunc pro tunc* to a date that precedes the date any such order is entered. Any request for *nunc pro tunc* relief shall be made on motion served on the United States Trustee, and the Bankruptcy Court shall rule on such request after notice and a hearing. Upon the Filing of a motion to close the Chapter 11 Case, the Liquidating Trustee shall file a final report pursuant to Local Rule 3022-1(c).

16.10 Filing of Additional Documents. On or before the Effective Date of the Plan, the Debtor may issue, execute, deliver, and File with the Bankruptcy Court or record any agreements and other documents, and take any action as may be necessary or appropriate to effectuate, consummate and further evidence the terms and conditions of the Plan, in each case, in consultation with the Committee in advance of any such issuance, execution, delivery, Filing, recording, or taking any such action.

16.11 Insurance. Nothing in this combined Disclosure Statement and Plan, the Confirmation Order, or the Liquidating Trust Agreement alters the rights and obligations of the Debtor (and its Estate) and the Insurers (and third-party claims administrators) under any Insurance Contracts or modifies the coverage or benefits provided thereunder or the terms and conditions thereof or diminishes or impairs the enforceability of the Insurance Contracts. All of the Debtor's and/or Estate's benefits, rights, interests and proceeds under any Insurance Contract to which the Debtor and/or the Estate may be insureds or beneficiaries shall vest with the Liquidating Trust for the benefit of the Beneficiaries and all of the beneficiaries of such policies.

16.12 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 of such Entity.

16.13 Governing Law. Except to the extent that the Bankruptcy Code or Bankruptcy Rules or other federal laws is applicable, and subject to the provisions of any contract, instrument, release, or other agreement or document entered into in connection with the Plan, the construction, implementation and enforcement of the Plan and all rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to conflicts of law principles which would apply the law of a jurisdiction other than the State of Delaware or the United States of America.

16.14 Exhibits and Schedules. All exhibits and schedules annexed hereto, and all documents submitted in support hereof, are incorporated into and are a part of the Plan as if set forth in full herein. Holders of Claims or Interests may obtain copies of the Filed exhibits and schedules upon written request to the Debtor. Upon their Filing, the exhibits and schedules may be inspected in the Office of the Clerk of the Bankruptcy Court or its designee during normal business hours. The documents contained in the exhibits and schedules shall be approved by the Bankruptcy Court pursuant to the Confirmation Order. To the extent any exhibit or schedule annexed hereto is inconsistent with the Plan, the contents of the Plan shall control.

16.15 Computation of Time. In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

16.16 Reservation of Rights. The Filing of the combined Disclosure Statement and Plan, any statement or provision contained in the combined Disclosure Statement and Plan, or the taking of any action by the Debtor with respect to the Plan shall not be, and shall not be deemed to be, an admission or waiver of any rights of the Debtor with respect to the Holders of Claims or Interests.

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Dated: October 2, 2020

PROTEUS DIGITAL HEALTH, INC.

/s/ Lawrence R. Perkins

By: Lawrence R. Perkins

Title: Interim Chief Executive Officer

EXHIBIT B

Effective Date Notice

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

	X	
	:	
In re:	:	Chapter 11
	:	
PROTEUS DIGITAL HEALTH, INC.,	:	Case No. 20-11580 (BLS)
	:	
Debtor. ⁵	:	Re: Docket Nos. 297, ____
	:	
	X	

**NOTICE OF (I) ENTRY OF CONFIRMATION ORDER; (II) OCCURRENCE OF
EFFECTIVE DATE; AND (III) RELATED BAR DATES**

PLEASE TAKE NOTICE THAT:

1. On November __, 2020, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered the *Findings of Fact, Conclusions of Law and Order Approving and Confirming the First Amended Combined Disclosure Statement and Chapter 11 Plan of Liquidation Dated October 2, 2020 Proposed by Proteus Digital Health, Inc.* [Docket No. __] (the “Confirmation Order”).⁶

2. On _____, 2020, all conditions precedent to the Effective Date of the Plan were satisfied or waived in accordance with the Plan. Accordingly, _____, 2020 is the Effective Date of the Plan.

