

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

OREXIGEN THERAPEUTICS, INC.,

Debtor.¹

Chapter 11

Case No. 18-10518 (KG)

MODIFIED PLAN SUPPLEMENT

THIS MODIFIED PLAN SUPPLEMENT IS FILED IN CONNECTION WITH THE DEBTOR'S MODIFIED AMENDED PLAN OF LIQUIDATION DATED MAY 14, 2019.

THIS MODIFIED PLAN SUPPLEMENT, INCLUDING THE AMOUNTS SET FORTH HEREIN AND DOCUMENTS ATTACHED HERETO, ARE SUBJECT TO BEING MODIFIED, AMENDED OR SUPPLEMENTED FROM TIME TO TIME PRIOR TO THE EFFECTIVE DATE. THE DOCUMENTS ATTACHED TO THIS MODIFIED PLAN SUPPLEMENT ARE INTEGRAL TO THE PLAN AND THE DEBTOR WILL SEEK APPROVAL OF THE FORMS OF SUCH DOCUMENTS PURSUANT TO THE CONFIRMATION ORDER.

Wilmington, Delaware
May 14, 2019

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-and -

Counsel for the Debtor and Debtor in Possession

¹ The last four digits of the Debtor's federal tax identification number are 8822. The Debtor's mailing address for purposes of this Chapter 11 Case is Orexigen Therapeutics, Inc. c/o Hogan Lovells US LLP, 390 Madison Avenue, New York, New York 10017. Capitalized terms used, but not otherwise defined, herein shall have the meanings set forth in the Debtor's *Plan of Liquidation*, dated March 27, 2019 [Dkt. No.1007].



I. Identity of the Wind Down Administrator

The Committee has appointed Province, Inc. as the Wind Down Administrator. A copy of the draft Wind Down Entity Agreement is attached as **Exhibit A**. Province, Inc.'s proposed engagement letter is attached hereto as **Exhibit B**.

II. Identities of Members of the Wind Down Committee

The Creditors' Committee has designated the following Persons to serve on the Wind Down Committee:

1. Wilmington Savings Funds Society, FSB
2. McKesson Specialty Health
3. Young & Rubicam, LLC

III. 401(k) Administrator Reserve

To be funded on the Effective Date from Cash on Hand in the amount of \$45,500, which is comprised of the following, and shall constitute the 401(k) Administrator Budget:

1. \$15,000: 401(k) Administrator compensation, to be paid in accordance with the 401(k) Administrator Consulting Agreement the proposed form of which is attached hereto as **Exhibit C**.
2. \$7,500: legal fees
3. \$5,000: broker fees
4. \$13,000: fees and expense for audit
5. \$5,000: expenses for Purchaser support with audit

IV. Lender Litigation Expense Reserve

To be funded on the Effective Date from Cash on Hand in the amount of \$1,000,000. This amount was determined by the Required Prepetition Secured Noteholders, in consultation with the Creditors' Committee, to be sufficient for use by the Wind Down Entity to fund Lender Litigation Expenses.

V. Priority Claim Reserve

To be funded on the Effective Date from Cash on Hand in the amount of \$146,968.

This amount was determined by the Debtor, in consultation with, and with the consent of, the Required Prepetition Secured Noteholders, to make the following distributions:

1. Allowed Administrative Claims: \$75,000
 - a. \$50,000 is earmarked for payment of the administrative claims asserted by Discovery, Inc., Food Network, Home & Garden Television and DIY Network in their motion filed May 6, 2019 [Dkt. No. 1092], to the extent such claims are allowed in whole or part.
2. Allowed Professional Fee Claims: \$71,968
 - a. Hogan Lovells US LLP: \$63,804
 - b. Morris, Nichols, Arsht & Tunnell LLP: \$8,164
3. Allowed Priority Tax Claims: \$0 (will be paid in full on Effective Date)
4. Allowed Claims in Class 1 (Priority Claims): \$0 (will be paid in full on Effective Date)
5. Allowed Claims in Class 2 (Other Secured Claims): \$0 (there are no such Claims)

VI. Wind Down Operating Expense Reserve

To be funded on the Effective Date from Cash on Hand in the amount of \$882,600.

This amount was determined by the Required Prepetition Noteholders to be sufficient for use by the Wind Down Entity to fund the following estimated Wind Down Operating Expenses:

1. Wind Down Administrator fees: \$180,000
2. Costs and expenses incurred by the Wind Down Administrator in administering the Wind Down Entity: \$50,000
3. U.S. Trustee fees: \$252,600
4. Fees and expenses of the Wind Down Advisors: \$200,000
5. U.S. Bank, as Prepetition Secured Notes Indenture Trustee: \$50,000
6. Quinn Emanuel Urquhart & Sullivan, LLP and other counsel for the Required Prepetition Noteholders: \$150,000

VII. Professional Fee Escrow

To be funded on the Effective Date from Cash on Hand in the amount of \$1,590,000. Obligations with respect to Allowed Professional Fee Claims shall not be limited nor deemed limited to the balance of funds held in the Professional Fee Escrow.

This amount is equal to the Professional Fee Claims Estimate as of this date, as determined by the Debtor with the consent of the Required Prepetition Secured Noteholders, and is comprised of the following amounts:

Hogan Lovells US LLP:	\$375,000
Ernst & Young LLP	\$420,000
Morris, Nichols, Arsht & Tunnell LLP	\$112,500
KCC LLC	\$240,000
Landis Roth & Cobb	\$262,500
Irell & Manella LLP	\$150,000
Elliot Greenleaf, P.C.	\$15,000
Berkeley Research Group	\$15,000

VIII. Distribution of Balances

All amounts remaining in the (i) 401(k) Administrator Reserve, (ii) Lender Litigation Expense Reserve, (iii) Priority Claim Reserve, (iv) Wind Down Operating Expense Reserve and (v) Professional Fee Escrow shall be distributed to the Holders of Class 3 Prepetition Secured Noteholder Claims in accordance with the Plan, Wind Down Entity Agreement and Confirmation Order.

IX. Wind Down Entity Documents

- Exhibit A: (Draft) Wind Down Entity Agreement
- Exhibit B: (Proposed) Province, Inc. Engagement Letter
- Exhibit C: (Proposed) 401(k) Administrator Consulting Agreement

EXHIBIT A

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WIND DOWN ENTITY AGREEMENT

This Wind Down Entity Agreement (this “Agreement”) is made this ___ day of May 2019, by and between Orexigen Therapeutics, Inc., a Delaware Corporation (the “Debtor”), and Province, Inc., as the wind down administrator (the “Wind Down Administrator”), and entered into in connection with the Debtor’s Amended Plan of Liquidation, dated March 27, 2019, and filed in the Debtor’s Case [Docket No. 1001] (together with the exhibits thereto, the “Plan”).

RECITALS

WHEREAS, on March 12, 2018, the Debtor filed the Case, Case No. 18-10518;

WHEREAS, the Plan was confirmed by an order of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on May ___, 2019 [Docket No. ___] (together with the exhibits thereto, the “Confirmation Order”);¹

WHEREAS, the Effective Date of the Plan occurred on the date hereof;

WHEREAS, the Plan provides for, on the Effective Date, among other things:

- (a) the creation of a wind down liquidating trust (the “Wind Down Entity”) pursuant to Treasury Regulation Section 301.7701-4(d), and the creation of beneficial interests in the Wind Down Entity for the respective benefit of (i) Holders of Allowed Prepetition Secured Noteholder Claims (the “Class 3 Trust Interests”), (ii) Holders of Allowed General Unsecured Claims (the “Class 4 Trust Interests”) and (iii) Holders of Allowed Prepetition Secured Noteholder Subordinated Deficiency Claims (the “Class 5 Subordinated Trust Interests”, and together with the Class 3 Trust Interests and Class 4 Trust Interests, the “Trust Interests”) (such Holders, the “Beneficiaries”, and, each individually, a “Beneficiary”);
- (b) the appointment of a wind down administrator (the “Wind Down Administrator”);
- (c) the funding of, and vesting in, the Wind Down Entity of:
 - 1. all Wind Down Assets (excluding the Takeda Reconciliation Lender Share), the Plan Settlement Initial Funding Amount, and all Plan Settlement Net Proceeds (collectively, the “Class 4 Trust Assets”) for (i) Beneficiaries of Class 4 Trust Interests and (ii) solely to the extent all Holders of Allowed General Unsecured Claims holding Class 4 Trust Interests have been paid in full, Beneficiaries of Class 5 Subordinated Trust Interests; following the Effective Date, Class 4 Trust Assets shall include all proceeds, products and income thereof and therefrom, including, without limitation, the Plan Settlement Proceeds; *provided, however*, that all Excluded Causes of Action, interests in property abandoned under the

¹ Unless otherwise specified capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Disclosure Statement or the Plan. Section 5.9 of the Plan is incorporated herein as if set forth in its entirety.

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Plan, funds in the Professional Fee Escrow, and the Purchased Assets (as defined in the Asset Purchase Agreement) shall not vest in the Wind Down Entity and shall not constitute Class 4 Trust Assets;

2. all Asset Purchase Agreement Claims, Tax Refunds, the 401(k) Administrator Expense Reserve, the Lender Litigation Expense Reserve, the Wind Down Operating Expense Reserve, the McKesson Reserve (subject to Section 8.3), the Holdback Amounts, and the Takeda Reconciliation Lender Share, (collectively, the “Noteholder Trust Assets”, and together with the Class 4 Trust Assets, the “Trust Assets”); following the Effective Date, Noteholder Trust Assets shall include all proceeds, products and income thereof and therefrom; *provided, however,* that all Excluded Causes of Action, interests in property abandoned under the Plan, funds in the Professional Fee Escrow, and the Purchased Assets (as defined in the Asset Purchase Agreement) shall not vest in the Wind Down Entity and shall not constitute Noteholder Trust Assets; and
- (d) the creation, maintenance and administration of the Wind Down Reserves, the Class 4 Disputed Claim Reserve, the McKesson Reserve, the Plan Settlement Litigation Reserve, and the Professional Fee Escrow in accordance with this Agreement and the other Wind Down Entity Documents, the Plan, and the Confirmation Order (collectively, the “Controlling Documents”).

WHEREAS, the Plan further contemplates that the Wind Down Entity, in accordance with the Plan and the Confirmation Order and pursuant to Treasury Regulation Section 301.7701-4(d), shall be created for the purposes of (a) liquidating and administering the Trust Assets; (b) adjudicating, objecting to, settling, or compromising General Unsecured Claims; (c) prosecuting, compromising, and resolving the Trust Assets; (d) defending compromising, and resolving any claims or causes of action against the Debtor; and (e) distributing the Trust Assets, or proceeds thereof, for the benefit of the applicable Beneficiaries provided for under the Plan, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Wind Down Entity and Plan; and

WHEREAS, the Wind Down Entity (notwithstanding its name) is intended to qualify, and shall be treated, as a “grantor trust” for U.S. federal income tax purposes, pursuant to Sections 671-677 of the IRC, with the Beneficiaries to be treated as the grantors of the Wind Down Entity and deemed to be the owners of the applicable Trust Assets (subject to the rights of creditors of the Wind Down Entity), and consequently, the transfer of the applicable Trust Assets to the Wind Down Entity shall be treated as a deemed taxable transfer of those assets from the Debtor and the Estate to the applicable Beneficiaries followed by a deemed taxable transfer by the applicable Beneficiaries to the Wind Down Entity for federal income tax purposes;

NOW, THEREFORE, pursuant to the Plan and the Confirmation Order, in consideration of the promises, the mutual agreements of the parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and affirmed, the undersigned parties hereto hereby agree as follows:

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**ARTICLE I.
DECLARATION OF TRUST**

1.1. Creation and Purpose of the Wind Down Entity. The Debtor and the Wind Down Administrator hereby create the Wind Down Entity for the primary purpose of liquidating and distributing the Trust Assets and the Wind Down Reserves to the applicable Beneficiaries in accordance with the terms of the Controlling Documents, and applicable tax statutes, rules, and regulations, and in an expeditious but orderly manner, with no objective to continue or engage in the conduct of a trade or business. Without limiting the other provisions of this Agreement, the Plan or the Confirmation Order, the Wind Down Administrator shall (a) make continuing efforts to collect and reduce, where applicable, the Trust Assets to Cash, (b) make timely distributions and not unduly prolong the duration of the Wind Down Entity, and (c) wind down the Debtor and its Estate. Notwithstanding anything to the contrary in this Agreement, Beneficiaries of Class 5 Subordinated Trust Interests shall be subordinated to the Beneficiaries of Class 3 Interests and Class 4 Interests to the same extent same forth in the Plan and Confirmation Order. A Holder of a Claim in Class 3, Class 4 or Class 5 shall only be a Beneficiary to the extent such Holder's Claim is an Allowed Claim under the Plan.

1.2. Declaration of Trust. To declare the terms and conditions hereof, and in consideration of the confirmation of the Plan, the Debtor and the Wind Down Administrator have executed this Agreement and, effective on the Effective Date, the Debtor hereby irrevocably transfers to the Wind Down Entity, without recourse, all of the right, title, and interests of the Debtor in and to the Trust Assets and the Wind Down Reserves, pursuant and subject to the terms of the Plan and the Confirmation Order, for the benefit of the applicable Beneficiaries and their permitted successors and assigns as provided for in the Controlling Documents.

1.3. Transfer and Vesting of Estate Assets.

a) On the Effective Date, the Trust Assets and the Wind Down Reserves, as well as the rights and powers of the Debtor therein, shall automatically vest in the Wind Down Entity, which also shall be authorized to obtain and collect all of the Trust Assets in the possession of third parties, and to liquidate, sell, transfer and reduce to Cash, where applicable, all of the Trust Assets, and to pursue the Causes of Action in accordance with the terms of the Plan. The Trust Assets and the Wind Down Reserves shall be delivered to the Wind Down Entity free and clear of interests, claims, liens, or other encumbrances of any kind subject to the rights of the Beneficiaries, Section 8.3 with respect to the Disputed Funds and except for the interests of certain of the Debtors' creditors in the Priority Claim Reserve. Upon the transfer of the Trust Assets and the Wind Down Reserves, the Debtor shall have no interest therein or with respect to the Wind Down Entity. The Wind Down Administrator shall have no duty to arrange for any of the transfers contemplated hereunder and shall be conclusively entitled to rely on the legality and validity of such transfers. To the extent any of the foregoing does not automatically occur on the Effective Date or is not effectuated through the Controlling Documents, the Wind Down Administrator, acting in the place of, and as attorney in fact for, the Debtor pursuant to the Controlling Documents, shall on the Effective Date or as soon thereafter as reasonably practicable, execute such other and further documents as are necessary or appropriate to

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effectuate or memorialize all of the foregoing. The Wind Down Entity shall continue to segregate the Disputed Funds in accordance with Section 8.3 and the stipulations entered into between the Debtor and McKesson. None of the Trust Assets shall be subject to garnishment, execution, seizure, or other process.

b) The Trust Assets shall be deemed to be held in *custodia legis* until distributed by the Wind Down Administrator to Beneficiaries in accordance with the Controlling Documents.

c) After the Effective Date, the Wind Down Entity or the Wind Down Administrator, in its discretion, shall be deemed to be substituted as the party in lieu of the Debtor in all pending matters including but not limited to (i) motions, contested matters and adversary proceeding pending in the Bankruptcy Court, and (ii) all matters pending in any courts, tribunals, forums or administrative proceedings outside of the Bankruptcy Court, in each case without the need or requirement for the Wind Down Administrator to file motions or substitutions of parties and counsels or to pay expenses of the Wind Down Entity.

