

**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)

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER CONFIRMING
DEBTOR'S MODIFIED AMENDED PLAN OF LIQUIDATION**

Upon consideration of:

- the *Debtor's Modified Amended Plan of Liquidation* (the "Plan"), proposed by Orexigen Therapeutics, Inc. (the "Debtor") [D.I. 1099], and all documents related thereto (including, without limitation, the Wind Down Entity Documents);²
- the *Order (A) Approving the Disclosure Statement on an Interim Basis, (B) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, (C) Approving the Forms of Ballots and Solicitation Materials, (D) Establishing the Voting Record Date, (E) Scheduling a Plan Confirmation Hearing and Deadline for Filing Objections to Final Approval of the Disclosure Statement and Confirmation of the Plan, and (F) Approving the Related Form of Notice* [D.I. 999] (the "Joint Procedures Order"), which approved on an interim basis, among other things, the *Disclosure Statement for Debtor's Amended Plan of Liquidation* [D.I. 1007] (the "Disclosure Statement") and certain procedures related to solicitation of acceptances of the Plan and tabulation of votes;
- the service of the *Notice of Order (A) Approving the Disclosure Statement on an Interim Basis, (B) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, (C) Approving the Forms of Ballots and Solicitation Materials, (D) Establishing the Voting Record Date, (E) Scheduling a Plan Confirmation Hearing and Deadline for Filing Objections to Final Approval of the Disclosure Statement and Confirmation of the Plan, and (F) Approving the Related Form of Notice*, along with copies of the Plan,

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 are Orexigen Therapeutics, Inc. c/o Hogan Lovells US LLP, 390 Madison Avenue New York, NY 10017, Attn: Chris Bryant and John Beck.

² Capitalized terms used herein that are not defined shall have the meaning ascribed to them in the Disclosure Statement and Plan, as applicable.



Disclosure Statement, and the Ballots, where applicable, on the parties set forth in that certain *Affidavit of Service* [D.I. 1059] (the “AOS”);

- the Affidavit of Publication [D.I. 1060] (the “Publication Affidavit”);
- the *Declaration of Angela Nguyen on Behalf of Kurtzman Carson Consultants LLC Regarding Voting and Tabulation of Ballots Accepting and Rejecting the Amended Plan of Liquidation of Orexigen Therapeutics, Inc.* [D.I. 1098] (the “KCC Declaration”) which certified the results of voting on the Plan;
- the *Declaration of Thomas P. Lynch in Support of Confirmation of the Debtor’s Modified Amended Plan of Liquidation* [D.I. 1102] (the “Lynch Declaration”);
- the *Declaration of Michael A. Narachi in Support of First Day Relief* [D.I. 3] (the “First Day Declaration”);
- the *Modified Plan Supplement* [D.I. 1100] (the “Plan Supplement”);
- the *Debtor’s Memorandum of Law In Support of Confirmation of the Debtor’s Modified Amended Plan of Liquidation* [D.I. 1101] (the “Confirmation Brief”); and
- the record of the hearing held to consider confirmation of the Joint Procedures Order (the “Joint Procedures Hearing”); and
- the record of the hearing held to consider confirmation of the Plan (the “Confirmation Hearing”); and

IT APPEARING TO THE COURT that proper notice has been provided in connection with confirmation of the Plan and the Confirmation Hearing;

IT FURTHER APPEARING TO THE COURT that the deadline for filing objections to the Plan has passed, and all formal and informal objections were resolved prior to or at the Confirmation Hearing or otherwise overruled hereby;

IT FURTHER APPEARING TO THE COURT that the deadline for casting ballots to accept or reject the Plan has passed as set forth in the KCC Declaration; and

IT FURTHER APPEARING TO THE COURT that confirmation of the Plan is supported by (a) the Lynch Declaration, the KCC Declaration, the First Day Declaration and the

Confirmation Brief, (b) testimony, evidence and argument of counsel in support of confirmation of the Plan, and (c) the opportunity of parties in interest to present additional testimony, evidence or argument of counsel.

NOW, THEREFORE, based upon the Court's review of (a) the Plan, (b) the Wind Down Entity Documents, (c) the Lynch Declaration, (d) the KCC Declaration, (e) the Confirmation Brief, (f) the Plan Supplement, (g) all of the evidence proffered or adduced at, filings in connection with, and arguments of counsel made at, the Confirmation Hearing, (h) all of the evidence proffered or adduced at, filings in connection with, and arguments of counsel made at, the Joint Procedures Hearing, and (i) the entire record of the Chapter 11 Case; and after due deliberation thereon and good cause appearing therefor, and for the reasons set forth on the record at the Confirmation Hearing;

IT IS HEREBY FOUND, DETERMINED, ADJUDGED AND DECREED THAT:³

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Jurisdiction: Venue; Core Proceeding. The Court has jurisdiction over the Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L) upon which this Court may issue a final order, and confirmation of a plan by this Court is a constitutional exercise of the jurisdiction conferred by Congress on this Court. This Court has jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed. The Debtor is an eligible debtor under section

³ The findings of fact and the conclusions of law stated in this Confirmation Order shall constitute the Court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052, made applicable pursuant to the proceeding by Fed. R. Bankr. P. 9014. To the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

109 of the Bankruptcy Code. The Debtor is a proper plan proponent under section 1121(a) of the Bankruptcy Code.

2. Judicial Notice. The Court takes judicial notice of the docket of the Chapter 11 Case maintained by the Clerk of the Court and/or KCC, including, without limitation, all pleadings and other documents filed with, all orders entered by, and all evidence and argument made, proffered or adduced at the hearings held before the Court during the pendency of the Chapter 11 Case.

3. Transmittal and Mailing of Solicitation Materials and Notices. The solicitation materials and notices prescribed by the Joint Procedures Order, including the Plan, Disclosure Statement and Ballots, were served in compliance with the Joint Procedures Order, and such service was appropriate and sufficient. Appropriate and sufficient notice (both actual and constructive) of the Joint Procedures Hearing, the Confirmation Hearing and the deadlines and matters required to be noticed pursuant to the Joint Procedures Order was given in compliance with the Bankruptcy Code, the Bankruptcy Rules and the Joint Procedures Order, and no other or further notice was, is or shall be required.

4. Adequacy of Solicitation Procedures. All procedures used to distribute the solicitation materials to the appropriate creditors entitled to vote on the Plan and to tabulate the Ballots returned by creditors were fair and were conducted in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Joint Procedures Order. Votes for acceptance or rejection of the Plan were solicited in good faith, and only after transmittal of the Disclosure Statement containing adequate information, and otherwise in compliance with 11 U.S.C. §§ 1125 and 1126 and Fed. R. Bankr. P. 3017 and 3018.