3. The Plan and its provisions, including the exculpation, release and injunction provisions, are binding on the (i) the Debtor; (ii) the Liquidating Trust; (iii) the Purchaser; (iv) any and all Holders of Claims or Interests (irrespective of whether any of such Claims or Interests are Impaired under the Plan or whether the Holders of such Claims or Interests accepted, rejected or are deemed to have accepted or rejected the Plan, or whether such Holders filed a proof of claim or interest); (v) any other Entity giving, acquiring or receiving property under the Plan; (vi) any and all non-Debtor Parties to any Executory Contract; (vii) the Liquidating Trustee, in its capacity as such; and (viii) the respective Affiliates, officers, directors, agents, representatives, attorneys, successors or assigns, if any, of any of the foregoing.

4. In accordance with the Confirmation Order, except with respect to the Post-Effective Date Rejected Contracts (as defined in the Plan Supplement),⁷ all Executory Contracts of the Debtor, other than the Assigned Contracts that were assumed and assigned to the

⁵ The Liquidating Trust’s mailing address is Proteus Liquidating Trust, c/o Dundon Advisers LLC, 440 Mamaroneck Avenue, Suite 507, Harrison, NY 10528.

⁶ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Confirmation Order.

⁷ A list of the Post-Effective Date Rejected Contracts is contained in the Plan Supplement. See Docket No. 343.

Purchaser,⁸ are deemed rejected as of the Effective Date, except to the extent: (a) the Debtor previously has assumed, assumed and assigned or rejected such Executory Contract, or (b) prior to the Effective Date, the Debtor has filed a motion to assume, assume and assign, or reject an Executory Contract on which the Court has not ruled. The Post-Effective Date Rejected Contracts will be rejected effective as of _____, 2021 (*i.e.*, the 91st day following the Effective Date).

5. If the rejection by the Debtor, under the Plan, of an Executory Contract gives rise to a Claim for rejection damages in accordance with section 502(g) of the Bankruptcy Code (a "Rejection Damages Claim"), a proof of Claim must be filed in accordance with the procedures set forth in the Bar Date Order⁹ with respect to Rejection Damages Claims by _____, 2020 or, solely with respect to the Post-Effective Date Rejected Contracts, _____, 2021 (such date, as applicable, the "Rejection Damages Claim Bar Date"). **Absent further Court order, any Rejection Damages Claim not filed by the Rejection Damages Claim Bar Date in accordance with the procedures set forth in the Bar Date Order with respect to Rejection Damages Claims shall be deemed waived and the Holder of such Rejection Damages Claim shall be forever barred from receiving payment on account thereof.**

6. Holders of Administrative Claims, other than 503(b)(9) Claims,¹⁰ Initial Administrative Claims¹¹ and Professional Fee Claims, accruing through and including the Effective Date ("Final Administrative Claims"), shall file with the Court and serve on counsel to the Debtor and counsel to the Liquidating Trust requests for payment, in writing, together with supporting documents, substantially complying with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, so as to actually be received **on or before** _____, 2021 (the "Final Administrative Claim Bar Date"). **Absent further Court order, any Final Administrative Claim not filed by the Final Administrative Claim Bar Date shall be deemed waived and the Holder of such Final Administrative Claim shall be forever barred from receiving payment on account thereof.**

7. All applications for allowance and payment of Professional Fee Claims shall be filed **on or before** _____, 2021 (the "Professional Fee Claims Bar Date"). **If an application for a Professional Fee Claim is not filed by the Professional Fee Claims Bar Date, such Professional Fee Claim shall be deemed waived and the Holder of such Claim shall be forever barred from receiving payment on account thereof.**

8. Copies of the Confirmation Order, Combined Disclosure Statement and Plan and all other documents filed with the Court are available free of charge on the Debtor's case information website maintained by the Debtor's claims and noticing agent, located at <http://www.kccllc.net/proteus> or can be requested by e-mail at ProteusInfo@kccllc.com, or by calling the toll-free information line at (866) 967-1788 or, if calling from outside the United States or Canada, at (310) 751-2688.

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⁸ A list of the Assigned Contracts that were assumed and assigned to the Purchaser can be found at Docket No. 354.

⁹ The Bar Date Order can be found at Docket No. 179.

¹⁰ All 503(b)(9) Claims are subject to the General Bar Date (as defined in the Bar Date Order).

¹¹ All Initial Administrative Claims are subject to the Initial Administrative Claim Bar Date.

Dated: _____, 2020
Wilmington, Delaware

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