1.4. Funding of the Wind Down Entity. The Wind Down Entity shall be funded on the Effective Date with the Trust Assets. The Wind Down Reserves, Class 4 Disputed Claim Reserve, Plan Settlement Litigation Reserve, and McKesson Reserve shall be funded from Trust Assets. For the avoidance of doubt, the Plan Settlement Initial Funding Amount, the Wind Down Reserves, and proceeds from the liquidation of Wind Down Assets in accordance with the terms of this Agreement and the Plan shall be the only sources of funding for the Wind Down Entity, and the Wind Down Entity shall not be entitled to enter into any loan agreement, securities or trust indenture or similar agreement as borrower or to otherwise borrow or raise funds for its own benefit in any manner, *provided*, that, for the avoidance of doubt, the foregoing shall not prevent the Wind Down Entity from receiving a debt instrument or security as consideration in the sale, transfer or other disposition of any Wind Down Assets as provided (but subject to the limitations set forth) in Section 2.3(e) of this Agreement.

1.5. Acceptance by Wind Down Administrator. The Wind Down Administrator, on behalf of the Wind Down Entity, hereby accepts the trust imposed upon the Wind Down Entity by this Agreement and agrees to observe and perform that trust on and subject to the terms and conditions set forth in the Controlling Documents, for the benefit of the Beneficiaries. In connection with and in furtherance of the purposes of the Plan and the Wind Down Entity, the Wind Down Administrator, on behalf of the Wind Down Entity, hereby accepts the transfer of the Trust Assets and the Wind Down Reserves from the Debtor to the Wind Down Entity.

1.6. Name of the Wind Down Entity. The Wind Down Entity established hereby shall be known as the “Orexigen Wind Down Entity.”

1.7. Wind Down Budget.

a) Prior to making distributions required to be made on the Effective Date under the Plan, the Debtor or Wind Down Administrator, as applicable, with the consent of the Required Prepetition Secured Noteholders, shall establish, fund and maintain the Wind Down Reserves. The Wind Down Reserves shall be funded out of Cash on Hand. The Wind Down Reserves shall

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be administered by the Wind Down Administrator on and after the Effective Date in accordance with a budget approved by the Required Prepetition Secured Noteholders from time to time (the “Wind Down Budget”). The initial Wind Down Budget shall be provided in the Plan Supplement, or, if not so provided, shall be established by the Wind Down Administrator, with the consent of the Required Prepetition Secured Noteholders, within 30 days of the date hereof.

b) The Wind Down Budget shall require that the Wind Down Entity hold retained funds in respect thereof, taking into account: (i) budgeted expenditures, (ii) the amount and timing of distributions to Beneficiaries in accordance with the Controlling Documents, (iii) the contribution of proceeds of the liquidation of the Wind Down Assets, including proceeds of the Causes of Actions, other than Plan Settlement Proceeds, to the Lender Litigation Expense Reserve and the Wind Down Operating Expense Reserve in accordance with the clause (d) of this Section 1.7, and (iv) the objectives of the Wind Down Entity. The Wind Down Administrator may revise the Wind Down Budget at any time, with the consent of the Required Prepetition Secured Noteholders. In the event that the Wind Down Administrator makes a good faith determination that the Lender Litigation Expense Reserves and/or the Wind Down Operating Expense Reserves exceed the cash requirements projected in the Wind Down Budget for Lender Litigation Expenses and Wind Down Operating Expenses, respectively, the Wind Down Administrator, with the consent of the Required Prepetition Secured Noteholders, shall distribute such excess to the Beneficiaries of Class 3 Trust Interests, or, if all Allowed General Unsecured Claims have been paid in full, Beneficiaries of Class 5 Subordinated Trust Interests. In the event the Wind Down Administrator determines that the Lender Litigation Expense Reserves and/or the Wind Down Operating Expense Reserves do not have sufficient funds to meet the cash requirements projected in the Wind Down Budget for Lender Litigation Expenses and Wind Down Operating Expenses, respectively, the Wind Down Administrator, may request from time to time that Required Prepetition Secured Noteholders provide additional funding, which funding may be provided by one or more Required Prepetition Secured Noteholders or other Persons in their sole discretion.

c) On the Effective Date, the Wind Down Administrator shall establish the Class 4 Disputed Claim Reserve. The Class 4 Disputed Claim Reserve shall be funded out of the Plan Settlement Initial Funding Amount, and shall be funded prior to any distributions being made by the Debtor from the Plan Settlement Initial Funding Amount to Beneficiaries of Class 4 Trust Interests. With respect to each Disputed Claim, the Class 4 Disputed Claim Reserve shall include an amount of Cash, equal to the Pro Rata distributions that would have been made on such Disputed Claim if it were an Allowed Claim, other than Disputed Claims that the Debtor or Wind Down Administrator, as applicable, determines in its reasonable discretion are covered by sufficient insurance and/or are subject to subordination under the Bankruptcy Code, in an amount equal to the lesser of (i) the amount of the Disputed Claim, (ii) the amount in which the Disputed Claim shall be estimated by the Bankruptcy Court pursuant to section 502 of the Bankruptcy Code for purposes of allowance, which amount, unless otherwise ordered by the Bankruptcy Court, shall constitute and represent the maximum amount in which such Claim ultimately may become an Allowed Claim, or (iii) such other amount as may be agreed upon by the holder of such Disputed Claim and the Debtor or Wind Down Administrator, as the case may be. Notwithstanding anything to the contrary, and for the avoidance of doubt, the Wind Down Administrator shall not be required to, and shall not, reserve any funds on account of the Section

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510(b) Claims. Any funds remaining in the Class 4 Disputed Claim Reserve shall be distributed to Beneficiaries of Class 3 Trust Interests.

d) In the event that there are any funds remaining that are not utilized in accordance with any Wind Down Budget, such funds shall be returned to the Beneficiaries of Class 3 Trust Interests, or, if all Allowed General Unsecured Claims have been paid in full, Beneficiaries of Class 5 Subordinated Trust Interests.

1.8. Valuation of the Transferred Assets. As soon as practicable after the date hereof, but in no event later than 90 days after the date hereof, the Wind Down Administrator shall inform, in writing, the Wind Down Committee and the Required Prepetition Secured Noteholders, of the value of the assets transferred to the Wind Down Entity, based on the good-faith determination of the Wind Down Administrator. The valuation shall be used consistently by all Beneficiaries parties for all federal income tax purposes. In connection with the preparation of the valuation contemplated by this Section 1.8, the Wind Down Administrator shall be entitled to retain such Wind Down Advisors as it shall determine to be appropriate or necessary, and shall take such other actions in connection therewith as it determines to be appropriate or necessary. The Wind Down Entity shall bear all of the reasonable costs and expenses incurred in connection with determining such value, including the fees and expenses of any Wind Down Advisors retained in connection therewith or otherwise as may be retained by the Wind Down Entity at any time.

1.9. Operations of the Wind Down Entity. The day-to-day operations of the Wind Down Entity shall be conducted by the Wind Down Administrator. The initial Wind Down Administrator shall be Province, Inc. The Wind Down Administrator shall have the duties and powers as provided for in the Controlling Documents, including the duty to maximize value of the Trust Assets through the sale, transfer, disposition, administration, or settlement, as the case may be, thereof in the most expeditious, controlled and efficient manner reasonably practicable for the respective benefit of the Beneficiaries.

1.10. Wind Down Committee. The Wind Down Committee shall be with effect on the Effective Date, as appointed by the Committee. The Wind Down Committee shall be comprised of three (3) members as determined in accordance with Section 3.1 below. The Wind Down Committee shall have the duties and powers as provided to the Wind Down Committee in this Agreement, including the duty to maximize the value of the Class 4 Trust Assets in the most expeditious, controlled and efficient manner reasonably practicable for the benefit of Beneficiaries of Class 4 Trust Interests. The Wind Down Administrator shall consult with the Wind Down Committee with respect to (i) the pursuit of Causes of Action; (ii) the Takeda Reconciliation; (iii) the retention of Wind Down Advisors in connection with the Causes of Action and the Takeda Reconciliation; (iii) the expenditure of Plan Settlement Litigation Expenses; and (iv) the amount and timing of distributions on account of Allowed General Unsecured Claims (other than distributions required to be paid pursuant to the Plan on the Effective Date), including the contribution of Plan Settlement Net Proceeds available for distribution to the Plan Settlement Litigation Reserve.

1.11. Required Prepetition Secured Noteholders. On the Effective Date, the Required Prepetition Secured Noteholders shall be comprised of the Persons designated in

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writing to the Wind Down Administrator, or, if the aggregate holdings of Prepetition Secured Notes by such Persons is not a majority in principal amount of the Prepetition Secured Notes as of the time an action is to be taken hereunder that is subject to the consent of the Required Prepetition Secured Noteholders, by such other Holder(s) of a majority in principal amount of Prepetition Secured Notes as of such time. The Wind Down Administrator may conclusively rely upon the list of registered Holders of Prepetition Secured Noteholders maintained by the Prepetition Secured Notes Indenture Trustee in determining the Required Prepetition Secured Noteholders. The Required Prepetition Secured Noteholders shall have the rights and powers provided to them in this Agreement, including in Section 3.4, and the other Controlling Documents.

1.12. Debtor's Privileges. Effective on Effective Date, all privileges of the Debtor relating to the Wind Down Assets (which include privileges of the Debtor relating to, without limitation, the Causes of Action, the Asset Purchase Agreement Claims, the McKesson Appeal, and/or any other claims or causes of action included among the Trust Assets) shall be deemed transferred, assigned, and delivered to the Wind Down Entity, without waiver or release, and shall vest with the Wind Down Entity. The Wind Down Administrator shall hold and be the beneficiary of all such privileges and entitled to assert or waive such privileges. No such privilege shall be waived by disclosures to the Wind Down Administrator of the Debtor's documents, information, or communications subject to attorney-client privileges, work product protections or other immunities (including those related to common interest or joint defense with third parties), or protections from disclosure held by the Debtor. The Debtor's privileges relating to the Trust Assets will remain subject to the rights of third parties under applicable law, including any rights arising from the common interest doctrine, the joint defense doctrine, joint attorney-client representation, or any agreement. Nothing contained in any of the Controlling Documents, nor any professional's compliance herewith and therewith, shall constitute a breach or waiver of any privileges of the Debtor.

ARTICLE II.
THE WIND DOWN ADMINISTRATOR

2.1. Appointment. The Wind Down Administrator has been selected by the Creditors' Committee pursuant to the provisions of the Plan and appointed with effect on the date hereof. The Wind Down Administrator's appointment shall continue until the earlier of (a) the termination of the Wind Down Entity or (b) the Wind Down Administrator's resignation, termination, death, dissolution, removal, or liquidation.

2.2. General Powers, Duties, Obligations, Rights and Benefits. The Wind Down Administrator, in the exercise of his or her reasonable business judgment, shall, in an expeditious but orderly manner, administer, liquidate and convert to Cash the Trust Assets, make timely distributions of such Cash and any and all other Cash available for distribution in accordance with the Controlling Documents, and not unduly prolong the duration of the Wind Down Entity. The Wind Down Administrator shall have all duties, obligations, rights and benefits assumed by, assigned to or vested in the Wind Down Entity under the Plan, the Confirmation Order, this Agreement and any other agreement entered into pursuant to or in connection with the Plan and, except as otherwise provided herein, the Wind Down Administrator may control and exercise authority over (a) the Trust Assets, (b) the Wind Down Reserves, (c) the Class 4 Disputed Claim

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Reserve, (d) the McKesson Reserve, and (e) the management and conduct of the Wind Down Entity. No Person dealing with the Wind Down Entity shall be obligated to inquire into the Wind Down Administrator's authority in connection with the receipt, preservation, management, or disposition of Class 4 Trust Assets; *provided that* the Members of the Wind Down Committee and the Required Prepetition Secured Noteholders, as applicable, shall be entitled to make such inquiries in connection with the exercise of their rights or powers pursuant to this Agreement. Without limiting the foregoing, the Wind Down Administrator shall be expressly authorized to, with respect to the Wind Down Entity and the Class 4 Trust Assets, the Wind Down Reserves, and the Class 4 Disputed Claim Reserve:

a) Exercise all power and authority that may be or could have been exercised, commence all proceedings that may be or could have been commenced, and take all actions that may be or could have been taken with respect thereto by any officer, director, shareholder, or other party acting in the name of the Debtor or the Estate, other than with respect to the Excluded Causes of Action, with like effect as if duly authorized, exercised, and taken by action of such officers, directors, shareholders, or other party;

b) Open and maintain bank accounts, including escrow accounts, on behalf of or in the name of the Wind Down Entity, calculate and make distributions, determine the amount of the Class 4 Disputed Claim Reserve in accordance with the Plan, and take other actions consistent with the Plan and the implementation thereof in the name of the Wind Down Entity;

c) Receive, manage, invest, supervise, and protect the Class 4 Trust Assets, the Wind Down Reserves, and the Class 4 Disputed Claim Reserve, subject to the limitations provided herein;

d) Hold legal title to any and all Trust Assets, the Wind Down Reserves, and the Class 4 Disputed Claim Reserve, and the McKesson Reserve (subject to Section 8.3);

e) Subject to the applicable provisions of the Controlling Documents, administer, collect, liquidate, monetize, sell, transfer or otherwise dispose of all Trust Assets, other than the non-Cash Trust Assets (including, without limitation, the Disputed Funds), Causes of Action, Plan Settlement Initial Funding Amount, Plan Settlement Proceeds and Wind Down Reserves, and wind down the remainder of the Debtor's business and assets as expeditiously as practicable in a value-maximizing, controlled and efficient manner, including (i) obtaining release of the Holdback Amounts from the Purchaser and distributing them Pro Rata to the Beneficiaries of the Class 3 Trust Interests; (ii) pursuing the Asset Purchase Agreement Claims as necessary, including, without limitation, by seeking appropriate relief in the Bankruptcy Court or other court of competent jurisdiction; and (iii) liquidating and, if necessary, obtaining turnover from third parties of Prepetition Secured Notes Collateral, including by seeking appropriate relief in the Bankruptcy Court or other court of competent jurisdiction;

f) Implement the Plan Settlement in accordance with the Plan;

g) Complete the Takeda Reconciliation and obtain any payment(s) due as a result thereof, including, without limitation, by seeking appropriate relief in the Bankruptcy Court or other court of competent jurisdiction;