5. Adequacy of Information -- 11 U.S.C. § 1125. The Disclosure Statement contains “adequate information” within the meaning of section 1125 of the Bankruptcy Code.

6. Good Faith Solicitation -- 11 U.S.C. § 1125(e). Based upon the record before the Court, the Debtor and its Professionals, the Creditors’ Committee and its Professionals, and the Prepetition Secured Noteholders and its professionals have acted in good faith within the meaning of 11 U.S.C. §§ 1125(e) and 1129(a)(3), and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Joint Procedures Order in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in 11 U.S.C. § 1125, and are entitled to the protections afforded by 11 U.S.C. § 1125(e) and, to the extent applicable, the exculpation and injunctive provisions set forth in Article VI of the Plan.

7. Impaired Classes that have Voted to Accept or Reject the Plan. Classes 3, 4 and 5 are each impaired under and entitled to vote on the Plan. As evidenced by KCC Declaration, which certified both the method and results of voting, Classes 3, 4 and 5 each voted to accept the Plan pursuant to the requirements of 11 U.S.C. §§ 1124 and 1126 and the Joint Procedures Order.

8. Class Deemed to Accept Plan. Classes 1 and 2 are unimpaired under the Plan. Pursuant to 11 U.S.C. § 1126(f), Holders of such unimpaired Claims are conclusively presumed to have accepted the Plan.

9. Class Deemed to Reject the Plan. Classes 6 and 7 are impaired and will not receive or retain any property under the Plan. Pursuant to 11 U.S.C. § 1126(g), Holders of such impaired Claims and Interests are conclusively presumed to have rejected the Plan.

10. Releases, Exculpations and Injunctions. The release, exculpation and injunction provisions set forth in Article VI of the Plan: (a) are within the jurisdiction of the Court under 28 U.S.C. §§ 1334(a), 1334(b) and 1334(d); (b) are essential to the successful implementation of the Plan pursuant to 11 U.S.C. § 1123(a)(5); (c) are an integral element of the transactions and settlements incorporated into the Plan; (d) confer material benefits on, and are in the best interests of, the Debtor, its Estate and its creditors; and (e) are consistent with 11 U.S.C. §§ 105, 1123 and 1129, and other applicable provisions of the Bankruptcy Code. With respect to the releases provided pursuant to Section 6.2(b) of the Plan by the Holders of Claims who did not opt out of such releases or who are otherwise not expressly carved out from such releases under the Plan or this Confirmation Order, such releases are (a) consensual; (b) in exchange for the good and valuable consideration provided by the Released Parties, representing a good faith settlement and compromise of any Claims released therein; (c) in the best interests of the Debtor and all Holders of Claims; (d) narrowly tailored; (e) fair, equitable and reasonable; and (f) a bar to any of the releasing parties' assertion of any Claim released by such provisions. The record of the Joint Procedures Hearing, Confirmation Hearing and the Chapter 11 Case is sufficient to support the release, exculpation and injunction provisions contained in Article VI of the Plan.

11. Plan Compliance with Bankruptcy Code -- 11 U.S.C. § 1129(a)(1). The Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying 11 U.S.C. § 1129(a)(1).

(i) Proper Classification -- 11 U.S.C. §§ 1122, 1123(a)(1). Aside from Administrative Expense Claims, Professional Fee Claims and Priority Tax Claims, which need not be classified, the Plan designates seven Classes of Claims and Interests against the Debtor. The Claims and Interests placed in each Class are substantially similar to the other Claims and Interests, as the case may be, in each such Class. Valid business, factual and legal reasons exist for separately classifying the various Classes of Claims and Interests created under the Plan, and such Classes do not unfairly discriminate among

holders of Claims and Interests. Thus, the Plan satisfies 11 U.S.C. §§ 1122 and 1123(a)(1).

(ii) Specify Unimpaired Classes -- 11 U.S.C. § 1123(a)(2). Article I of the Plan specifies that Classes 1 and 2 are unimpaired under the Plan, thereby satisfying 11 U.S.C. § 1123(a)(2).

(iii) Specify Treatment of Impaired Classes -- 11 U.S.C. § 1123(a)(3). Article I of the Plan specifies that Classes 3, 4, 5, 6 and 7 are impaired under the Plan and specifies the treatment of Claims or Interests in those Classes, thereby satisfying 11 U.S.C. § 1123(a)(3).

(iv) No Discrimination -- 11 U.S.C. § 1123(a)(4). The Plan provides for the same treatment by the Debtor for each Claim or Interest in each respective Class unless the Holder of a particular Claim or Interest has agreed to a less favorable treatment of such Claim or Interest, thereby satisfying 11 U.S.C. § 1123(a)(4).

(v) Implementation of Plan -- 11 U.S.C. § 1123(a)(5). The Plan provides adequate and proper means for its implementation, including the creation, funding of, and vesting in the Wind Down Entity of the Wind Down Assets and other property, thereby satisfying 11 U.S.C. § 1123(a)(5).

(vi) Non-Voting Equity Securities/Allocation of Voting Power -- 11 U.S.C. § 1123(a)(6). Section 1123(a)(6) of the Bankruptcy Code does not apply to the Plan because the Debtor is not issuing any equity securities under the Plan.

(vii) Designation of Directors and Officers -- 11 U.S.C. § 1123(a)(7). The Debtor's remaining officer and remaining director will be terminated on the Effective Date, except that Thomas P. Lynch will continue as a consultant in the limited role as 401(k) Administrator, with additional oversight over the Professional Fee Escrow. The identity of the Wind Down Administrator has been fully disclosed in the Plan Supplement and Wind Down Entity Documents, and was selected in a manner consistent with the interests of creditors and equity holders. Therefore, the Debtor has satisfied section 1123(a)(7) of the Bankruptcy Code.

(viii) Additional Plan Provisions -- 11 U.S.C. § 1123(b). The Plan's additional provisions, including the Plan Settlement and Sabby Settlement and those relating to the Wind Down Entity, are appropriate and not inconsistent with applicable provisions of the Bankruptcy Code.

(ix) Impairment/Unimpairment of Classes of Claims and Equity Interests -- 11 U.S.C. § 1123(b)(1). Pursuant to Article I of the Plan, (a) Classes 1 and 2 are unimpaired and (b) Classes 3, 4, 5, 6 and 7 are impaired, as contemplated by section 1123(b)(1) of the Bankruptcy Code.

