

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

In re: )  
 ) Chapter 11  
NOVAN, INC., *et al.*,<sup>1</sup> )  
 ) Case No. 23-10937 (LSS)  
 Debtors. )  
 ) (Jointly Administered)  
 )  
 ) **Re: D.I. 20, 164**  
 )  
\_\_\_\_\_ )

**NOTICE OF FILING OF REVISED ORDER (I) APPROVING  
DEBTORS’ KEY EMPLOYEE INCENTIVE PROGRAM  
AND (II) GRANTING CERTAIN RELATED RELIEF**

**PLEASE TAKE NOTICE** that, on July 17, 2023 (the “Petition Date”), the above-captioned debtors and debtors in possession (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”), commencing these chapter 11 cases.

**PLEASE TAKE NOTICE** that on the Petition Date, the Debtors filed the *Debtors’ Motion for Entry of an Order (I) Approving Debtors’ Key Employee Incentive Program and (II) Granting Certain Related Relief* (D.I. 20) (the “Motion”). Attached to the Motion as Exhibit A was a proposed form of order granting the relief requested in the Motion (the “Proposed Order”). The Motion was noticed with an objection deadline of August 9, 2023, at 4:00 p.m. (ET). The objection deadline was later extended to August 15, 2023, only in regards to the Office of the United States Trustee (the “U.S. Trustee”) (the “U.S. Trustee Objection Deadline”), and August 16, 2023, (the “Committee Objection Deadline”) only in regards to the Official Committee of Unsecured Creditors (the “Committee”).

**PLEASE TAKE FURTHER NOTICE** that prior to the U.S. Trustee Objection Deadline, the U.S. Trustee filed *The United States Trustee’s Objection to Debtors’ Motion for Entry of an Order (I) Approving Debtors’ Key Employee Incentive Program and (II) Granting Certain Related Relief* (the “Objection”) [D.I. 164]. In addition, prior to the Committee Objection Deadline, the Committee provided informal comments to the Debtors regarding the Motion.

**PLEASE TAKE FURTHER NOTICE** that the Debtors and counsel to the Committee have been in active good faith discussions. As a result of these extensive discussions, the Debtors have made certain revisions to the Proposed Order as reflected in the revised proposed

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digitals of the Debtors’ federal tax identification number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.



form of order attached hereto as **Exhibit A** (the “Revised Proposed Order”) that resolves the informal comments of the Committee. In addition, the Debtors are hopeful that the Revised Proposed Order resolves the Objection.

**PLEASE TAKE FURTHER NOTICE** that attached hereto as **Exhibit B** is a blackline comparing the Revised Proposed Order against the Proposed Order.

**PLEASE TAKE FURTHER NOTICE** that the Debtors will seek entry of the Revised Proposed Order at the hearing scheduled for **August 21, 2023, at 10:00 a.m. (ET)**.

Dated: August 18, 2023  
Wilmington, Delaware

Respectfully submitted,

*/s/ Scott D. Jones*

**MORRIS, NICHOLS, ARSHT & TUNNEL**

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*Proposed Counsel to the Debtors and Debtors  
in Possession*

**Exhibit A**  
Revised Proposed Order

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

In re: )  
 ) Chapter 11  
NOVAN, INC., *et al.*,<sup>1</sup> )  
 ) Case No. 23-10937 (LSS)  
 Debtors. )  
 ) (Joint Administration Requested)  
 )  
 ) **Re D.I. 20**  
 )  
 )  
 )

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**ORDER (I) APPROVING DEBTORS' KEY EMPLOYEE  
INCENTIVE PROGRAM AND (II) GRANTING CERTAIN RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of the Debtors for entry of an order (this "Order"), pursuant to Sections 105(a), 363(b) and 503(c) of the Bankruptcy Code, authorizing and approving the Debtors' KEIP, as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing were appropriate under the circumstances and no other notice need be provided; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing; and this Court having determined that the legal and factual bases set forth in the Motion and at a hearing

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Motion.

establish just cause for the relief granted herein; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and upon all of the proceedings had before this Court, and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The KEIP is approved on the terms described in this Order.
3. The KEIP Participants will earn 20% of their KEIP Payment for each \$1 million in aggregate sale proceeds collected above the Stalking Horse Bid of \$15 million in connection with the sale of all or a portion of the Debtors' assets, including the R&D Assets and the Commercial Assets, up to 100% of their KEIP Payment if such aggregate sale proceeds equal \$20 million.
4. The Debtors are authorized to take all actions necessary to implement the KEIP on the terms and conditions set forth in this Order in the ordinary course, including, but not limited to, making payments pursuant to the terms of the KEIP.
5. All amounts earned and payable under the KEIP shall have administrative expense priority under sections 105(a), 503(b), and 507(a)(2) of the Bankruptcy Code for all purposes in these Chapter 11 Cases and in any other case under the Bankruptcy Code to which these Chapter 11 Cases may be converted.
6. The Debtors are authorized, but not directed, to continue payments under their usual severance policies and practices to the KEIP Participants, subject to the limitations of section 503(c) of the Bankruptcy Code.
7. The Debtors are authorized and empowered to take all actions necessary or appropriate to implement the relief granted in this Order.

8. The terms and conditions of this Order shall be immediately effective and enforceable upon entry.

9. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Order.

**Exhibit B**  
Blackline

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|  
Exhibit A

**Proposed Order**



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

In re: )  
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NOVAN, INC., *et al.*,<sup>1</sup> )  
 ) Case No. 23-10937 (LSS)  
 Debtors. )  
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Upon the motion (the “Motion”)<sup>2</sup> of the Debtors for entry of an order (this “Order”), pursuant to Sections 105(a), 363(b) and 503(c) of the Bankruptcy Code, authorizing and approving the Debtors’ KEIP, as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing were appropriate under the circumstances and no other notice need be provided; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing; and this Court having determined that the legal and factual bases set forth in the Motion and at a hearing establish just cause for the relief granted herein; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and upon all of the proceedings had before this Court, and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The KEIP is approved on the terms described in ~~the Motion~~this Order.
3. The KEIP Participants will earn 20% of their KEIP Payment for each \$1 million in aggregate sale proceeds collected above the Stalking Horse Bid of \$15 million in connection with the sale of all or a portion of the Debtors’ assets, including the R&D Assets and

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Motion.

the Commercial Assets, up to 100% of their KEIP Payment if such aggregate sale proceeds equal \$20 million.

4. ~~3.~~ The Debtors are authorized to take all actions necessary to implement the KEIP on the terms and conditions set forth in ~~the Motion or~~ this Order in the ordinary course, including, but not limited to, making payments pursuant to the terms of the KEIP.

5. ~~4.~~ All amounts earned and payable under the KEIP shall have administrative expense priority under sections 105(a), 503(b), and 507(a)(2) of the Bankruptcy Code for all purposes in these Chapter 11 Cases and in any other case under the Bankruptcy Code to which these Chapter 11 Cases may be converted.

6. ~~5.~~ The Debtors are authorized, but not directed, to continue payments under their usual severance policies and practices to the KEIP Participants, subject to the limitations of section 503(c) of the Bankruptcy Code.

7. ~~6.~~ The Debtors are authorized and empowered to take all actions necessary or appropriate to implement the relief granted in this Order.

8. ~~7.~~ The terms and conditions of this Order shall be immediately effective and enforceable upon entry.

9. ~~8.~~ This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Order.