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h) Liquidate, and, if necessary, obtain turnover from third parties of Prepetition Secured Notes Collateral, including by seeking appropriate relief in the Bankruptcy Court or other court of competent jurisdiction

i) Review, and where appropriate, object to, seek to estimate, seek to subordinate, compromise or settle any and all Claims against the Debtor that have not already been Allowed as of the Effective Date, and administer the commencement, prosecution, settlement, allowance, compromise, withdrawal, or resolution of all Disputed Claims without any further notice to or action, order or approval by the Bankruptcy Court;

j) File one or more Allowed Claims Notices with respect to non-contingent, liquidated Proofs of Claim that are not Allowed either prior to or following the Effective Date and as to which the Wind Down Administrator has determined not to file any objection;

k) File one or more objections to, and prosecute, pursue, compromise, settle, or resolve in any manner, the Rejection Claims;

l) Appear and take all required action before the Bankruptcy Court and any courts, tribunals, forums or administrative proceedings with respect to the Trust Assets, with or without Bankruptcy Court approval;

m) Subject to Article IV of this Agreement, commence, prosecute, pursue, compromise, settle, withdraw, abandon, or resolve in any manner all Causes of Action transferred to the Wind Down Entity and all other claims and causes of action included among the Trust Assets in their discretion, provided that the Wind Down Administrator shall first consult with the Wind Down Committee and with the Required Prepetition Secured Noteholders as provided in Section 3.3 and Section 3.4;

n) Consistent with Section 2.19 of the Plan, (i) prepare and file (or cause to be prepared and filed), on behalf of the Wind Down Entity and the Debtor, all tax returns required to be filed or that the Wind Down Administrator otherwise deems appropriate, (ii) seek a determination of any tax liability under Section 505 of the Bankruptcy Code, if applicable; (iii) file, if necessary, any and all tax and information returns required with respect to the Wind Down Entity; (iv) make tax elections for and on behalf of the Wind Down Entity; (v) pay taxes, if any, payable for and on behalf of the Wind Down Entity, and (vi) wind up and dissolve the Debtor in accordance with Sections 2.9 and 7.4 of the Plan and applicable law in the most expeditious, controlled and efficient manner reasonably practicable;

o) In the event that the Wind Down Entity shall fail or cease to qualify as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d), take any and all necessary actions as it shall deem appropriate to have the Wind Down Entity classified as a partnership for federal tax purposes under Treasury Regulation Section 301.7701-3, including, if necessary, creating or converting the Wind Down Entity into a Delaware statutory trust, limited liability partnership or limited liability company that is so classified;

p) Incur and pay any reasonable and necessary expenses in connection with the implementation of the Plan and the performance of its duties under this Agreement, including in

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connection with retaining Wind Down Advisors and/or entering into agreements as set forth herein, and pay all lawful expenses, debts, charges, taxes, and liabilities of the Wind Down Entity;

q) Supervise and administer distributions to Holders of Prepetition Secured Noteholder Claims, Allowed General Unsecured Claims, and, if Allowed General Unsecured Claims are paid in full, Prepetition Secured Noteholder Subordinated Deficiency Claims, pursuant to the Controlling Documents;

r) Consistent with Section 2.19(e) of the Plan, withhold from the amount distributable to any Person or entity such amount as may be sufficient to pay any tax or other charge which the Wind Down Administrator has determined, based upon the advice of its agents and/or professionals, may be required to be withheld therefrom under the income tax laws of the United States, any state or political subdivision thereof or any applicable foreign jurisdiction;

s) Enter into any agreement or execute any document required by or consistent with the Plan and Confirmation Order and perform all of the Debtor's and Wind Down Entity's obligations thereunder;

t) The Wind Down Administrator shall have authority to, as necessary or applicable, (i) nominate and appoint a person duly qualified to act as trustee in any state or jurisdiction and require from each such trustee such security as may be designated by the Wind Down Administrator in its discretion; (ii) confer upon such trustee all the rights, powers, privileges, and duties of the Wind Down Administrator hereunder, subject to the conditions and limitations of this Agreement, except as modified or limited by the Wind Down Administrator and except where the conditions and limitations may be modified by the laws of such state or other jurisdiction (in which case, the laws of the state or other jurisdiction in which such trustee is acting shall prevail to the extent necessary); (3) require such trustee to be answerable to the Wind Down Administrator for all monies, assets, and other property that may be received in connection with the administration of all property; and (4) remove such trustee, with or without cause, and appoint a successor trustee at any time by the execution by the Wind Down Administrator of a written instrument declaring such trustee removed from office, and specifying the effective date and time of removal;

u) Subject to Section 5.5 of this Agreement, and subject to sufficient funding being available in the Wind Down Budget for such purpose, purchase and carry all insurance policies and pay all insurance premiums and costs it deems reasonably necessary or advisable, including customary insurance coverage for the protection of the Wind Down Committee, the Required Prepetition Secured Noteholders, the Wind Down Administrator and the 401(k) Administrator;

v) Implement, enforce, or discharge all of the terms, conditions, and other provisions of, and all duties and obligations under, the Controlling Documents;

w) Enter into employment agreements (including with former employees, excluding executive-level employees, of the Debtor to the extent their services are required to assist in carrying out the purposes of the Wind Down Entity), including causing the Wind Down Entity to enter into employment agreements with the executives, and retain Wind Down Advisors to

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pursue the Causes of Action and otherwise advise the Wind Down Administrator and provide services to the Wind Down Entity in connection with the matters contemplated by the Controlling Documents;

x) Maintain any books and records of the Wind Down Entity, including any books and records of the Debtor transferred to the Wind Down Entity, and undertake as expeditiously as possible all administrative functions remaining in the Case, including, subject to Sections 2.9 and 7.4 of the Plan, taking such other actions as may be necessary or appropriate to facilitate the wind down of the Debtor's affairs, including obtaining a final decree closing the Case;

y) Invest in demand and time deposits in banks or savings institutions, or temporary investments such as short term certificates of deposit or Treasury bills or other investments that a "liquidating trust" within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to applicable Treasury Regulations or any modification in the Internal Revenue Services ("IRS") guidelines, whether set forth in IRS rulings, revenue procedures, other IRS pronouncements or otherwise; and

z) Take all other actions required by or otherwise not inconsistent with the provisions of the Controlling Documents that the Wind Down Administrator deems reasonably necessary or desirable in administering the Wind Down Entity.

Notwithstanding anything to contrary, the rights and powers of the Wind Down Entity and Wind Down Administrator set forth in this Section 2.2 is subject to Section 3.3 and Section 3.4.

2.3. Limitations on the Wind Down Administrator. Notwithstanding anything under applicable law or the Controlling Documents to the contrary, the Wind Down Administrator shall not do or undertake any of the following:

a) Disregard the instructions of the Wind Down Committee and/or the Required Prepetition Secured Noteholders, as applicable, regarding any of the matters specifically identified in the Controlling Documents;

b) Take, or fail to take, any action that would jeopardize treatment of the Wind Down Entity as a "liquidating trust" for federal income tax purposes. Without limiting the foregoing, the Wind Down Administrator shall not cause the Wind Down Entity to engage in the operation of a trade or business except in connection with the wind down, liquidation and/or administration of the Trust Assets as set forth in the Controlling Documents;

c) Receive transfers of any listed stocks or securities, any readily-marketable assets or any operating assets of a going business, except as is absolutely necessary to carry out the purposes of the Wind Down Entity; *provided, however*, that the Wind Down Entity may receive readily-marketable securities as consideration in the sale, transfer or other disposition of the Wind Down Assets for the purpose of maximizing the proceeds through such sales, transfers or dispositions so long as the Wind Down Administrator causes such readily-marketable securities to be reduced to Cash as soon as reasonably practicable and, *provided, further*, that in no event shall the Wind Down Administrator receive any such investment that would jeopardize treatment of the Wind Down Entity as a "liquidating trust" for federal income tax purposes;

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d) Exercise any investment power other than the power to invest in demand and time deposits in banks or savings institutions, or temporary investments such as short term certificates of deposit or Treasury bills or other investments that a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to applicable Treasury Regulations or any modification in the IRS guidelines, whether set forth in IRS rulings, revenue procedures, other IRS pronouncements or otherwise;

e) Receive or retain any operating assets of a going business, a partnership interest in a partnership that holds operating assets, or fifty percent (50%) or more of the stock of a corporation with operating assets, except as is absolutely necessary to carry out the purposes of the Wind Down Entity; *provided, however*, that in no event shall the Wind Down Administrator receive or retain any such asset or interest that would jeopardize treatment of the Wind Down Entity as a “liquidating trust” for federal income tax purposes;

Notwithstanding any of the foregoing, the Wind Down Administrator shall not be prohibited from engaging in any trade or business on its own account, *provided that* such activity does not interfere with the Wind Down Administrator’s administration of the Wind Down Entity or its fiduciary duties to the Beneficiaries.

2.4. Compensation of Wind Down Administrator and its Agents and Professionals.

a) The Wind Down Administrator shall be entitled to receive reimbursement for professional fees and expenses incurred by one counsel retained by it in reviewing, negotiating, executing, and implementing this Agreement prior to the Effective Date, as well as for the performance of its duties after the Effective Date in the amount of \$7,500 a month for the first twelve (12) months of its engagement following the Effective Date, and thereafter the lesser of \$7,500 per month or its hourly monthly invoice billed at standard rates (the “Monthly Fee”), in accordance with the engagement letter attached as Exhibit C. In addition to the Monthly Fee, the Wind Down Administrator shall be entitled to the reimbursement of all reasonable and documented out-of-pocket expenses incurred in connection with this Agreement, in accordance with the attached engagement letter. Any successor to the Wind Down Administrator shall also be entitled to reasonable compensation in connection with the performance of its duties, which compensation may be different from the terms provided herein and shall be approved by the Wind Down Committee and the Required Prepetition Secured Noteholders, plus the reimbursement of reasonable and documented out-of-pocket expenses.

b) The Monthly Fee may be modified from time to time with the consent of the Wind Down Administrator, the Required Prepetition Secured Noteholders and the Wind Down Committee. From and after the date hereof, accrued Monthly Fees shall be automatically paid in arrears by wire transfer on the last day of each month (or by such other means as may be agreed to by the Wind Down Administrator and the Required Prepetition Secured Noteholders); *provided that* the first monthly payment shall include a Pro Rata payment for services rendered for any partial month following the Effective Date.

c) No later than the fifteenth (15th) day of each month, a Wind Down Advisor seeking compensation or reimbursement for Lender Litigation Expenses shall deliver a written

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statement of fees and expenses to the Wind Down Administrator and Required Prepetition Secured Noteholders. The Wind Down Administrator shall be authorized to pay such reasonable and documented fees and expenses from the Lender Litigation Expense Reserve unless the Required Prepetition Secured Noteholders object to the payment of such fees and expenses within seven (7) days from the date such statement is received. If an objection is made by the Required Prepetition Secured Noteholders to any portion of such fees and expenses, the Wind Down Administrator shall be authorized to pay all such reasonable and documented fees and expenses from the Lender Litigation Expense Reserve except for the portion of such fees and expenses to which such objection is made. The parties (including the Wind Down Advisor requesting such fees and expenses) shall work together in good faith to consensually resolve any objection of the Required Prepetition Secured Noteholders to any requested fees or expenses. If a Wind Down Advisor fails to submit a statement timely, it shall be ineligible to receive payment of fees and expenses therefore as provided in this Agreement until the statement is submitted and affirmatively approved by the Required Prepetition Secured Noteholders as set forth in this clause (c).

d) No later than the fifteenth (15th) day of each month, a Wind Down Advisor seeking compensation or reimbursement for Plan Settlement Litigation Expenses shall deliver a written statement of fees and expenses to the Wind Down Administrator, Wind Down Committee, and the Required Prepetition Secured Noteholders. The Wind Down Administrator shall be authorized to pay such reasonable and documented fees and expenses from the Plan Settlement Litigation Reserve and/or the Wind Down Operating Expense Reserve unless the Wind Down Administrator, Wind Down Committee, or the Required Prepetition Secured Noteholders object to the all or a part of the payment of such fees and expenses within seven (7) days from the date such statement is received. If any such objection is made, the Wind Down Administrator shall be authorized to pay all such reasonable and documented fees and expenses from the Plan Settlement Litigation Reserve and/or the Wind Down Operating Expense Reserve except for the portion of such fees and expenses to which such objection is made. The parties (including the Wind Down Advisor requesting such fees and expenses) shall work together in good faith to consensually resolve any such objection to any requested fees or expenses. If a Wind Down Advisor fails to submit a statement timely, it shall be ineligible to receive payment of fees and expenses therefore as provided in this Agreement until the statement is submitted and affirmatively approved as set forth in this clause (d).

2.5. Replacement of the Wind Down Administrator. The Wind Down Administrator may resign at any time upon thirty (30) days' prior written notice delivered to the Wind Down Committee and the Required Prepetition Secured Noteholders, *provided that* such resignation shall only become effective upon the appointment of a permanent or interim successor Wind Down Administrator. The Wind Down Committee may remove the Wind Down Administrator with or without cause. In the event of the resignation, death or removal of the Wind Down Administrator, a successor Wind Down Administrator shall be appointed by the Wind Down Committee subject to the prior written approval of the Required Prepetition Secured Noteholders, which consent shall not unreasonably withheld. Upon his or her appointment, the successor Wind Down Administrator, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor, but subject to the right of the Wind Down Committee and Required Prepetition Secured Noteholders, pursuant to Section 2.4,

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to set different compensation for the successor Wind Down Administrator, and all responsibilities of the predecessor Wind Down Administrator relating to the Wind Down Entity shall be terminated. In the event the Wind Down Administrator's appointment terminates by reason of death, dissolution, liquidation, resignation, or removal, such Wind Down Administrator shall be immediately compensated for all reasonable and documented fees and expenses accrued through the effective date of such termination, whether or not previously invoiced. The provisions of Article V of this Agreement shall survive the resignation or removal of any Wind Down Administrator.

2.6. Wind Down Entity Continuance. The death, dissolution, liquidation, resignation, or removal of the Wind Down Administrator shall not terminate the Wind Down Entity or revoke any existing agency or fiduciary duty of the Wind Down Administrator pursuant to this Agreement or invalidate any action theretofore taken by the Wind Down Administrator, and the provisions of this Agreement shall be binding upon and inure to the benefit of the successor Wind Down Administrator and all of its successors or assigns.