(x) Assumption, Assignment and Rejection -- 11 U.S.C. § 1123(b)(2). Article III of the Plan and this Confirmation Order governs the rejection of executory contracts and unexpired leases and meets the requirements of section 365(b) of the Bankruptcy Code, thereby satisfying section 1123(b)(2) of the Bankruptcy Code. The Debtor is not seeking to assume or assign any executory contract or unexpired lease pursuant to the Plan, other than any insurance policies of the Debtor, to the extent they are executory, including, but not limited, to any directors' and officers' liability insurance policies, which shall be deemed assumed on the Effective Date.

(xi) Compliance with Fed. R. Bankr. P. 3016. The Plan is dated and identifies the entity submitting it, thereby satisfying Fed. R. Bankr. P. 3016(a). Further, the Plan and Disclosure Statement describe in specific and conspicuous language all acts to be enjoined and identify the Persons that are subject to the injunction, satisfying Fed. R. Bankr. P. 3016(c) to the extent applicable.

(xii) Compliance with Fed. R. Bankr. P. 3017. The Debtor has given notice of the Confirmation Hearing as required by Fed. R. Bankr. P. 3017(d) and the Joint Procedures Order. As reflected by, among other things, the AOS, Publication Affidavit and the KCC Declaration, the solicitation materials prescribed by the Joint Procedures Order were transmitted to creditors entitled to vote on the Plan in accordance with Fed. R. Bankr. P. 3017(d).

(xiii) Compliance with Fed. R. Bankr. P. 3018. The solicitation of votes to accept or reject the Plan satisfies Fed. R. Bankr. P. 3018. The Plan was transmitted to all creditors entitled to vote on the Plan, sufficient time was prescribed for such creditors to accept or reject the Plan, and the solicitation materials used and solicitation procedures followed comply with 11 U.S.C. §§ 1125 and 1126, thereby satisfying the requirements of Fed. R. Bankr. P. 3018.

12. Compliance with Bankruptcy Code -- 11 U.S.C. § 1129(a)(2). The Debtor has complied with the applicable provisions of the Bankruptcy Code, thereby satisfying 11 U.S.C. § 1129(a)(2).

13. Plan Proposed in Good Faith -- 11 U.S.C. § 1129(a)(3). The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying 11 U.S.C. § 1129(a)(3). In determining that the Plan has been proposed in good faith, the Court has examined the totality of the circumstances surrounding the formulation of the Plan. The Debtor filed this Chapter 11 Case and proposed the Plan with legitimate and honest purposes including, among other things, liquidating the Debtor's business and maximizing creditor recoveries. The

Plan and the agreements implemented by the Plan (including the Plan Settlement and Sabby Settlement) are the result of extensive, arm's-length, good faith negotiations between and among the principal constituencies in this Chapter 11 Case. Furthermore, the Plan is consistent with the best interests of the Estate, creditors, interest holders and other stakeholders.

14. Payments for Services or Costs and Expenses -- 11 U.S.C. § 1129(a)(4). Any payment made or to be made by the Debtor for services or for costs and expenses of the Debtor's Professionals in connection with the Chapter 11 Case, or in connection with the Plan and incident to the Chapter 11 Case, has been approved by, or is subject to the approval of, the Bankruptcy Court as reasonable, thereby satisfying section 1129(a)(4) of the Bankruptcy Code.

15. Director, Officers and Insiders -- 11 U.S.C. § 1129(a)(5). The Debtor has complied with section 1129(a)(5) of the Bankruptcy Code, to the extent such section is applicable. The Debtor's remaining officer and remaining director will be terminated on the Effective Date, except that Thomas P. Lynch will continue as a consultant in the limited role as 401(k) Administrator, with additional oversight over the Professional Fee Escrow. The Debtor has disclosed the identity and affiliation of the Wind Down Administrator, which shall serve in such capacity after confirmation of the Plan, and the appointment to, or continuance in, of such entity is consistent with the interests of creditors and equity security holders and with public policy. Other than Thomas P. Lynch serving in the limited capacity as 401(k) Administrator on a consulting basis, with additional oversight over the Professional Fee Escrow, the Debtor is not employing or retaining any insider.

16. No Rate Changes -- 11 U.S.C. § 1129(a)(6). There is no regulatory commission having jurisdiction after confirmation of the Plan over the rates of the Debtor and no rate change

provided for in the Plan requiring approval of any such commission. Therefore, 11 U.S.C. § 1129(a)(6) is not applicable.

17. Best Interests of Creditors – 11 U.S.C. § 1129(a)(7). The Plan satisfies 11 U.S.C. § 1129(a)(7). The liquidation analysis included in the Disclosure Statement and the evidence proffered or adduced at the Confirmation Hearing (a) are persuasive and credible, (b) have not been controverted by other evidence, and (c) establish that each Holder of an impaired Claim or Interest either has accepted the Plan or will receive or retain under the Plan, on account of such Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount that such Holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code on such date. The Plan effects the Plan Settlement and the Sabby Settlement, and provides that the Asset Purchase Agreement Claims, the Takeda Reconciliation Claim, the Holdback Amounts, and the Causes of Action, among other things, will be pursued and liquidated by the Wind Down Administrator for the benefit of Holders of Allowed Prepetition Secured Noteholder Claims and/or Holders of Allowed General Unsecured Claims, as applicable. Each Holder has either accepted the Plan (so that the best interests test does not apply) or will receive under the Plan on account of its respective Claim or Interest property of a value, as of the Effective Date, that is not less than the amount that each such Holder would have received if the Debtor was to have liquidated on the Effective Date under Chapter 7 of the Bankruptcy Code. Without the structure of the Plan, and the settlements contained therein (including, without limitation, those in sections 2.15 and 6.2(c)-(d) of the Plan), all of the Creditors that are Holders of Allowed General Unsecured Claims would likely receive a diminished recovery, or no recovery at all, on account of their Claims. In addition, Holders of Class 6 Section 510(b) Claims and Holders of Interests in Class 7 would receive no recovery

under Chapter 7 of the Bankruptcy Code. Accordingly, the “best interests” test of Bankruptcy Code section 1129 is satisfied.

18. Acceptance or Rejection by Certain Classes -- 11 U.S.C. § 1129(a)(8). Classes 1 and 2 are unimpaired and are conclusively presumed to have accepted the Plan under 11 U.S.C. § 1126(f). Classes 3, 4 and 5 are impaired and have voted to accept the Plan. Classes 6 and 7 receive nothing under the Plan and are deemed to have rejected the Plan.