**ARTICLE III.
WIND DOWN COMMITTEE AND REQUIRED PREPETITION SECURED
NOTEHOLDERS**

3.1. The Wind Down Committee. The Wind Down Committee shall consist of three (3) members, consisting on the Effective Date of Wilmington Savings Funds Society, FSB, McKesson Specialty Health, and Young & Rubicam, LLC (the "Wind Down Committee Members"), and each individually a "Wind Down Committee Member"). Should any Wind Down Committee Member resign from, or otherwise become unable or unwilling to perform his or her duties as a Wind Down Committee Member, a replacement shall be selected by the remaining two (2) Wind Down Committee members. A majority vote of the Wind Down Committee Members shall constitute an act or decision of the Wind Down Committee; *provided, however,* that, if any Wind Down Committee Member has resigned, recuses himself or herself from a vote, or otherwise is unable to perform his or her duties as a Wind Down Committee Member but a replacement has not been selected as provided herein for any reason, in any matter then subject to approval of the Wind Down Committee, if the two remaining Wind Down Committee Members cannot agree on such matter, the Wind Down Administrator shall be authorized to, and may, cast a tie-breaking vote to resolve the deadlock on such matter. A Person shall not be disqualified from serving as a Wind Down Committee Member as a consequence of that Person's employment or affiliation with an entity engaged in the trading of Claims against or interests in the Wind Down Entity, *provided that* an internal "ethical wall" has been created prohibiting such Person from discussing or sharing any information about the Wind Down Entity with others employed by or affiliated with the entity engaged in such trading activities. The Wind Down Committee shall hold regular meetings, which may be telephonic, at least quarterly.

3.2. Reports to the Wind Down Committee and Required Prepetition Secured Noteholders. Notwithstanding any other provision of this Agreement, the Wind Down Administrator shall report to the Wind Down Committee and the Required Prepetition Secured Noteholders on a regular basis, not less than monthly. The Wind Down Committee and the Required Prepetition Secured Noteholders, shall keep all such information strictly confidential,

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except to the extent the Wind Down Committee or a Required Prepetition Secured Noteholder deems it reasonably necessary to disclose such information to a Beneficiary.

3.3. Actions Requiring Approval of the Wind Down Committee. Without limiting any other requirements set forth in this Agreement or the other Controlling Documents, the Wind Down Administrator shall obtain the approval of the Wind Down Committee prior to taking any action regarding any of the following:

a) Pursuant to the Plan, in the event that the Class 4 Disputed Claim Reserve is less than \$1,000,000, the Wind Down Administrator may retain the difference between \$1,000,000 and the amount in the Disputed Class 4 Claim Reserve, up to an additional \$125,000, for use by the Wind Down Administrator at such Wind Down Administrator's discretion; *provided, however,* that if the Wind Down Administrator desires to retain a greater sum, the Wind Down Administrator shall obtain the unanimous consent of the Wind Down Committee;

b) The commencement, prosecution, settlement, compromise, withdrawal, or other resolution of any Cause of Action and Asset Purchase Agreement Claims and all other claims and causes of action included among the Trust Assets by the Wind Down Entity where the amount of Plan Settlement Proceeds sought to be recovered in the complaint or other document initiating such Cause of Action exceeds \$1,000,000;

c) The prosecution of objections to Disputed Claims in Class 4, or the commencement, settlement, compromise, withdrawal, or other resolution of any such Disputed Claims, where the amount of the asserted Claim exceeds \$1,000,000;

d) The selection, retention, or termination of any Wind Down Advisor;

e) Making any distribution from Plan Settlement Net Proceeds (other than the payment of the Takeda Reconciliation Lender Share) in accordance with Article IX;

f) The exercise of any right or action set forth in the Controlling Documents that expressly requires approval of the Wind Down Committee;

g) Making any investment of Plan Settlement Proceeds authorized to be made by the Wind Down Administrator under the Controlling Documents.

3.4. Actions Requiring Approval of the Required Prepetition Secured Noteholders. Without limiting any of the other rights or powers of the Required Prepetition Secured Noteholders under the Controlling Documents, the Wind Down Administrator shall obtain the approval of the Required Prepetition Secured Noteholders prior to taking any material action regarding any of the following matters:

a) The Asset Purchase Agreement Claims;

b) The McKesson Dispute, McKesson Appeal or McKesson Reserve;

c) The dispute with the Purchaser concerning the Holdback Amounts;

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- d) The Tax Refunds;
- e) The selection, retention, or termination of any Wind Down Advisor, including without limitation, in connection with the McKesson Dispute, but excluding any Wind Down Advisor in connection with the Causes of Action and the Takeda Reconciliation;
- f) The 401(k) Administrator Reserve, the Lender Litigation Expense Reserve, the Priority Claim Reserve, Wind Down Operating Expense Reserve, or the McKesson Reserve;
- g) The incurrence of Lender Litigation Expenses;
- h) Amendments to the Wind Down Budget;
- i) The amount and timing of distributions to Beneficiaries of Class 3 Trust Interests and Class 5 Subordinated Trust Interests;
- j) The contribution of the proceeds of liquidation of Wind Down Assets (other than the Causes of Action and the Takeda Reconciliation Lender Share) to the Lender Litigation Expense Reserve and the Wind Down Operating Expense Reserve;
- k) The prosecution of objections to Disputed Claims in Class 3 or Class 5, if any;
- l) Making any distribution from the Wind Down Assets other than from Plan Settlement Proceeds or proceeds of Causes of Action in accordance with Article IX; and
- m) The exercise of any right or action set forth in the Controlling Documents that expressly requires the approval or consent of the Required Prepetition Secured Noteholders.

3.5. Investments and Bond. The Wind Down Administrator may invest Cash held pursuant to this Agreement in prudent investments, subject to Section 2.3 above and the preservation of tax attributes of the Wind Down Entity; *provided, however*, that (i) any such investment of the Class 4 Trust Assets shall require the prior approval of the Wind Down Committee; and (ii) any such investment of Noteholder Trust Assets shall require the prior approval of the Required Prepetition Secured Noteholders. The Wind Down Committee and the Required Prepetition Secured Noteholders, may, in their respective sole discretion, require a fidelity bond from the Wind Down Administrator in such reasonable amount as may be proscribed by the Wind Down Committee or the Required Prepetition Secured Noteholders, as applicable.

ARTICLE IV. PROSECUTION AND RESOLUTION OF CAUSES OF ACTION AND OTHER ACTIONS AND CLAIMS

4.1. The Wind Down Entity's Exclusive Authority to Pursue, Settle, or Abandon Causes of Action. Subject to Section 3.3, Section 3.4, the Plan and Confirmation Order:

- a) Subject to Section 3.3 and Section 3.4 and the rights and powers of the 401(k) Administrator (including with respect to the Professional Fee Reserve), the Wind Down Entity

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and the Wind Down Administrator shall have all rights, powers, and interests of the Debtor and the Estate to pursue, settle, or abandon Causes of Action, the Asset Purchase Agreement Claims and any and all other claims and causes of action included among the Trust Assets transferred to the Wind Down Entity in accordance with the Plan and Confirmation Order and any claims or causes of action arising after the Effective Date in favor of the Wind Down Entity, including, without limitation, taking any action with respect to Disputed Claims, appeals, counterclaims, and defenses of, or with respect to, such Disputed Claims, Causes of Action, Asset Purchase Agreement Claims, McKesson Appeal, the dispute with the Purchaser concerning the Holdback Amounts, and any and all other claims and causes of action included among the Trust Assets and/or any claims or causes of Action arising after the Effective Date in favor of the Wind Down Entity, as the sole representative of the Debtor and Estate pursuant to section 1123(b)(3) of the Bankruptcy Code.

b) No Person or entity may rely on the absence of a specific reference in the Controlling Documents, or any other supplemental documents, to any of the Causes of Action, the Asset Purchase Agreement Claims, or other claims or causes of action included among the Trust Assets against it as any indication that the Debtor and/or Wind Down Entity will not pursue any and all available rights and remedies related thereto against any such Person or entity, or that the Wind Down Administrator does not have the right to pursue any such claim or cause of action. The Wind Down Administrator expressly reserves all Causes of Action, Asset Purchase Agreement Claims, and other claims and causes of action included among the Trust Assets and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action, Asset Purchase Agreement Claims, and/or other claims and casus of action included among the Trust Assets upon, after, or as a consequence of confirmation or consummation of the Plan. Unless any Causes of Action, Asset Purchase Agreement Claims or other claim or causes of action included among the Trust Assets against any Person or entity is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Final Order of the Bankruptcy Court or other court of competent jurisdiction, the Debtor or the Wind Down Administrator, as applicable, expressly reserves all Causes of Action, Asset Purchase Agreement Claims, and other claims and causes of action included among the Trust Down Assets for later adjudication.

c) The Wind Down Administrator will prepare and make available to the Beneficiaries, on a monthly basis, a written report detailing, among other things, the status of Causes of Action, the Takeda Reconciliation, the McKesson Reserve, any settlements entered into by the Wind Down Entity, the Plan Settlement Proceeds and proceeds recovered to date from the Trust Assets, the status of the Wind Down Reserves, and any distributions made by the Wind Down Entity.

ARTICLE V.
LIABILITY OF THE WIND DOWN ADMINISTRATOR, THE
WIND DOWN COMMITTEE, THE REQUIRED PREPETITION
SECURED NOTEHOLDERS AND 401(K) ADMINISTRATOR

5.1. Standard of Care; Exculpation. Neither the Wind Down Entity, the Wind Down Administrator, the Wind Down Committee, the Wind Down Committee Members, the Required

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Prepetition Secured Noteholders, the 401(k) Administrator, the Wind Down Advisors, nor any director, officer, affiliate, employee, employer, professional, successor, assign, agent, or representative of the foregoing, including, without limitation, the Wind Down Advisors (each, an “Exculpated Party” and collectively, the “Exculpated Parties”), shall be liable for any losses, claims, damages, liabilities, obligations, settlements, proceedings, suits, judgments, causes of action, litigation, actions, or investigations (whether civil or administrative and whether sounding in tort, contract, or otherwise), penalties, costs, and expenses, including reasonable fees and disbursements (collectively referred to herein as “Losses”), whether or not in connection with litigation in which any Exculpated Party is a party, or implementing or enforcing the Controlling Documents (including these exculpation provisions), as and when imposed on the Wind Down Administrator, incurred, caused by, relating to, based upon or arising out of (directly or indirectly) the Wind Down Administrator’s, the Wind Down Committee’s, any Wind Down Committee Member’s, any Required Prepetition Secured Noteholder’s, or the 401(k) Administrator’s execution, delivery, and acceptance of or the performance or nonperformance of its powers, duties and obligations under the Controlling Documents or as may arise by reason of any action, omission, or error of an Exculpated Party; *provided, however*, that the foregoing limitation shall not apply to any Losses suffered or incurred by any Beneficiary, that are found in a Final Order by a court of competent jurisdiction to have resulted primarily and directly from the gross negligence, willful misconduct or professional malpractice of such Exculpated Party. Every act taken or omitted, power exercised, or obligation assumed by the Wind Down Entity or any Exculpated Party pursuant to the provisions of this Agreement shall be held to be taken or omitted, exercised, or assumed, as the case may be, by the Wind Down Entity or any Exculpated Party acting for and on behalf of the Wind Down Entity and not otherwise; *provided, however*, that none of the foregoing entities or Persons are deemed to be responsible for any other such entities’ or Persons’ actions or inactions. Except as provided in the first proviso of the first sentence of this Section, every Person, firm, corporation, or other entity contracting or otherwise dealing with or having any relationship with the Wind Down Entity or any Exculpated Party shall have recourse only to (i) with respect to the Wind Down Entity, the Wind Down Administrator, the Wind Down Committee, the Wind Down Committee Members, and the Wind Down Advisors, and the related Exculpated Parties of each of the foregoing, the Wind Down Assets for payment of any liabilities or other obligations arising in connection with such contracts, dealings or relationships, and (ii) with respect to the Required Prepetition Secured Noteholders and the 401(k) Administrator, and the related Exculpated Parties of each of the foregoing, the Noteholder Trust Assets, and the Exculpated Parties shall not be individually liable therefore.

5.2. Indemnification.

a) The Wind Down Administrator, the Wind Down Committee, the Wind Down Committee Members, the Required Prepetition Secured Noteholders, the 401(k) Administrator, the Wind Down Advisors, and any director, officer, affiliate, employee, employer, professional, successor, assign, agent, or representative of any of the foregoing (each, an “Indemnified Party” and collectively, the “Indemnified Parties”) shall be defended, held harmless, and indemnified from time to time by the Wind Down Entity against any and all Losses, including, without limitation, the costs for counsel or others in investigating, preparing, defending, or settling any action or claim, whether or not in connection with litigation in which any Indemnified Party is a

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party, or enforcing this Agreement (including these indemnity provisions), as and when imposed, incurred, caused by, relating to, based upon or arising out of (directly or indirectly) an Indemnified Party's execution, delivery, and acceptance of or the performance or nonperformance of its powers, duties, and obligations under the Controlling Documents or as may arise by reason of any action, omission, or error of an Indemnified Party; *provided, however*, such indemnity shall not apply to any such Losses to the extent it is found in a Final Order by a court of competent jurisdiction to have resulted primarily and directly from the gross negligence, willful misconduct or professional malpractice of such Indemnified Party.

b) Satisfaction of any obligation of the Wind Down Entity arising pursuant to the terms of this Section shall be payable (i) with respect to Losses in connection with, or arising from, Class 4 Trust Assets or Class 4 Trust Interests, shall be satisfied solely from the Class 4 Trust Assets, and shall be entitled to a priority distribution therefrom, superior to any other rights to receive a distribution of the Class 4 Trust Assets, (ii) with respect to Losses in connection with, or arising from, Class 3 Trust Assets or Class 3 Trust Interests, shall be satisfied solely from the Class 3 Trust Assets, and shall be entitled to a priority distribution therefrom, superior to any other rights to receive a distribution of the Class 3 Trust Assets, and (iii) with respect to all other matters, as the Wind Down Administrator and Wind Down Committee, on the one hand, and the Required Prepetition Secured Noteholders, on the other hand shall agree, or, if such parties are unable to agree following good faith negotiations, as shall be decided by the Bankruptcy Court.

c) The Wind Down Entity shall promptly pay to the Indemnified Party, subject to the conditions set forth herein, the expenses set forth in Section 5.2(a) upon submission of invoices therefore on a current basis. Each Indemnified Party hereby undertakes, and the Wind Down Entity hereby accepts its undertaking, to repay any and all such amounts so paid by the Wind Down Entity if it shall ultimately be determined that such Indemnified Party is not entitled to be indemnified therefore under this Agreement.