19. Treatment of Administrative Claims, Fee Claims, and Priority Tax Claims -- 11 U.S.C. § 1129(a)(9). The treatment of Administrative Claims, Professional Fee Claims, and Priority Tax Claims pursuant to Article I of the Plan satisfies the requirements of 11 U.S.C. §§ 1129(a)(9)(A), (B) and (C).

20. Acceptance by Impaired Class -- 11 U.S.C. § 1129(a)(10). Classes 3, 4 and 5 are entitled to vote and have voted to accept the Plan in accordance with 11 U.S.C. § 1126(c). As such, without including any acceptance of the Plan by any statutory insider, there is at least one Class of Claims against the Debtor that is impaired under the Plan and has accepted the Plan. Thus, the Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code.

21. Feasibility -- 11 U.S.C. § 1129(a)(11). The Plan calls for liquidation of the Debtor. Therefore, confirmation of the Plan will not be followed by the need for further financial reorganization of the Debtor, thereby satisfying and eliminating the need to consider section 1129(a)(11) of the Bankruptcy Code. Nonetheless, the Disclosure Statement, the Lynch Declaration and other evidence proffered or adduced by the Debtor at or prior to the Confirmation Hearing with respect to feasibility (a) are reasonable, persuasive, credible and accurate, (b) have not been controverted by other evidence, and (c) establish that the Plan is feasible, thereby satisfying the requirements of 11 U.S.C. § 1129(a)(11).

22. Payment of Fees -- 11 U.S.C. § 1129(a)(12). All fees payable pursuant to section 1930 of title 28 of the United States Code have been paid or shall be paid on or before the Effective Date, thereby satisfying the requirements of section 1129(a)(12) of the Bankruptcy Code.

23. Continuation of Retiree Benefits -- 11 U.S.C. § 1129(a)(13); No Domestic Support Obligations (11 U.S.C. § 1129(a)(14)); Debtor Is Not an Individual (11 U.S.C. § 1129(a)(15)); Transfers of Property -- 11 U.S.C. § 1129(a)(16). The Debtor does not provide “retiree benefits” as such term is defined in section 1144 of the Bankruptcy Code, the Debtor is not required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the Debtor is not an individual, and the Debtor is a moneyed, business, or commercial corporation. Therefore, sections 1129(a)(13), (14), (15), and (16) of the Bankruptcy Code are inapplicable to the Plan.

24. Fair and Equitable: No Unfair Discrimination as to Rejecting Classes – 11 U.S.C. § 1129(b). Because Classes 6 and 7 are deemed to have rejected the Plan, the requirements of Bankruptcy Code section 1129(a)(8) are not satisfied. The Debtor therefore has requested confirmation of the Plan under section 1129(b) of the Bankruptcy Code, the “cramdown” provision, with respect to Classes 6 and 7. The Plan does not discriminate unfairly with respect to the non-accepting Classes. The Plan’s treatment of the non-accepting Classes is proper because all similarly-situated holders of Class 6 Claims and Class 7 Interests will receive the same treatment with their Class members and the Plan’s classification scheme rests on a legally acceptable rationale. Class 6 consists of claims that are subordinated pursuant to section 510(b) of the Bankruptcy Code. Class 7 constitutes Interests, which are not similarly situated—legally or otherwise—to any other Class. Accordingly, the Plan does not discriminate unfairly with respect to impaired dissenting Interests and satisfies the requirements of section 1129(b).

The Plan is also “fair and equitable” with respect to the non-accepting Classes because the Plan complies with the “absolute priority” rule. The impaired interest test requires that any class junior to the impaired class not receive any distribution under a plan on account of its junior interest. The Plan satisfies section 1129(b)(2)(C) for Class 6 Claims and Class 7 Interests, because no Class junior to these Classes will receive or retain property under the Plan on account of such junior interest.

25. Only One Plan -- 11 U.S.C. § 1129(c). Other than the Plan (including previous versions thereof), no other plan has been filed in the Chapter 11 Case. Accordingly, the requirements of 11 U.S.C. § 1129(c) have been satisfied.

26. Principal Purpose -- 11 U.S.C. § 1129(d). The principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of Section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. The Plan, therefore, satisfies the requirements of 11 U.S.C. § 1129(d).

27. No Objection to Disposition of Contracts and Leases. No party to an executory contract or unexpired lease to be rejected by the Debtor pursuant to the Plan has objected to the rejection thereof. Each rejection of an executory contract or unexpired lease under the Plan shall be legal, valid and binding upon the Debtor, the Wind Down Entity, and all non-Debtor parties to such executory contract or unexpired lease, all to the same extent as if rejection had been effectuated by motion.

28. Retention and Preservation of Causes of Action. It is in the best interests of the Debtor’s Estate and its Creditors that Causes of Action shall not revert in the Debtor, but shall instead vest in the Wind Down Entity, under the exclusive control of the Wind Down Administrator, in accordance with the provisions of the Plan, this Confirmation Order and the

Wind Down Entity Documents. Excluded Causes of Action shall not vest in the Wind Down Entity.

29. Burden of Proof. The Debtor has met its burden of proving the elements of 11 U.S.C. §§ 1129(a) and (b) by a preponderance of the evidence.

30. Satisfaction of Confirmation Requirements. The Plan satisfies the requirements for confirmation set forth in 11 U.S.C. § 1129.

THE COURT FURTHER FINDS, ADJUDGES AND ORDERS AS FOLLOWS:

31. Confirmation of Plan. The Plan is approved and confirmed pursuant to 11 U.S.C. § 1129.

32. Related Documents. The terms of each document ancillary to the Plan (including, without limitation, the Plan Supplement, the Wind Down Entity Documents, the form of 401(k) Administrator consulting agreement, and the proposed Wind Down Administrator engagement letter) are approved, incorporated by reference into, and an integral part of the Plan, and all parties are authorized to enter into such agreements with such amendments or revisions as agreed to by the applicable parties, and comply with the terms of such final agreements.

33. Approval of Disclosure Statement. The Disclosure Statement is approved on a final basis under sections 105(d) and 1125 of the Bankruptcy Code, Bankruptcy Rule 3017 and Local Rule 3017-2, subject only to the following modifications:

i. **Section 1.2.82** of the Disclosure Statement shall be deemed to be amended to read in its entirety as follows:

Exculpated Parties: (a) The Debtor and its Estate, (b) the Creditors' Committee, (c) the members of the Creditors' Committee (in such capacity), (d) the Wind Down Administrator (in such capacity), (e) the Wind Down Committee, (f) the members of the Wind Down Committee (in such capacity), (g) the Sole Continuing Director (in such capacity), (h) the Sole Continuing Officer (in such capacity), (i) the 401(k) Administrator (in such capacity), and (j) KCC (in its

capacity as Claims Agent, Noticing Agent, Balloting Agent and Plan distribution agent), including any and all Related Persons of each of the foregoing in such capacities.

ii. **Section 1.2.156** of the Disclosure Statement shall be deemed to be amended to read in its entirety as follows:

Professional Fee Escrow: An amount equal to the Professional Fee Claim Estimate to be funded by the Debtor from Cash on Hand on the Effective Date and held, maintained, and distributed, by and through the 401(k) Administrator, pursuant to Section 7.2 of the Plan.

34. **Overruling of Objections.** Any formal and informal objections raised at or before the Confirmation Hearing, which were not otherwise withdrawn or resolved herein or by the Plan, to the extent not resolved, are hereby overruled.

35. **Incorporation of Terms and Provisions of Plan.** The terms and provisions of the Plan, Plan Supplement and Wind Down Entity Documents are incorporated by reference into and are an integral part of this Confirmation Order. Each term and provision of the Plan is valid, binding and enforceable as though fully set forth herein. The provisions of the Plan, the Plan Supplement, Wind Down Entity Documents and this Confirmation Order, including the findings of fact and conclusions of law set forth herein, are non-severable and mutually dependent. The failure specifically to include or reference any particular term or provision of the Plan, Plan Supplement and/or Wind Down Entity Documents in this Confirmation Order shall not diminish or impair the effectiveness of such term and provision, it being the intent of the Court that the Plan be confirmed in its entirety.

36. **Binding Effect.** Pursuant to section 1141 of the Bankruptcy Code, effective on the Effective Date, and except as expressly provided in the Plan or this Confirmation Order, the Plan (and the Plan Supplement and the Wind Down Entity Documents) and its provisions shall be binding upon the Debtor, the Wind Down Entity, the Creditors' Committee, any Person

acquiring or receiving property or a distribution under the Plan and any Holder of a Claim against or Interest in the Debtor, including all governmental entities, whether or not the Claim or Interest of such Holder is impaired under the Plan and whether or not such Holder has accepted the Plan and/or will receive a distribution pursuant to the Plan. Pursuant to 11 U.S.C. §§ 1123(a) and 1142(a) and the provisions of this Confirmation Order, from and after the Effective Date, the Debtor, the Wind Down Entity, the Wind Down Committee, the 401(k) Administrator and KCC shall comply with the Plan and all Plan-related documents (including, without limitation, the Plan Supplement and Wind Down Entity Documents), and the Plan and all Plan-related documents (including, without limitation, the Plan Supplement and Wind Down Entity Documents) shall be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

37. Notice. Good and sufficient notice (both actual and constructive) of the Confirmation Hearing and the deadline for filing and serving objections to the Plan and confirmation thereof has been provided, which notice is hereby approved.

38. Wind Down Entity. On the Effective Date, the Wind Down Entity shall be established, and the Wind Down Committee and Wind Down Administrator shall be appointed, pursuant to the Plan and Wind Down Entity Documents for the purposes set forth in the Plan and Wind Down Entity Documents, including, among other things, (i) prosecution and potential settlement of the Causes of Action, the Asset Purchase Agreement Claims, and the McKesson Appeal, and any and all other claims and causes of action included among the Wind Down Assets, (ii) taking any action with respect to Disputed Claims, appeals, counterclaims, and defenses of, or with respect to, such Disputed Claims, Causes of Action and Asset Purchase Agreement Claims, and any and all other claims and causes of action included among the Wind Down Assets and/or any claims or causes of Action arising after the Effective Date in favor of

the Wind Down Entity, (iii) administering, monetizing and/or liquidating the Wind Down Assets (iv) filing all required federal, state, and local tax returns and/or informational returns for the Debtor and/or Wind Down Entity, including collecting all resulting Tax Refunds due to the Debtor in respect of tax years ending after the Effective Date and prior to January 1, 2021, or such later date as determined by the Wind Down Administrator in consultation with the Required Prepetition Secured Noteholders, and (v) making all distributions from the Wind Down Entity as provided for in the Plan, Wind Down Entity Documents and this Confirmation Order. The Wind Down Entity Agreement, substantially in the form annexed to the Plan Supplement, and all other Wind Down Entity Documents, and all provisions therein, are hereby approved by this Confirmation Order. The designation of Province, Inc. as the Wind Down Administrator is approved. Pending the occurrence of the Effective Date, the Debtor and the Creditors' Committee, as applicable, are each authorized to take all actions as may be necessary to facilitate the creation and implementation of the Wind Down Entity. The Wind Down Entity is authorized and empowered, pursuant to the Plan, Wind Down Entity Documents and this Confirmation Order, to liquidate or otherwise administer the Wind Down Entity Assets and take all actions contemplated and authorized by the Plan, Wind Down Entity Documents and this Confirmation Order.

39. Vesting of Estate Assets in Wind Down Entity. Pursuant to section 1141(b) of the Bankruptcy Code, the Wind Down Assets shall vest in the Wind Down Entity free and clear of all Claims, Liens, charges or other encumbrances; *provided, however*, 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 Section 2.19(c) of the Plan 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.

40. Reserves and Professional Fee Escrow.

- (i) *Wind Down Reserves.* 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 reasonable consent of the Required Prepetition Secured Noteholders, shall establish, fund and maintain the Wind Down Reserves, which shall be funded out of Cash on Hand and shall 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 in the manner set forth in the Wind Down Entity Documents. Any funds remaining in the Wind Down Reserves shall be distributed to Holders of Prepetition Secured Noteholder Claims.
- (ii) *Class 4 Disputed Claim Reserve.* Prior to making any distribution to Holders of Allowed Class 4 Claims, 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. 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 Holders of General Unsecured Claims.