5.3. No Liability for Acts of Successor/Predecessor Wind Down Administrators, Wind Down Committee Members, or Required Prepetition Secured Noteholders. Upon the appointment or designation of a successor Wind Down Administrator, Wind Down Committee Member, or Required Prepetition Secured Noteholder, the predecessor Wind Down Administrator, Wind Down Committee Member, or Required Prepetition Secured Noteholder, and any director, officer, affiliate, employee, employer, professional, agent, or representative of the predecessor Wind Down Administrator, Wind Down Committee Member, or Required Prepetition Secured Noteholder, as applicable, shall have no further liability or responsibility with respect thereto. A successor Wind Down Administrator, Wind Down Committee Member, or Required Prepetition Secured Noteholder shall have no duty to examine or inquire into the acts or omissions of its immediate or remote predecessor and no successor Wind Down Administrator, Wind Down Committee Member, or Required Prepetition Secured Noteholder shall be in any way liable for the acts or omissions of any predecessor Wind Down Administrator, Wind Down Committee Member, or Required Prepetition Secured Noteholder, as applicable, unless a successor Wind Down Administrator, Wind Down Committee Member, or Required Prepetition Secured Noteholder expressly assumes such responsibility in writing. A predecessor Wind Down Administrator, Wind Down Committee Member, or Required

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Prepetition Secured Noteholder shall have no liability for the acts or omissions of any immediate or subsequent successor Wind Down Administrator, Wind Down Committee Member, or Required Prepetition Secured Noteholder, as applicable, for any events or occurrences subsequent to the cessation of its role as Wind Down Administrator, Wind Down Committee Member, or Required Prepetition Secured Noteholder, as applicable.

5.4. Reliance by Wind Down Administrator, the Wind Down Committee, and the Required Prepetition Secured Noteholders on Documents or Advice of Counsel. Except as otherwise provided in this Agreement, the Wind Down Administrator, the Wind Down Committee, each Wind Down Committee Member, each Required Prepetition Secured Noteholder, and any director, officer, affiliate, employee, employer, professional, agent, or representative of the foregoing may rely in good faith, and shall be protected from liability for acting or not acting, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed by the Wind Down Administrator, the Wind Down Committee, each Wind Down Committee Member, or each Required Prepetition Secured Noteholder to be genuine and to have been presented by an authorized party. Neither the Wind Down Administrator, the Wind Down Committee, each Wind Down Committee Member, nor each Required Prepetition Secured Noteholder shall be liable for any action taken or omitted or suffered by the Wind Down Administrator, the Wind Down Committee, the Required Prepetition Secured Noteholders, as applicable, in reasonable reliance upon the advice of counsel engaged by the Wind Down Administrator, the Wind Down Committee, the Creditors' Committee or the Required Prepetition Secured Noteholders, as applicable, in accordance with this Agreement. Each of the Wind Down Administrator, the Wind Down Committee, each Wind Down Committee Member, and each Required Prepetition Secured Noteholder shall be fully indemnified by the Wind Down Entity for or in respect of any action taken, suffered or omitted by it in accordance with such advice or opinion.

5.5. Insurance. The Wind Down Administrator, upon the approval of the Wind Down Committee and subject to sufficient funding being available in the Wind Down Budget for such purpose, may purchase and carry all insurance policies and pay all insurance costs and premiums the Wind Down Administrator deems reasonably necessary or advisable, including, without limitation, purchasing any errors and omissions insurance with regard to any Losses it may incur, arising out of or due to its actions or omissions, or consequences of such actions or omissions, other than as a result of its fraud or willful misconduct, with respect to the implementation and administration of the Controlling Documents.

5.6. The provisions of this Article V shall survive the termination of this Agreement and the death, resignation, removal, liquidation, dissolution, or replacement of the Wind Down Administrator, any Wind Down Committee Member, or any Required Prepetition Secured Noteholder, or the dissolution of the Wind Down Entity.

ARTICLE VI. GENERAL PROVISIONS CONCERNING ADMINISTRATION OF THE WIND DOWN ENTITY

6.1. Registers. The Wind Down Administrator shall maintain at all times registers of the names, distribution addresses, and the ratable interests in the Prepetition Secured Noteholder

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Claims, General Unsecured Claims, the Prepetition Secured Noteholder Subordinated Deficiency Claims, the Class 4 Disputed Claim Reserve, the McKesson Reserve, the Priority Claim Reserve, holders of unresolved Claims, and holders of unpaid Allowed Claims, as applicable (each, a “Register”), and shall recognize and deal with the foregoing as reflected on the applicable Register. Information available to the Debtor to be sued by the Wind Down Administrator to prepare the Registers shall be delivered to the Wind Down Administrator by the Debtor on the date hereof and shall include the list of Holders of Claims maintained by Kurtzman Carson Consultants, LLC as of the date hereof. The Wind Down Administrator shall cause the Register to be kept at its office or at such other place or places as may be designated by the Wind Down Administrator from time to time.

6.2. Books and Records.

a) On the Effective Date, the Debtor shall transfer and assign to the Wind Down Entity full title to, and the Wind Down Entity shall be authorized to take possession of, all of the books and records of the Debtor. The Wind Down Entity shall have the responsibility of storing and maintaining books and records transferred hereunder until the Wind Down Entity is closed, after which time such books and records may, to the extent not prohibited by applicable law, be abandoned or destroyed in accordance with the Plan and Confirmation Order. For the purpose of this Section, books and records include computer generated or computer maintained books and records and computer data, as well as electronically generated or maintained books and records or data, along with books and records of the Debtor maintained by or in possession of third parties and all of the claims and rights of the Debtor in and to their books and records, wherever located.

b) The Wind Down Administrator also shall maintain in respect of the Wind Down Entity, any other books and records relating to the Trust Assets and any income or proceeds realized therefrom and the payment of expenses of and claims against or assumed by the Wind Down Entity in such detail and for such period of time as may be necessary to enable it to make full and proper reports in respect thereof. Except as expressly provided in the Controlling Documents, or as may be required by applicable law (including applicable securities law), nothing in this Agreement is intended to require the Wind Down Entity to file any accounting or seek approval of any court with respect to the administration of the Wind Down Entity, or as a condition for making any payment or distribution out of the Trust Assets from any Wind Down Reserve, or from any other reserve or escrow created or maintained by the Wind Down Entity in accordance with the Controlling Documents. The Wind Down Committee and the Required Prepetition Secured Noteholders shall have the right to inspect the books and records of the Wind Down Entity at any time upon reasonable notice to the Wind Down Administrator. Beneficiaries shall have the right upon ten (10) days’ prior written notice delivered to the Wind Down Administrator to inspect the Wind Down Entity’s books and records, including each Register, provided such Beneficiary shall have entered into a confidentiality agreement in form and substance reasonably satisfactory to the Wind Down Administrator, the Wind Down Committee, and the Required Prepetition Secured Noteholders. Satisfaction of the foregoing condition notwithstanding, if (i) the Wind Down Administrator, the Wind Down Committee, and the Required Prepetition Secured Noteholders determine in good faith that the inspection of the Wind Down Entity’s books and records, including any Register, by any such Beneficiary would

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be detrimental to the Wind Down Entity or (ii) such Beneficiary is a litigation party (or potential party) in a pending (or potential) action brought by or against the Wind Down Entity, the Wind Down Administrator may deny such request for inspection.

6.3. Filing of Interim and Annual Reports; Other Reporting. The Wind Down Entity shall make available to Beneficiaries (i) monthly reports (unaudited) regarding the liquidation or other administration of the Trust Assets, (ii) an annual report (unaudited) regarding the liquidation or other administration of the Trust Assets, and (iii) a current report generally based on SEC Form 8-K regarding the occurrence of any significant asset sales or other events of significance to the Wind Down Entity (but without the need to provide any pro forma financial information under item 9.01 of Form 8-K). Until the closing of the Case, the Wind Down Entity shall also file the foregoing reports with the Bankruptcy Court.

In addition, the Wind Down Administrator shall conduct monthly update calls until the twelve (12) month anniversary of the Effective Date, and thereafter shall conduct quarterly update calls, in each case to be held three (3) Business Days after the posting of the last applicable monthly report, with the Wind Down Committee and the Required Prepetition Secured Noteholders regarding the status of the Trust Assets and other administrative issues concerning the Wind Down Entity.

6.4. Final Accounting of Wind Down Administrator. The Wind Down Administrator (or any such successor Wind Down Administrator) shall within ninety (90) days after the termination of the Wind Down Entity or the death, dissolution, liquidation, resignation, or removal of the Wind Down Administrator, render and deliver to the Wind Down Committee and the Required Prepetition Secured Noteholders an accounting containing the following information:

- a) A description of the Trust Assets;
- b) A summarized accounting in sufficient detail of all gains, losses, receipts, disbursements and other transactions in connection with the Wind Down Entity and the Trust Assets during the Wind Down Administrator's term of service, including their source and nature
- c) Separate entries for all receipts of principal and income;
- d) The ending balance of all Trust Assets as of the date of the accounting, including the Cash balance on hand and the name(s) and location(s) of the depository or depositories where the Cash is kept;
- e) All known liabilities of the Wind Down Entity; and

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f) All pending actions.

6.5. Filing of Accounting. The final accounting described in Section 6.4 shall be filed with the Bankruptcy Court (unless the Case has been closed) and made available to all of the Persons and/or entities reflected on each Register.

ARTICLE VII. BENEFICIAL INTERESTS

7.1. Trust Beneficial Interests. On the date hereof, the Wind Down Entity shall issue:

a) The Class 4 Trust Interests to the Holders of Allowed General Unsecured Claims in accordance with the treatment of such Allowed General Unsecured Claims under the Plan, and such Class 4 Trust Interests shall be entitled to distributions as set forth in the Controlling Documents;

b) The Class 3 Trust Interests to the Holders of Allowed Prepetition Secured Noteholder Claims in accordance with the treatment of such Allowed Prepetition Secured Noteholder Claims under the Plan, and such Class 3 Trust Interests shall be entitled to distributions as set forth in the Controlling Documents;

c) The Class 5 Subordinated Trust Interests to the Holders of Allowed Prepetition Secured Noteholder Subordinated Deficiency Claims in accordance with the treatment of such Allowed Prepetition Secured Noteholder Subordinated Deficiency Claims under the Plan, and such Class 5 Subordinated Trust Interests shall be entitled to distributions as set forth in the Controlling Documents.

7.2. Interest Beneficial Only. Ownership of Trust Interests shall not entitle any Beneficiary thereof to any title in or to any Trust Assets or to any right to call for a partition or division of the Trust Assets or the Noteholder Trust Assets, or to require an accounting.

7.3. Evidence of Beneficial Interest. Ownership of a Trust Interest shall not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever. The Trust Interests shall be evidenced only in the form of a book entry on the applicable Register maintained on the books and records of the Wind Down Entity by the Wind Down Administrator.

7.4. Exemption from Registration. The parties hereto intend that Trust Interests shall not be “securities” under applicable law. The Trust Interests shall not have consent or voting rights or otherwise confer on Beneficiaries any rights similar to the rights of a shareholder of a corporation in respect of any actions taken or to be taken by the Wind Down Committee and/or the Wind Down Administrator in connection with the Wind Down Entity and the Trust Assets. Neither the Wind Down Administrator or the Wind Down Committee shall take any action to establish or support the establishment of an active trading market with respect to the Trust Interests.

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7.5. Transfers of Beneficial Interests/Lender Wind Down Claim. Class 4 Trust Interests shall be nontransferable except upon the death of the interest holder or by operation of law; *provided, however*, each Beneficiary of a Class 4 Trust Interest shall have the right to transfer some or all of their Class 4 Trust Interests at least one (1) time each calendar year and shall give the Wind Down Administrator prompt written notice thereof (each, a "Permitted Transfer"). The Wind Down Entity shall not have any obligation to recognize any transfer of Class 4 Trust Interests occurring after the Record Date other than a Permitted Transfer, and only those holders of Trust Interests of record as of the Record Date, and transferees of a Permitted Transfer, shall be entitled to be recognized for all purposes hereunder. Class 3 Trust Interests and Class 5 Subordinated Interests shall be freely transferable, subject to applicable law and the Prepetition Secured Notes Indenture.

7.6. Absolute Owners. The Wind Down Administrator may deem and treat the Beneficiary of a Trust Interest on the applicable Register as the absolute owner thereof for the purposes of receiving distributions and payments on account thereof, for federal and state income tax purposes and for all other purposes whatsoever.

7.7. Change of Address. A Beneficiary or any other creditor of the Wind Down Entity may, after the Effective Date, select an alternative distribution address by serving a notice upon the Wind Down Entity identifying such alternative distribution address, and the Wind Down Administrator shall update the applicable Register upon receipt of such notice. Absent such notice, the Wind Down Administrator shall not recognize any such change of distribution address. Such notification shall be effective only upon receipt by the Wind Down Administrator.

7.8. Effect of Death, Dissolution, Incapacity, or Bankruptcy of Beneficiary. The death, dissolution, incapacity, or bankruptcy of any creditor of the Wind Down Entity or Beneficiary during the term of the Wind Down Entity shall not operate to terminate the Wind Down Entity during the term of the Wind Down Entity nor shall it entitle the representative or creditors of the deceased, incapacitated or bankrupt Beneficiary to an accounting or to take any action in any court or elsewhere for the distribution of the Trust Assets or for a partition thereof nor shall it otherwise affect the rights and obligations of the Beneficiary under this Agreement or in the Wind Down Entity.

7.9. Standing. Except as expressly provided in this Agreement, no Beneficiary shall have standing to direct the Wind Down Administrator to do or not to do any act or to institute any action or proceeding at law or in equity against any party upon or with respect to the Trust Assets.

ARTICLE VIII. PROCEDURES FOR RESOLVING AND TREATING DISPUTED CLAIMS

8.1. Incorporation of Plan Provisions. As of the Effective Date, the Wind Down Entity shall assume responsibility for all Claims matters established by the Plan, other than with respect to the Excluded Causes of Action.