- (iii) *Plan Settlement Litigation Reserve.* After the Effective Date, the Wind Down Administrator, in consultation with the Wind Down Committee, may establish and fund the Plan Settlement Litigation Reserve, which shall include Cash in an amount to be determined by the Wind Down Administrator and transferred to the Wind Down Entity on the Effective Date (or reserved thereafter from time to time from Plan Settlement Net Proceeds) and used by the Wind Down Administrator solely for the payment of Plan Settlement Litigation Expenses, in accordance with the Wind Down Entity Documents. Any funds remaining in the Plan Settlement Litigation Reserve shall be distributed to the Holders of Allowed General Unsecured Claim.
- (iv) *McKesson Reserve.* Pursuant to a series of stipulations, the Debtor agreed that it would segregate \$6,932,816.40 (the “Disputed Funds”) from the Sale proceeds pending the entry of a Final Order (as defined in the McKesson Stipulation) resolving the McKesson Dispute. The Debtor shall continue to segregate the Disputed Funds until such a Final Order (as defined in the McKesson Stipulation) resolving the McKesson Dispute has been entered.
- (v) *Professional Fee Escrow.* On the Effective Date, the Debtor shall establish and fund the Professional Fee Escrow from Cash on Hand. The Debtor shall fund the Professional Fee Escrow in an amount equal to the Professional Fee Claims Estimate. Funds held in the Professional Fee Escrow 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. After all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid, all remaining amounts in the Professional Fee Escrow shall be distributed by the Debtor to the Holders of Prepetition Secured Noteholder Claims in accordance with the Plan. Professional Fees owing to the applicable Professionals shall be paid in Cash to such Professionals from funds held

in the Professional Fee Escrow when such Claims are Allowed by an order of the Bankruptcy Court; provided, however, that 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. No liens, claims, or interests shall encumber the Professional Fee Escrow in any way.

41. Wind Down Entity Documents. The rights and powers of the Wind Down Entity and the Wind Down Administrator are specified in the Plan and Wind Down Entity Documents. Except as expressly set forth in the Plan, Wind Down Entity Documents or this Confirmation Order, the Wind Down Administrator, on behalf of the Wind Down Entity, shall have absolute discretion to pursue or not to pursue any Causes of Action transferred to the Wind Down Entity or arising 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 and/or other Causes of Action.

42. Wind Down Committee. On the Effective Date, the Wind Down Committee shall be appointed in accordance with the Plan and Wind Down Entity Agreement. The Wind Down Committee shall have the rights and powers provided for under the Plan and the Wind Down Entity Documents.

43. 401(k) Administrator. The 401(k) Administrator shall have sole authority for taking any and all actions necessary in connection with the 401(k) Plan, including to cure any defect affecting the qualified status of the 401(k) Plan under the Internal Revenue Code, in consultation with the Required Prepetition Secured Noteholders and in accordance with the 401(k) Administrator Budget. In addition, the 401(k) Administrator shall have sole authority to administer the Professional Fee Escrow pursuant to the Plan, this Confirmation Order, the escrow agreement governing the Professional Fee Escrow, and all orders of this Court entered with respect to the fees and expenses of Professionals.

44. Post-Effective Date Fees and Expenses. From and after the Effective Date, any requirement that Professionals comply with section 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and, subject to the terms of the Wind Down Entity Documents, the Wind Down Administrator may employ and pay any Wind Down Advisors (including firms or individuals retained by the Debtor, the DIP Lenders, the Prepetition Secured Noteholders, or the Creditors' Committee during the Chapter 11 Case) for services rendered or expenses incurred after the Effective Date in the ordinary course of business without any further notice to any party or action, order or approval of the Bankruptcy Court. The Wind Down Administrator's compensation, including fees and expenses of Wind Down Advisors, will be paid as set forth in the Wind Down Entity Documents and the Plan Supplement.

45. Fees of the Required Prepetition Secured Noteholders. Notwithstanding the confirmation and effectiveness of the Plan, the terms of paragraph 45 of the DIP Order respecting reimbursement of fees and expenses shall remain in effect with respect to fees and expenses incurred through and including the Effective Date. The Wind Down Administrator shall make any reimbursement required thereby from the Wind Down Operating Expense Reserve.

46. Statutory Fees. All fees due and payable pursuant to section 1930 of Title 28 of the U.S. Code prior to the Effective Date shall be paid by the Debtor. On and after the Effective Date, the Wind Down Entity, on behalf of the Debtor, shall pay any and all such fees when due and payable from the Wind Down Operating Expense Reserve, and shall file with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the U.S. Trustee. The Wind Down Entity, on behalf of the Debtor, shall remain obligated to pay quarterly fees to the

Office of the U.S. Trustee until the Bankruptcy Code enters a final decree closing the Chapter 11 Case.

47. Application of Absolute Priority Rule. The Plan satisfies the requirements of 11 U.S.C. § 1129(b) with respect to Class 6 and Class 7. Therefore, the treatment of the Claims and Interests in such Classes is approved.

48. Good Faith Settlement and Compromise Among the Debtor, the Creditors' Committee, Prepetition Secured Noteholders and Creditors. The Plan (embodying the Plan Settlement) is a settlement among the Debtor, the Creditors' Committee and creditors of all Claims and litigation against the Debtor, pending or threatened, or that were or could have been commenced against the Debtor prior to the date of entry of this Confirmation Order (other than the Wind Down Entity's ability to prosecute objections to Claims, Disputed Claims and other retained causes of action to the extent preserved under the Plan). The Plan Settlement is hereby approved pursuant to section 1123(b) of the Bankruptcy Code and Bankruptcy Rule 9019.

49. Releases. The release provisions of Section 6.2 of the Plan, as set forth below, are approved, and are incorporated by reference into, and are an integral part of, this Confirmation Order. It is hereby ordered that such provisions shall be effective in accordance with their terms.

(a) Releases by the Debtor. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, AS OF THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, INCLUDING: (1) THE SETTLEMENT, RELEASE AND COMPROMISE OF DEBT AND ALL OTHER GOOD AND VALUABLE CONSIDERATION PAID PURSUANT HERETO; AND (2) THE SERVICES OF THE DEBTOR'S PRESENT AND FORMER OFFICERS, DIRECTORS, MANAGERS AND ADVISORS IN FACILITATING THE EXPEDIENT IMPLEMENTATION OF THE TRANSACTIONS, DISTRIBUTIONS AND LIQUIDATION CONTEMPLATED HEREBY, THE DEBTOR, AND ANY PERSON OR ENTITY SEEKING TO EXERCISE THE RIGHTS OF THE DEBTOR'S ESTATE, INCLUDING, WITHOUT LIMITATION, ANY SUCCESSOR TO THE DEBTOR OR ANY ESTATE REPRESENTATIVE APPOINTED OR SELECTED PURSUANT TO SECTION 1123(B)(3) OF THE BANKRUPTCY CODE (INCLUDING THE WIND DOWN ENTITY AND WIND DOWN ADMINISTRATOR), SHALL BE DEEMED TO FOREVER RELEASE

AND WAIVE EACH OF THE RELEASED PARTIES FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, REMEDIES, RIGHTS, CAUSES OF ACTION, RIGHTS OF SETOFF AND LIABILITIES WHATSOEVER (INCLUDING ANY DERIVATIVE CLAIMS ASSERTED ON BEHALF OF THE DEBTOR) IN CONNECTION WITH OR IN ANY WAY RELATING TO THE DEBTOR, THE CONDUCT OF THE DEBTOR'S BUSINESSES, THE CASE, THE DISCLOSURE STATEMENT OR THE PLAN (OTHER THAN THE RIGHTS OF THE DEBTOR, THE WIND DOWN ADMINISTRATOR OR A CREDITOR HOLDING AN ALLOWED CLAIM TO ENFORCE THE OBLIGATIONS UNDER THE CONFIRMATION ORDER AND THE PLAN AND THE CONTRACTS, INSTRUMENTS, RELEASES, AND OTHER AGREEMENTS OR DOCUMENTS DELIVERED THEREUNDER) WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THEN EXISTING OR THEREAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, THAT ARE BASED IN WHOLE OR PART ON ANY ACT, OMISSION, TRANSACTION, EVENT, OR OTHER OCCURRENCE TAKING PLACE PRIOR TO THE EFFECTIVE DATE; *PROVIDED, HOWEVER*, THAT NOTHING IN THIS SECTION 6.2(a):

- (i) SHALL BE DEEMED TO PROHIBIT THE WIND DOWN ADMINISTRATOR FROM OBJECTING TO OR SEEKING DISALLOWANCE OF ANY DISPUTED CLAIMS FILED BY ANY RELEASED PARTIES OR RELATED PERSONS; OR
- (ii) SHALL OPERATE AS A RELEASE, WAIVER OR DISCHARGE OF ANY CAUSES OF ACTION OR LIABILITIES UNKNOWN TO THE DEBTOR AS OF THE PETITION DATE ARISING OUT OF GROSS NEGLIGENCE, WILLFUL MISCONDUCT, FRAUD OR CRIMINAL ACTS OF ANY SUCH RELEASED PARTY OR RELATED PERSON.

(b) **Releases by Holders of Claims.** NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, ON THE EFFECTIVE DATE AND AS OF THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, THE HOLDERS OF CLAIMS AGAINST IN THE DEBTOR WHO: (I) VOTES TO ACCEPT THIS PLAN, (II) IS DEEMED TO HAVE ACCEPTED THE PLAN, (III) ABSTAINS FROM VOTING ON THE PLAN, OR (IV) VOTES TO REJECT THIS PLAN AND DOES NOT OPT OUT OF THE RELEASES CONTAINED IN THE PLAN SHALL BE DEEMED TO FOREVER RELEASE AND WAIVE EACH OF THE RELEASED PARTIES FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, RIGHTS, CAUSES OF ACTION, AND LIABILITIES WHATSOEVER IN CONNECTION WITH OR IN ANY WAY RELATING TO THE DEBTOR, THE CONDUCT OF THE DEBTOR'S BUSINESSES, THE CASE, THE DISCLOSURE STATEMENT OR THE PLAN (OTHER THAN THE RIGHTS OF THE DEBTOR, OR A CREDITOR HOLDING AN ALLOWED CLAIM TO ENFORCE THE OBLIGATIONS UNDER THE CONFIRMATION ORDER AND THE PLAN AND THE CONTRACTS, INSTRUMENTS, RELEASES, AND OTHER AGREEMENTS OR DOCUMENTS DELIVERED THEREUNDER), WHETHER LIQUIDATED OR

UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THEN EXISTING OR THEREAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, WHETHER FOR TORT, CONTRACT, VIOLATION OF FEDERAL OR STATE SECURITIES LAW OR OTHERWISE, THAT ARE BASED IN WHOLE OR PART ON ANY ACT, OMISSION, TRANSACTION, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR PRIOR TO THE EFFECTIVE DATE; *PROVIDED, HOWEVER*, THAT NOTHING IN THIS SECTION 6.2(b) SHALL OPERATE AS A RELEASE, WAIVER OR DISCHARGE OF ANY CAUSES OF ACTION OR LIABILITIES UNKNOWN TO SUCH PERSON AS OF THE PETITION DATE ARISING OUT OF GROSS NEGLIGENCE, WILLFUL MISCONDUCT, FRAUD OR CRIMINAL ACTS OF ANY SUCH RELEASED PARTY; *PROVIDED, FURTHER, HOWEVER*, THAT, FOR THE AVOIDANCE OF DOUBT, NOTHING IN THIS SECTION 6.2(b) SHALL OPERATE AS A RELEASE, WAIVER OR DISCHARGE OF ANY CLAIMS OR CAUSES OF ACTION (I) AGAINST THE DEBTOR OR ANY NON-DEBTOR, ARISING UNDER OR IN CONNECTION WITH THE SECURITIES LITIGATION OR (II) OF THE DEBTOR, TO THE EXTENT NOT OTHERWISE RELEASED UNDER SECTION 6.2(a), TO BE TRANSFERRED TO THE WIND DOWN ENTITY ON THE EFFECTIVE DATE.

(c) **Plan Settlement.** AS NOTED ABOVE, ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO SECTION 1123(B) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019, OF THE PLAN SETTLEMENT, INCLUDING THE FOREGOING RELEASE BY THE DEBTOR, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED HEREIN, AND FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE FOREGOING RELEASE BY THE DEBTOR IS: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (2) A GOOD FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS AND INTERESTS RELEASED BY THE FOREGOING RELEASE BY THE DEBTOR; (3) IN THE BEST INTERESTS OF THE DEBTOR AND ALL HOLDERS OF CLAIMS AND INTERESTS; (4) FAIR, EQUITABLE AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR TO THE DEBTOR OR THE WIND DOWN ADMINISTRATOR ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE FOREGOING RELEASE BY THE DEBTOR.