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8.2. Class 4 Disputed Claim Reserve

a) On the Effective Date, the Wind Down Administrator shall establish the Class 4 Disputed Claim Reserve. The Class 4 Disputed Claim Reserve shall be funded out of the Plan Settlement Initial Funding Amount, and shall be funded prior to any distributions being made by the Debtor from the Plan Settlement Initial Funding Amount to Beneficiaries of Class 4 Trust Interests. With respect to each Disputed Claim, the Class 4 Disputed Claim Reserve shall include an amount of Cash, equal to the Pro Rata distributions that would have been made on such Disputed Claim if it were an Allowed Claim, other than Disputed Claims that the Debtor or Wind Down Administrator, as applicable, determines in its reasonable discretion are covered by sufficient insurance and/or are subject to subordination under the Bankruptcy Code, in an amount equal to the lesser of (i) the amount of the Disputed Claim, (ii) the amount in which the Disputed Claim shall be estimated by the Bankruptcy Court pursuant to section 502 of the Bankruptcy Code for purposes of allowance, which amount, unless otherwise ordered by the Bankruptcy Court, shall constitute and represent the maximum amount in which such Claim ultimately may become an Allowed Claim, or (iii) such other amount as may be agreed upon by the holder of such Disputed Claim and the Debtor or Wind Down Administrator, as the case may be. Notwithstanding anything to the contrary, and for the avoidance of doubt, the Wind Down Administrator shall not be required to, and shall not, reserve any funds on account of the Section 510(b) Claims. Any funds remaining in the Class 4 Disputed Claim Reserve shall be distributed to Beneficiaries of Class 4 Trust Interests.

b) The Class 4 Disputed Claim Reserve shall be maintained in trust for Holders of Class 4 Claims not yet Allowed as of the Effective Date and not paid prior to the Effective Date or as part of the distributions provided for under the Plan. Each such Claim shall be paid in full in Cash from funds held in the Disputed Claims Reserve as soon as practicable after the date on which such Claim becomes an Allowed Claim. Such Claims shall be paid first from amounts in the Class 4 Disputed Claim Reserve and then from the assets of the Wind Down Entity (to the extent such assets constitute Plan Settlement Net Proceeds) only if no funds remain in the Class 4 Disputed Claim Reserve. For the avoidance of doubt, costs and expenses of the Wind Down Entity shall not be paid from the Class 4 Disputed Claim Reserve.

8.3. McKesson Reserve. On the Effective Date, the Wind Down Entity shall segregate the Disputed Funds until a Final Order resolving the McKesson Dispute has been entered (the “McKesson Reserve”). To the extent a Final Order grants the Disputed Rights Motion, in whole or in part, the Disputed Funds shall be paid to McKesson to such extent, free and clear of any lien, charge, claim or interest and shall automatically reduce any Class 4 Claim or Class 4 Trust Interest of McKesson dollar for dollar. To the extent a Final Order denies the Disputed Rights Motion, in whole or in part, the Disputed Funds shall be distributed to such extent Pro Rata to the Beneficiaries of Class 3 Trust Interests, and the McKesson Reserve shall be closed. The Disputed Funds shall be Class 3 Trust Assets subject to the provisions of this Section 8.3.

8.4. Objections to Claims. Except insofar as a Claim is Allowed under the Plan or has already been paid by the Debtors in the ordinary course of business pursuant to an order of the Court, subject to Section 3.3 and Section 3.4, the Wind Down Entity shall have exclusive authority to object to Claims. Subject to Section 3.3 and Section 3.4, the Wind Down Entity shall

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be entitled to dispute and/or otherwise object to any Claim in accordance with applicable law, including Bankruptcy Code section 502.

8.5. Distribution. Payments on any unresolved Claim, including a Disputed Claim that becomes an Allowed Claim, shall be distributed by the Wind Down Administrator on the first distribution date after the Claim is Allowed in accordance with Article IX. Distributions shall be made only to the extent of the aggregate distributions that the Holder of any such Allowed Claim would have received had such Claim been Allowed as of the Effective Date. Distributions to each Holder of a Disputed Claim that has become an Allowed Claim (and to the extent that the Holder of the Disputed Claim has not received prior distributions on account of that Claim) shall be made in accordance with the provisions of the Plan and Article IX.

8.6. Transmittal of Distributions and Notices. Any property or notice which a Person is or becomes entitled to receive pursuant to the Plan and this Agreement may be delivered by wire transfer in accordance with instructions provided to the Wind Down Administrator by such person or by regular mail, postage prepaid, in an envelope addressed to that person's address listed in the applicable Register. Subject to the provisions of Article IX, property distributed in accordance with this subsection shall be deemed delivered to such person regardless of whether such property is actually received by that Person. Notice given in accordance with this subsection shall be effective only upon receipt.

ARTICLE IX. DISTRIBUTIONS

9.1. Distributions From Wind Down Assets. All payments to be made by the Wind Down Entity with respect to Class 4 Trust Interests shall be made only in accordance with the terms of the Controlling Documents from the Wind Down Assets (or from the income and/or proceeds realized from the Wind Down Assets) net of the Class 4 Disputed Claim Reserve and only to the extent that the Wind Down Entity has sufficient Class 4 Trust Assets (or income and/or proceeds realized from the Class 4 Trust Assets) to make such payments in accordance with and to the extent provided for in this Agreement. All payments to be made by the Wind Down Entity with respect to the Noteholder Trust Interests shall be made only in accordance with the terms of the Controlling Documents. Any payment of Cash by the Wind Down Entity shall be made by the Wind Down Administrator via (i) a check drawn on, or (ii) wire transfer from, a domestic bank selected by the Wind Down Entity, the option of which shall be in the sole discretion of the Wind Down Administrator. For the avoidance of doubt, no distributions shall be made by the Wind Down Entity on account of the Equity Interests.

9.2. Distributions; Withholding. The Wind Down Administrator shall make distributions in accordance with the terms of the Plan and this Agreement at least once every 180 days unless such distributions would be less than \$500,000 in the aggregate. Notwithstanding the foregoing, the Wind Down Committee and/or the Required Prepetition Secured Noteholders, as applicable, may authorize the Wind Down Administrator to retain proceeds from the Wind Down Assets to fund additional costs of the Wind Down Entity following the date hereof; *provided further that* on each one (1) year anniversary of the Effective Date, the Wind Down Administrator shall cause the Wind Down Entity to distribute all net income accumulated on and/or proceeds realized from the Trust Assets, except to the extent of any amounts reasonably

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necessary to maintain the value of the Trust Assets or to satisfy claims and contingent liabilities (including Disputed Claims) or to maintain the value of the Trust Assets during liquidation of the Trust Assets. The Wind Down Entity may withhold from amounts otherwise distributable to any entity any and all amounts, determined in the Wind Down Administrator's reasonable discretion but not to exceed, together with all other cash held by the Wind Down Entity at such time, \$2,000,000, that may be required by this Agreement, or any law, regulation, rule, ruling, directive, treaty or other governmental requirement. Any party issuing any instrument or making any distribution under the Plan shall comply with all applicable withholding and reporting requirements imposed by any U.S. federal, state or local tax law or tax authority, and all distributions under this Agreement shall be subject to any such withholding or reporting requirements. Notwithstanding the above, each Holder of an Allowed Claim that is to receive a distribution shall have the sole and exclusive responsibility for the satisfaction and payment of any taxes imposed on such Holder by any governmental unit, including income, withholding and other tax obligations, on account of such distribution. The Wind Down Entity has the right, but not the obligation, to not make a distribution until any such Holder has made arrangements satisfactory to the Wind Down Administrator for payment of any such tax obligations, and, if the Wind Down Entity fails to withhold with respect to any such Holder's distribution and is later held liable for the amount of such withholding, such Holder shall reimburse the Wind Down Entity. The Wind Down Administrator may require, as a condition to the receipt of a distribution, that the applicable Holder complete the appropriate Form W-8 or Form W-9, as applicable to such Holder. If the Holder fails to comply with such a request within 180 days, such distribution shall be deemed to be Unclaimed Property (defined below). Prior to the making of any distributions contemplated hereunder, the Wind Down Administrator shall provide the Wind Down Committee and the Required Prepetition Secured Noteholders with five (5) Business Days' written notice of any such distribution, which notice shall include a summary of the aggregate amounts to be distributed. Within three (3) Business Days of receipt of the notice of distribution, any Wind Down Committee Member or Required Prepetition Secured Noteholder may request additional information regarding the calculation of the aggregate distribution amounts and the identity of the payees in respect thereof. No Claims shall be entitled, under any circumstances, to receive any interest on account of such Claim.

9.3. No Distribution Pending Allowance. No payment or distribution shall be made with respect to any Claim to the extent it is a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim, except for distributions into the Class 4 Disputed Claim Reserve in accordance with the provisions of the Controlling Documents.

9.4. Distributions after Allowance. Distributions to each Holder of a Disputed Claim, to the extent that such Claim ultimately becomes an Allowed Claim, shall be made in accordance with the provisions of the Controlling Documents.

9.5. Reserves and Escrows. The 401(k) Administrator Reserve, Class 4 Disputed Claim Reserve, Lender Litigation Expense Reserve, Plan Settlement Litigation Reserve, Priority Claim Reserve, Wind Down Operating Expense Reserve, and McKesson Reserve shall be established (unless previously established by the Debtor), maintained and administered by the Wind Down Entity as specified in the Controlling Documents. Claims and other amounts shall be paid in Cash from funds held in the applicable reserve or escrow as soon as practicable after

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the date hereof, or otherwise in accordance with the terms of the Controlling Documents. If any amount is remaining in a reserve or escrow established pursuant to the Controlling Documents after the purpose of such reserve or escrow shall have been satisfied, including as the result of the valid termination of the Wind Down Entity pursuant to the other terms of this Agreement, such excess shall be distributed in accordance with the terms of the Controlling Documents. Funds held in the Professional Fee Escrow, which shall be administered by the 401(k) Administrator pursuant to the Plan, Confirmation Order and applicable escrow agreement, shall not be considered property of the Debtor's Estate or property of the Wind Down Entity or its Beneficiaries, but shall be held in trust for Professionals retained by the Creditors' Committee and the Debtor and for no other Persons, until all Professional Fee Claims Allowed by the Bankruptcy Court have been paid in full.

9.6. Non-Cash Property. The Wind Down Administrator may abandon or otherwise not accept any Wind Down Assets that the Wind Down Administrator believes, in good faith, to have no value to, or will be unduly burdensome to, the Wind Down Entity. Any Wind Down Assets that the Wind Down Administrator so abandons or otherwise does not accept shall not be Wind Down Assets and shall be deemed abandoned by the Debtor pursuant to Bankruptcy Code section 554 without further order of the Bankruptcy Court. The Debtor and/or Wind Down Administrator, as applicable, shall not be required to comply with applicable local, state and federal statutes, rules and ordinances in connection with this Section except to the extent that compliance is necessary to ensure the government's interest in public health and safety. Additionally, any action by any local, state or federal agency, department or governmental authority or any other entity to prevent, interfere with, or otherwise hinder the Debtor's or Wind Down Administrator's abandonment, disposal and/or destruction of any Wind Down Assets shall be enjoined effective as of the Effective Date. Notice of any sale, transfer, abandonment or disposition of such Wind Down Assets shall be provided pursuant to the reporting obligations provided in this Agreement. If, in the Wind Down Administrator's reasonable judgment, such property cannot be sold in a commercially reasonable manner, or the Wind Down Administrator believes, in good faith, such property has no value to the Wind Down Entity, the Wind Down Administrator shall have the right, subject to the approval of the Wind Down Committee and the Required Prepetition Secured Noteholders, to abandon or otherwise dispose of such property, including by donation of such property to a charity designated by the Wind Down Committee and the Required Prepetition Secured Noteholders in accordance with the terms of this Agreement. Except in the case of fraud, willful misconduct, or gross negligence, no party in interest shall have a cause of action against the Wind Down Administrator, the Wind Down Committee, the Required Prepetition Secured Noteholders, any Wind Down Committee Member, or any of their directors, officers, employees, consultants, or professionals arising from or related to the disposition of non-Cash property in accordance with this Section.

9.7. Undeliverable and Unclaimed Distributions. If any distribution is returned as undeliverable, the Wind Down Administrator may, in its discretion, make such efforts to determine the current address of the Beneficiary with respect to which the distribution was made as the Wind Down Administrator deems appropriate, but no distribution to a Beneficiary shall be made unless and until the Wind Down Entity has determined the then-current address of such Beneficiary, at which time the distribution to such Beneficiary shall be made to such Beneficiary without interest. Amounts in respect of any undeliverable distributions made by the Wind Down

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Entity shall be treated as Unclaimed Distributions. Any Cash or other property to be distributed under the Plan that is an Unclaimed Distribution shall revert to the Wind Down Administrator if it is not claimed by the Unclaimed Distribution Deadline. If such Cash or other property is not claimed on or before the Unclaimed Distribution Deadline, then, at the election of the Wind Down Administrator, the distribution made to such Beneficiary shall be deemed to be reduced to zero and such returned, undeliverable, or unclaimed distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and shall revert to the Wind Down Entity for distribution on account of other Allowed Claims.

9.8. Withholding Taxes and Expenses of Distribution. Any federal, state, or local withholding taxes or other amounts required to be withheld under applicable law shall be deducted from distributions hereunder. All Holders of Allowed Claims shall be required to provide the Wind Down Administrator with any information necessary to effect the withholding of such taxes. In addition, all distributions under the Plan shall be net of the actual and reasonable costs of making such distributions.

9.9. Distributions on Non-Business Days. Any payment or distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day.

9.10. No Distribution in Excess of Allowed Amount of Claim. Notwithstanding anything to the contrary herein, no creditor shall receive any distribution in excess of the Allowed amount of its Claim.

9.11. Setoff and Recoupment. The Wind Down Entity may, but shall not be required to, setoff against, or recoup from distribution, any claims or defenses of any nature whatsoever that the Wind Down Entity may have against the applicable recipient of such distribution, but the failure to do so shall not constitute a waiver or release by the Wind Down Entity of any claim, defense, right of setoff, or recoupment that it may have against such recipient.

9.12. Fractional Dollars; De Minimis Distributions; Unclaimed Distributions. Notwithstanding any other provision of the Controlling Documents to the contrary, for distributions to Beneficiaries (a) the Debtor and/or Wind Down Administrator shall not be required to make distributions or payments of fractions of dollars, and whenever any distribution of a fraction of a dollar under the Plan would otherwise be required, the actual distribution made shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down; and (b) the Debtor and/or Wind Down Administrator shall have no duty to make a distribution on account of any Allowed Claim (i) if the aggregate amount of all distributions on account of Allowed Claims authorized to be made on such date is less than \$30,000, in which case such distributions shall be deferred at the discretion of the Wind Down Administrator, (ii) if the amount to be distributed to a Beneficiary on the particular distribution date is less than \$50.00, unless such distribution constitutes the final distribution to such Beneficiary, or (iii) if the amount of the final distribution to such Beneficiary is \$30.00 or less, in which case no distribution will be made to that Beneficiary and such distribution shall revert to the Wind Down Entity for distribution on account of other Allowed Claims. Any Cash or other property to be distributed under the Plan that is an Unclaimed Distribution shall revert to the Wind Down Administrator if it is not claimed by the Unclaimed Distribution Deadline. If such Cash or other property is not claimed on or before the Unclaimed Distribution Deadline, then, at

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the election of the Liquidating Trustee, the distribution made to such Beneficiary shall be deemed to be reduced to zero and such returned, undeliverable, or unclaimed distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and shall revert to the Wind Down Entity for distribution on account of other Allowed Claims. A Claim, and the Unclaimed Distribution distributed on account of such Claim, shall not escheat to any federal, state, or local government or other entity by reason of the failure of its Beneficiary to claim a distribution in respect of such Claim.

ARTICLE X.
TAXES

10.1. Exemption from Certain Taxes and Fees. Pursuant to section 1146(a) of the Bankruptcy Code, the making or delivery of any instrument or transfer from the Debtor to the Wind Down Entity, or to any other Person pursuant to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp tax, real estate transfer tax, mortgage recording tax or other similar tax or governmental assessment, and the Confirmation Order directs the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the forgoing instruments or other documents without the payment of any such tax or governmental assessment.

10.2. Income Tax Status of the Wind Down Entity. Consistent with Revenue Procedure 94-45, 1994-28 I.R.B. 124, the Wind Down Entity shall be treated as a liquidating trust pursuant to Treasury Regulation Section 301.7701-4(d) and as a grantor trust pursuant to Sections 671-677 of the Tax Code. For all U.S. federal income tax purposes, all parties (including, without limitation, the Debtor, the Wind Down Administrator, and all Holders of Allowed Claims who are Beneficiaries) shall treat the transfer of the Trust Assets to the Wind Down Entity as (i) a transfer of the Trust Assets (subject to any obligations relating to those assets) directly to the Holders of Allowed Claims in Classes 3, 4 and 5 and, to the extent that the Trust Assets are allocable (a) to Disputed Claims, to the applicable reserve or (b) to Allowed Claims not otherwise paid on the Effective Date, to the applicable reserve, followed by (ii) the transfer by such Holders of Allowed Claims to the Wind Down Entity of the Trust Assets deemed received by such Holders pursuant to clause (i) (other than the Trust Assets allocable to the relevant reserve) in exchange for distributions, as applicable. Accordingly, the Holders of Allowed Claims in Classes 3, 4 and 5 shall be treated for U.S. federal income tax purposes as the grantors and owners of their respective share of the in Classes 3, 4 and 5 (other than such Trust Assets as are allocable to the relevant reserve). The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

a. **Tax Returns.** The Wind Down Administrator shall file tax returns for the Wind Down Entity treating the Wind Down Entity as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a). On or before March 15 of each year, the Wind Down Administrator also will send to each Beneficiary a separate statement setting forth such person's share of items of income, gain, loss, deduction or credit (including the receipts and expenditures of the Wind Down Entity) as relevant for U.S. federal income tax purposes and will instruct all such persons to use such information in preparing their U.S. federal income tax returns or to forward the appropriate information to such person's underlying beneficial holders with instructions to utilize

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such information in preparing their U.S. federal income tax returns. If it is not reasonably practicable to issue such statements by March 15 of any year, the Wind Down Administrator shall instead issue estimates of such statements by such date and final statements by no later than March 15 of such year. The Wind Down Administrator shall also file (or cause to be filed) any other statement, return or disclosure relating to the Wind Down Entity that is required by any governmental unit.

b. **Valuations.** The valuation of the Wind Down Assets prepared pursuant to Section 1.7 shall be used consistently by all parties for all federal income tax purposes.

c. **Allocations.** Allocations of Wind Down Entity taxable income (other than taxable income allocable to the Class 4 Disputed Claim Reserve, the McKesson Reserve, and the Priority Claims Reserve) among Beneficiaries shall be determined by reference to the manner in which an amount of Cash equal to such taxable income would be distributed (were such cash permitted to be distributed at such time, and without regard to any restrictions on distributions described herein) if, immediately prior to such deemed distribution, the Wind Down Entity had distributed all its assets (valued at their tax book value, and other than assets allocable to the Class 4 Disputed Claim Reserve, the McKesson Reserve, and the Priority Claims Reserve) to the applicable Beneficiaries, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Wind Down Entity. Similarly, taxable loss of the Wind Down Entity shall be allocated by reference to the manner in which an economic loss would be borne immediately after a hypothetical liquidating distribution of the remaining Trust Assets. The tax book value of the Trust Assets for the purpose of this paragraph shall equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the Tax Code, the applicable Treasury Regulations and other applicable administrative and judicial authorities and pronouncements.

d. **Payment of Taxes.** The Wind Down Administrator shall be responsible for payment, out of the applicable Trust Assets, of any taxes imposed on the Wind Down Entity or the Trust Assets, including the Class 4 Disputed Claim Reserve, the McKesson Reserve, and the Priority Claims Reserve. In the event, and to the extent, any Cash retained in the Class 4 Disputed Claim Reserve, the McKesson Reserve, and the Priority Claims Reserve is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, such Claims, such taxes shall be (i) reimbursed from any subsequent Cash amounts retained on account of such Claims or (ii) to the extent that such Claims have subsequently been resolved, deducted from any amounts otherwise distributable by the Wind Down Administrator as a result of the resolution of such Claims.

e. **Expedited Determination of Taxes.** The Wind Down Administrator may request an expedited determination of taxes of the Wind Down Entity, including the Class 4 Disputed Claim Reserve, the McKesson Reserve, and the Priority Claims Reserve, or the Debtor under section 505(b) of the Bankruptcy Code, for all tax returns filed for, or on behalf of, the Wind Down Entity or the Debtors for all taxable periods through the dissolution of the Wind Down Entity.

10.3. Income Tax Status of the Class 4 Disputed Claim Reserve, the McKesson Reserve, and the Priority Claims Reserve. Subject to contrary definitive guidance from the

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Internal Revenue Service or a court of competent jurisdiction (including the receipt by the Wind Down Administrator of a private letter ruling if the Wind Down Administrator so requests, or the receipt of an adverse determination by the Internal Revenue Service upon audit if not contested by the Wind Down Administrator), the Wind Down Administrator may (a) elect to treat the Class 4 Disputed Claim Reserve, the McKesson Reserve, and the Priority Claims Reserve as a “disputed ownership fund” governed by Treasury Regulation Section 1.468B-9 and (b) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. Accordingly, to the extent such election is made by the Wind Down Administrator pursuant to this Section 10.3, any Class 4 Disputed Claim Reserve, the McKesson Reserve, and the Priority Claims Reserve will be subject to tax annually on a separate entity basis on any net income earned with respect to the Wind Down Assets in such reserves, and all distributions from such reserves (which distributions will be net of the related expenses of the reserve) will be treated as received by Beneficiaries in respect of such Claims as if distributed by the Debtor. All parties will be required to report for U.S. federal, state and local income tax purposes consistently with the foregoing if the election is made by the Wind Down Administrator pursuant to this Section 10.3.

10.4. Withholding of Taxes. The Wind Down Administrator may withhold and pay to the appropriate tax authority all amounts required to be withheld pursuant to the Tax Code or any provision of any foreign, state or local tax law with respect to any payment or distribution. All such amounts withheld and paid to the appropriate tax authority shall be treated as amounts distributed to Beneficiaries for all purposes of this Agreement. The Wind Down Administrator shall be authorized to collect such tax information from Beneficiaries (including, without limitation, social security numbers or other tax identification numbers) as it, in its sole discretion, deems necessary to effectuate the Plan, the Confirmation Order and this Agreement. In order to receive distributions from the Wind Down Entity, all Beneficiaries will need to identify themselves to the Wind Down Administrator and provide tax information and the specifics of their holdings, to the extent that the Wind Down Administrator deems appropriate. The Wind Down Administrator may refuse to make a distribution to any Beneficiaries that fails to furnish such information in a timely fashion, until such information is delivered; *provided, however*, that, upon the delivery of such information by a Beneficiary, the Wind Down Administrator shall make such distribution to which the Beneficiary is entitled, without interest; and, *provided, further*, that, if the Wind Down Administrator fails to withhold in respect of amounts received and distributed with respect to any such Beneficiary and the Wind Down Administrator is later held liable for the amount of such withholding, such Holder shall reimburse the Wind Down Administrator for such liability.

10.5. Foreign Tax Matters. The Wind Down Administrator shall duly comply on a timely basis with all obligations, and satisfy all liabilities, imposed on the Wind Down Administrator or the Wind Down Entity under non-United States law relating to taxes. The Wind Down Administrator, or any other legal representative of the Wind Down Entity, shall not distribute the Post-Effective Date Assets or proceeds thereof without having first obtained all certificates required to have been obtained under applicable non-United States law relating to taxes.

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ARTICLE XI.
TERMINATION OF WIND DOWN ENTITY; DEBTOR DISSOLUTION

11.1. Termination of Wind Down Entity. The Wind Down Committee and the Wind Down Entity shall be dissolved at such time as (i) all of the Trust Assets have been administered, sold, transferred, abandoned or otherwise disposed of and the proceeds thereof have been distributed pursuant to the Controlling Documents, (ii) the Wind Down Administrator determines, in consultation with the Wind Down Committee and the Required Prepetition Secured Noteholders, that the administration of any remaining Trust Assets is not likely to yield sufficient additional Wind Down Entity proceeds to justify further pursuit or (iii) all distributions or payments required to be made by the Wind Down Entity under the under the Plan and this Agreement, including, without limitation, from all reserves and escrow accounts established under the Plan and this Agreement, have been made; *provided, however*, that in no event shall the Wind Down Entity be dissolved later than three (3) years from the Effective Date unless the Bankruptcy Court, upon motion within the six-month period prior to the third anniversary (or within the six-month period prior to the end of an extension period), determines that a fixed period extension (not to exceed one (1) year, including any prior extensions, without a favorable private letter ruling from the Internal Revenue Service or an opinion of counsel satisfactory to the Wind Down Administrator that any further extension would not adversely affect the status of the Wind Down Entity as a liquidating trust for U.S. federal income tax purposes) is necessary to facilitate or complete the administration, recovery and/or liquidation of the Trust Assets.

Notwithstanding the foregoing paragraph, if, at any time, the Wind Down Administrator determines, in reliance upon the Wind Down Advisors in consultation with the Wind Down Committee and Required Prepetition Secured Noteholders, that the expense of administering the Wind Down Entity is likely to exceed the value of the assets remaining in the Wind Down Entity, the Wind Down Administrator may, in accordance with its fiduciary duties, (i) reserve any amount necessary to dissolve the Wind Down Entity, (ii) donate any balance to a charitable organization (A) described in Section 501(c)(3) of the Tax Code, (B) exempt from U.S. federal income tax under Section 501(a) of the Tax Code, (C) not a “private foundation,” as defined in Section 509(a) of the Tax Code and (D) that is unrelated to the Debtor, the Wind Down Entity and any insider of the Wind Down Administrator and (iii) dissolve the Wind Down Entity.

11.2. Events Upon Termination. Upon dissolution of the Wind Down Entity, the Wind Down Administrator shall distribute any remaining proceeds from the monetization of the Trust Assets in accordance with the terms of the Controlling Documents, and the Wind Down Administrator shall file and make available to Beneficiaries the final accounting in accordance with this Agreement.

11.3. Winding Up, Discharge, and Release of the Wind Down Administrator. For the purposes of winding up the affairs of the Wind Down Entity at the conclusion of its term, the Wind Down Administrator shall continue to act as Wind Down Administrator until its duties under the Controlling Documents have been fully discharged or its role as Wind Down Administrator is otherwise terminated under this Agreement and the Plan

11.4. Dissolution of the Debtor. The affairs of the Debtor may be wound up and, with the express consent of the 401(k) Administrator, the Debtor may be dissolved at any time after

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the Effective Date without the need for any further action or approval or filings with the secretary of state of other governmental official or authorities in the Debtor's state of incorporation. For the avoidance of doubt, the entry of the Final Decree in the Case shall not effect a dissolution of the Debtor without the express consent of the 401(k) Administrator. After the Effective Date, the Debtor, along with its attorneys, accountants and other agents as applicable, shall have the right to (i) prosecute applications for payment of fees and reimbursement of expenses of Professionals, or attending to any other issues related to applications for payment of fees and reimbursement of expenses of Professionals, including in connection with the Final Fee Hearing, and (ii) participate in any appeals of the Confirmation Order and/or motions seeking reconsideration thereof through the date such appeals and/or motions are finally decided, settled, withdrawn or otherwise resolved. Subsequent to the distribution of the proceeds of the Trust Assets (or, at the Wind Down Administrator's election, earlier, if appropriate), the Wind Down Administrator, with the prior written consent of the 401(k) Administrator, shall seek entry of the Final Decree including through the Wind Down Administrator's counsel Filing a certification of counsel requesting the entry of the Final Decree.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

12.1. Amendments. The Wind Down Administrator may, with the approval of the Wind Down Committee and the Required Prepetition Secured Noteholders, modify, supplement, or amend this Agreement in any way that is not inconsistent with the Plan or the Confirmation Order.

12.2. Waiver. No failure by the Wind Down Entity, the Wind Down Administrator, the Wind Down Committee, or the Required Prepetition Secured Noteholders to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power, or privilege.

12.3. Cumulative Rights and Remedies. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights under law or in equity, subject to any limitations provided under the Plan and the Confirmation Order.

12.4. No Bond Required. Notwithstanding any state law to the contrary, the Wind Down Administrator (including any successor Wind Down Administrator) shall be exempt from giving any bond or other security in any jurisdiction other than as provided under Section 3.5 of this Agreement.

12.5. Irrevocability. This Agreement and the Wind Down Entity created hereunder shall be irrevocable, except as otherwise expressly provided in this Agreement.

12.6. Relationship to the Plan. The principal purpose of this Agreement is to aid in the implementation of the Plan and, therefore, this Agreement incorporates and, to the extent that the provisions of this Agreement are otherwise non-determinative, is subject to the provisions of the Plan and the Confirmation Order, which are attached hereto as Exhibit A and Exhibit B,

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respectively. Section 5.9 of the Plan is hereby incorporated into this Agreement as if fully set forth herein.

12.7. The 401(k) Administrator. Notwithstanding anything to the contrary in this Agreement, after the Effective Date, the 401(k) Administrator shall have sole authority for taking any and all actions necessary or desirable (i) in connection with the 401(k) Plan, in consultation with the Required Prepetition Secured Noteholders and in accordance with the 401(k) Administrator Budget and the Controlling Documents, and (ii) in connection with administering the Professional Fee Escrow in accordance with the 401(k) Administrator Budget, the applicable escrow agreement, orders of the Bankruptcy Court affecting Professional fees and expenses, and the Controlling Documents.

12.8. Division of Wind Down Entity. Under no circumstances shall the Wind Down Administrator have the right or power to divide the Wind Down Entity.

12.9. Statutory Fees. From and after the Effective Date, the Wind Down Entity shall pay all such fees all fees payable pursuant to 28 U.S.C. § 1930 from the Wind Down Operating Expense Reserve.

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

12.11. Retention of Jurisdiction. Notwithstanding the Effective Date, and to the fullest extent permitted by law, until the closing of the Case, the Bankruptcy Court shall retain exclusive jurisdiction over the Wind Down Entity after the Effective Date, including, jurisdiction to resolve any and all controversies, suits and issues that may arise in connection therewith, including in connection with, this Agreement, or any entity's obligations incurred in connection herewith. Each party to this Agreement hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court in any action to enforce, interpret or construe any provision of this Agreement or of any other agreement or document delivered in connection with this Agreement, and also hereby irrevocably waives any defense of improper venue, forum *non conveniens* or lack of personal jurisdiction to any such action brought in the Bankruptcy Court. Each party further irrevocably agrees that, until the closing of the Case, any action to enforce, interpret, or construe any provision of this Agreement will be brought only in the Bankruptcy Court. Each party hereby irrevocably consents to the service by certified or registered mail, return receipt requested, of any process in any action to enforce, interpret or construe any provision of this Agreement.

12.12. Severability. In the event that any provision of this Agreement or the application thereof to any person or circumstance shall be determined by any court of proper jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to persons or circumstance, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

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12.13. Limitation of Benefits. Except as otherwise specifically provided in this Agreement, the Plan or the Confirmation Order, nothing herein is intended or shall be construed to confer upon or to give any person other than the parties hereto and the Beneficiaries any rights or remedies under or by reason of this Agreement.

12.14. Notices. Except as provided in Section 12.9 of this Agreement, all notices, requests, demands, consents, and other communications hereunder shall be in writing and shall be deemed to have been duly given to a person, if delivered in person or by facsimile with an electromagnetic report of delivery or if sent by overnight mail, registered mail, certified mail, or regular mail, with postage prepaid, to the following addresses:

If to the Wind Down Administrator:

Province, Inc.
2360 Corporate Circle
Suite 330
Henderson, Nevada 89074
Attn: Peter Kravitz, Principal
Fax: [ADD]

with a copy to:

Irell & Manella LLP
840 Newport Center Drive, Suite 400
Newport Beach, California 92660
Attn: Jeffrey M. Reisner, Esq.
Fax: (949) 760-5200

If to a Beneficiary or Holder of a Claim:

To the name and distribution address set forth in the applicable Register with respect to such Person or entity.

The parties may designate in writing from time to time other and additional places to which notices may be sent.

12.15. Further Assurances. From and after the Effective Date, the parties hereto covenant and agree to execute and deliver all such documents and notices and to take all such further actions as may reasonably be required from time to time to carry out the intent and purposes of this Agreement, and to consummate the transactions contemplated hereby.

12.16. Integration. The Controlling Documents constitute the entire agreement with, by and among the parties thereto, and there are no representations, warranties, covenants, or obligations among them except as set forth herein, in the Plan and in the Confirmation Order. This Agreement, together with the Plan and the Confirmation Order, supersede all prior and contemporaneous agreements, understandings, negotiations, and discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise provided in this Agreement, the Plan or Confirmation Order, nothing herein is intended or shall

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be construed to confer upon or give any person other than the parties hereto or the Beneficiaries any rights or remedies under or by reason of this Agreement.

12.17. Interpretation. The enumeration and Section headings contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or of any term or provision hereof. Unless context otherwise requires, whenever used in this Agreement the singular shall include the plural and the plural shall include the singular, and words importing the masculine gender shall include the feminine and the neuter, if appropriate, and vice versa, and words importing persons shall include partnerships, associations, and corporations. The words herein, hereby, and hereunder and words with similar import, refer to this Agreement as a whole and not to any particular Section or subsection hereof unless the context requires otherwise. Any reference to the “Wind Down Administrator” shall be deemed to include a reference to the “Wind Down Entity” and any reference to the “Wind Down Entity” shall be deemed to include a reference to the “Wind Down Administrator” except for the references in Section 5.1 and Section 5.2, and such other provisions in which the context otherwise requires.

12.18. Counterparts. This Agreement may be signed by the parties hereto in counterparts, which, when taken together, shall constitute one and the same document. Delivery of an executed counterpart of this Agreement by facsimile or email in .pdf format shall be equally effective as delivery of a manually executed counterpart.

[Remainder of Page Left Intentionally Blank]

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IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers or representatives, all as of the date first above written.

DEBTOR:

Orexigen Therapeutics, Inc.

By: _____

Name: Thomas P. Lynch

Title: Chief Administrative Officer and General Counsel

WIND DOWN ADMINISTRATOR:

Province, Inc.,
as Wind Down Administrator

By: _____

Name: Peter Kravitz

Title: Principal

CREDITORS' COMMITTEE:

By: _____

Name:

Title:

REQUIRED PREPETITION SECURED NOTEHOLDERS:

By: _____

Name:

Title:

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EXHIBIT A

Plan

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EXHIBIT B

Confirmation Order

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EXHIBIT C

Wind Down Administrator Engagement Letter

EXHIBIT B



April 15, 2019

Re: Orexigen Therapeutics, Inc., Case No. 18-10518

Province, Inc. (“Province”), is pleased that we have been selected as Wind Down Administrator of the Wind Down Entity. The scope of our engagement and the powers and responsibilities we have agreed to are set forth in the Plan, Confirmation Order and Wind Down Entity Agreement. This letter confirms that Province has been engaged to perform the services set forth in the aforementioned documents, specifically in the Wind Down Entity Agreement.

For this engagement, the parties have agreed to the following compensation structure:

- A flat fee of \$7,500 a month for the first 12 months following the Effective Date of the Plan;
- Thereafter, the lesser of \$7,500 flat fee or hourly invoice billed at standard rates;

In addition, Province will bill for reimbursement of any actual and necessary expenses.

If this letter accurately reflects our agreement, please sign and return to us at your earliest convenience.

If you have any questions concerning the provisions of this Agreement, we invite your inquiries. We look forward to working with you.

Sincerely,

Peter Kravitz
Principal

AGREED AND ACCEPTED

By: _____
Title:

EXHIBIT C

401(K) ADMINISTRATOR CONSULTING AGREEMENT

THIS 401(K) ADMINISTRATOR CONSULTING AGREEMENT (this “*Agreement*”), dated May __, 2019, by and between OREXIGEN THERAPEUTICS, INC., the debtor and debtor in possession (the “*Debtor*”) in case number 18-10518 currently pending before the United States Bankruptcy Court for the District of Delaware (the “*Bankruptcy Court*”), and THOMAS P. LYNCH (solely in his capacity as such and not in his individual capacity, the “*401(k) Administrator*”, and together with the Debtor, the “*Parties*”), is subject to approval by the Bankruptcy Court as part of the Confirmation Order and shall be effective upon the Effective Date of the Plan (the “*Commencement Date*”). Capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Disclosure Statement or Plan, as applicable. In consideration of the foregoing, the Parties hereby agree as follows:

1. SERVICES.

a. The 401(k) Administrator, in accordance with the 401(k) Plan, 401(k) Administrator Budget, Wind Down Entity Documents and Confirmation Order, shall have any and all powers and authority necessary in connection with the following (collectively, the “*Services*”):

i. overseeing, managing, directing, terminating, and winding down the 401(k) Plan, including, coordinating audits and disbursements to 401(k) Plan participants;

ii. overseeing, managing and implementing the Voluntary Correction Plan, and interacting with the IRS and other governmental authorities, agencies or departments concerning the same;

iii. negotiating and implementing any changes or amendments to the Voluntary Correction Plan as may be required by the IRS or any other governmental authority, agency or department;

iv. coordinating with the Required Prepetition Noteholders concerning the 401(k) Administrator Budget;

v. coordinating with the Required Prepetition Noteholders and Wind Down Administrator concerning the 401(k) Administrator Expense Reserve;

vi. retaining and directing professionals and agents as the 401(k) Administrator deems reasonably necessary in connection with the Services;

vii. overseeing the preparation and filing of any necessary regulatory filings;

viii. overseeing and administering the Professional Fee Escrow and Professional Fee Reserve according to the Plan; and

ix. performing all other matters incident to the foregoing as the 401(k) Administrator reasonably deems necessary.

b. All of the Services shall be paid or funded from the 401(k) Administrator Expense Reserve, other than Services related to the Professional Fee Escrow which shall be paid or funded from the Professional Fee Reserve; *provided, however*, the Fee (as defined below) shall be paid solely from the 401(k) Administrator Expense Reserve.

c. The 401(k) Administrator shall devote such time as he reasonably deems necessary to the performance of the Services, it being understood that he may have other employment during the period of his Agreement. Nothing in this Agreement shall prohibit the 401(k) Administrator from undertaking additional or other responsibilities on behalf of the Required Prepetition Noteholders and/or the Wind Down Entity.

2. **TERM AND TERMINATION.** This Agreement will commence on the Commencement Date and will continue until the earlier of (i) the entry of a final decree in the Case, (ii) May 30, 2020 (unless extended with the consent of the 401(k) Administrator and the Required Prepetition Secured Noteholders), and (iii) the occurrence of an Event of Default (as defined below). To the extent the Commencement Date does not occur, this Agreement shall be void and have no effect.

3. **Payments.** The 401(k) Administrator shall receive a one-time payment of \$15,000 (the "*Fee*") upon the Effective Date. The Fee shall be fully earned and non-refundable upon the Effective Date, subject to Section 6. The Fee shall be paid from the 401(k) Administrator Expense Reserve.

3. **Relationship of the Parties.** Notwithstanding any provision of this Agreement to the contrary, the 401(k) Administrator is and shall at all times be an independent contractor and not an employee, agent, partner, or joint venturer of the Debtor, the Required Prepetition Noteholders or the Wind Down Entity.

4. **REPRESENTATIONS, WARRANTIES AND COVENANTS.**

a. The 401(k) Administrator represents and warrants as of the Commencement Date that this Agreement and the performance of the Services does not conflict with or violate any obligation of the 401(k) Administrator or, to the knowledge of the 401(k) Administrator (without any inquiry), the right of any third party;

b. The 401(k) Administrator shall perform the Services in compliance with (i) the applicable provisions of the Plan, Confirmation Order and Wind Down Entity Documents, (ii) this Agreement, and (iv) applicable law;

c. The 401(k) Administrator shall notify the Required Prepetition Noteholders and Wind Down Entity immediately if the IRS or any state or federal regulatory authority has made material inquiries or commenced proceedings concerning the 401(k) Plan, the Voluntary Correction Plan, the 401(k) Administrator, the 401(k) Administrator Budget, the 401(k) Administrator Reserve, or this Agreement.

d. The 401(k) Administrator shall perform the Services in a timely and commercial manner consistent with the Plan, Confirmation Order, Wind Down Entity Documents and this Agreement.

5. **Events of Default.** Each of the following shall constitute an "Event of Default" hereunder: (i) the failure of a representation or warranty made hereunder by the 401(k) Administrator to be materially true and correct as of the Commencement Date, or (ii) a material breach by the 401(k) Administrator of any of his obligations under this Agreement that has not been cured by the 401(k) Administrator within ten (10) days of receipt from the Wind Down Administrator or the Required Prepetition Noteholders of written notice of the occurrence of material breach hereunder, or (iii) the receipt by the Debtor, the Wind Down Administrator, or the Required Prepetition Noteholders of a notice of resignation from the 401(k) Administrator. In the event of an Event of Default that remains uncured following any applicable cure period, the 401(k) Administrator shall promptly refund the Fee to the 401(k) Administrator Expense Reserve or Required Prepetition Noteholders, as directed in writing by the Required Prepetition Noteholders.

6. **INDEMNIFICATION.** The 401(k) Administrator shall have the benefit of all exculpation, release and indemnification provisions, and insurance coverage, applicable to him under or through the Plan, the Confirmation Order, the Wind Down Entity Documents, the Debtor, and the Wind Down Entity.

7. **LIMITATION OF LIABILITY.** THE 401(K) ADMINISTRATOR SHALL NOT BE SUBJECT TO PERSONAL LIABILITY FOR ANY LOSSES, CLAIMS OR EXPENSES OF ANY KIND INCURRED OR ACCRUED BY ANY PERSON IN CONNECTION WITH THE PERFORMANCE OF THE SERVICES OR IN CONNECTION WITH OR ARISING UNDER OR

FROM THIS AGREEMENT, EXCEPT IN THE CASE OF THE 401(K) ADMINISTRATOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS DETERMINED PURSUANT TO A FINAL ORDER ENTERED BY A COURT OF COMPETENT JURISDICTION.

8. MISCELLANEOUS.

a. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO ANY CONFLICTS OF LAW PROVISIONS WHICH WOULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION. BY ITS EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ANY LEGAL ACTION, SUIT, DISPUTE OR PROCEEDING ARISING UNDER, OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL BE BROUGHT IN THE FEDERAL OR STATE COURTS OF COMPETENT JURISDICTION LOCATED IN THE STATE OF DELAWARE OR IN THE BANKRUPTCY COURT (FOR SO LONG AS THE BANKRUPTCY COURT HAS JURISDICTION) AND EACH OF THE PARTIES HERETO IRREVOCABLY ACCEPTS AND SUBMITS ITSELF TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS, GENERALLY AND UNCONDITIONALLY, AND WAIVES ANY OBJECTIONS AS TO VENUE OR INCONVENIENT FORUM. EACH PARTY HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT HEREBY. NOTWITHSTANDING THE FOREGOING CONSENT TO JURISDICTION, SO LONG AS THE BANKRUPTCY COURT HAS JURISDICTION, EACH OF THE PARTIES AGREES THAT THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION WITH RESPECT TO ANY MATTER UNDER OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, AND HEREBY SUBMITS TO THE JURISDICTION OF THE BANKRUPTCY COURT.

b. This Agreement is the entire agreement of the Parties with respect to the Services and supersedes any prior or contemporaneous agreements between the Parties with respect to the subject matter of this Agreement. This Agreement may only be modified by a written amendment signed by the Parties and with the prior written consent of the Required Prepetition Noteholders.

c. This Agreement, and the rights and obligations of 401(k) Administrator hereunder, may not be assigned or transferred by the 401(k) Administrator.

d. Either Party's failure to enforce any right resulting from a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other or subsequent breach by the other Party.

e. If any of the provisions of this Agreement are found to be invalid under an applicable statute or rule of law, they are to be enforced to the maximum extent permitted by law and beyond such extent are to be deemed omitted from this Agreement, without affecting the validity of any other provision of this Agreement.

f. This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together shall constitute one and the same instrument. A facsimile, PDF or any other type of copy of an executed version of this Agreement signed by a party is binding upon the signing party to the same extent as the original of the signed Agreement, and may be delivered electronically.

g. The 401(k) Administrator hereby acknowledges that the 401(k) Administrator has had the opportunity to consult with legal counsel prior to executing this Agreement.

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Having understood and agreed to the foregoing, the Debtor and the 401(k) Administrator have signed this Agreement as of the Commencement Date.

THOMAS P. LYNCH

**OREXIGEN THERAPEUTICS, INC. (AS DEBTOR
AND DEBTOR IN POSSESSION)**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Acting Solely in his capacity as 401(k)
Administrator and not in his individual capacity