(d) **Releases by Sabby Parties in Connection with Sabby Settlement.** NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, ON THE EFFECTIVE DATE AND AS OF THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, THE SABBY PARTIES, EACH OF THEIR RESPECTIVE SUBSIDIARIES AND AFFILIATES, AND THE RESPECTIVE PAST AND PRESENT AGENTS, ATTORNEYS, EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, SUCCESSORS, ASSIGNS, MEMBERS, REPRESENTATIVES (IN THEIR CAPACITY AS SUCH) OF EACH OF THE FOREGOING (COLLECTIVELY, THE "**SABBY RELEASE PARTIES**"), FOREVER, IRREVOCABLY AND UNCONDITIONALLY RELEASE AND DISCHARGE U.S. BANK NATIONAL ASSOCIATION, IN ITS CAPACITIES AS PREPETITION SECURED NOTES INDENTURE

TRUSTEE AND PREPETITION COLLATERAL AGENT, THE PREPETITION SECURED NOTEHOLDERS (OTHER THAN THE SABBY PARTIES), THE COMMITTEE AND ITS MEMBERS (SOLELY IN THEIR CAPACITIES AS SUCH), THE WIND DOWN ENTITY, THE WIND DOWN ADMINISTRATOR, AND THE DEBTOR, THE RESPECTIVE SUBSIDIARIES AND AFFILIATES OF EACH OF THE FOREGOING, AND THE RESPECTIVE PAST AND PRESENT AGENTS, ATTORNEYS, EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, SUCCESSORS, ASSIGNS, MEMBERS, REPRESENTATIVES (IN THEIR CAPACITY AS SUCH) OF EACH OF THE FOREGOING (COLLECTIVELY, THE “**DEBTOR/SECURED PARTY RELEASE PARTIES**”), FROM ANY AND ALL ACTIONS, ATTORNEYS’ FEES, CHARGES, CLAIMS, COSTS, DEMANDS, EXPENSES, JUDGMENTS, LIABILITIES AND CAUSES OF ACTION OF ANY KIND, NATURE OR DESCRIPTION, WHETHER MATURED OR UNMATURED, CONTINGENT OR ABSOLUTE, LIQUIDATED OR UNLIQUIDATED, KNOWN OR UNKNOWN (COLLECTIVELY, “**SABBY LITIGATION RELATED CLAIMS**”) WHICH THE SABBY RELEASE PARTIES MAY NOW HAVE, HAVE EVER HAD, OR MAY IN THE FUTURE HAVE AGAINST THE DEBTOR/SECURED PARTY RELEASE PARTIES, ARISING OUT OF OR IN CONNECTION WITH THE CLAIMS AND DISPUTES ASSERTED IN THE SABBY LITIGATION. THE RELEASES PROVIDED HEREIN BY THE SABBY RELEASE PARTIES IN FAVOR OF THE DEBTOR/SECURED PARTY RELEASE PARTIES DO NOT IN ANY MANNER WHATSOEVER EXTEND TO PAYMENT OF THE SABBY SETTLEMENT AMOUNT OR ANY OBLIGATION OF U.S. BANK NATIONAL ASSOCIATION, IN ITS CAPACITIES AS PREPETITION SECURED NOTES INDENTURE TRUSTEE AND PREPETITION COLLATERAL AGENT, UNDER THE SABBY SETTLEMENT AGREEMENT OR TO DISTRIBUTIONS UNDER THE PLAN OR ANY OTHER CHAPTER 11 PLAN IN THE CASE.

(e) **Releases by Debtor, U.S. Bank National Association, Prepetition Secured Noteholders and Committee in Connection with Sabby Settlement.** NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, ON THE EFFECTIVE DATE AND AS OF THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, THE DEBTOR/SECURED PARTY RELEASE PARTIES FOREVER, IRREVOCABLY AND UNCONDITIONALLY RELEASE AND DISCHARGE THE SABBY RELEASE PARTIES FROM ANY AND ALL SABBY LITIGATION RELATED CLAIMS WHICH THE DEBTOR/SECURED PARTY RELEASE PARTIES MAY NOW HAVE, HAVE EVER HAD, OR MAY IN THE FUTURE HAVE AGAINST THE SABBY RELEASE PARTIES, ARISING OUT OF OR IN CONNECTION WITH THE CLAIMS AND DISPUTES ASSERTED IN THE SABBY LITIGATION. THE RELEASES PROVIDED HEREIN BY THE DEBTOR/SECURED PARTY RELEASE PARTIES IN FAVOR OF THE SABBY RELEASE PARTIES DO NOT IN ANY MANNER WHATSOEVER EXTEND TO THE OBLIGATION OF THE SABBY PARTIES UNDER THE SABBY SETTLEMENT AGREEMENT.

(f) **Sabby Litigation Settlement.** ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT’S APPROVAL, PURSUANT TO SECTION 1123(B) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019, OF THE SABBY SETTLEMENT AGREEMENT, INCLUDING THE FOREGOING RELEASE BY THE DEBTOR OF THE SABBY RELATED PARTIES, WHICH INCLUDES

BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED HEREIN, AND FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE FOREGOING RELEASE BY THE DEBTOR IS: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE SABBY RELATED PARTIES; (2) A GOOD FAITH SETTLEMENT AND COMPROMISE OF THE SABBY LITIGATION RELATED CLAIMS RELEASED BY THE FOREGOING RELEASE BY THE DEBTOR; (3) IN THE BEST INTERESTS OF THE DEBTOR AND ALL HOLDERS OF CLAIMS AND INTERESTS; (4) FAIR, EQUITABLE AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR TO THE DEBTOR OR THE WIND DOWN ADMINISTRATOR ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE FOREGOING RELEASE BY THE DEBTOR.

50. Injunction. The injunction provisions of Section 6.2(g) of the Plan, as set forth below, are approved, and are incorporated by reference into, and are an integral part of, this Confirmation Order. It is hereby ordered that such provisions shall be effective in accordance with their terms.

(g) **Injunction Related to Releases and Exculpations**. Except as provided in the Plan or the Confirmation Order, as of the Effective Date, (i) all Persons that hold, have held, or may hold a Claim or Interest or any other cause of action, obligation, suit, judgment, damages, debt, right, remedy or liability of any nature whatsoever, relating to the Debtor or any of its respective assets, property and Estate, the Released Parties or the Exculpated Parties that is released or exculpated pursuant to Sections 6.1 or 6.2 of the Plan, (ii) all other parties in interest, and (iii) each of the Related Persons of each of the foregoing entities, are, and shall be, permanently, forever and completely stayed, restrained, prohibited, barred and enjoined from taking any of the following actions (whether directly or indirectly, derivatively or otherwise, on account of or based on the subject matter of such released Claims or Interests or other causes of action, obligations, suits, judgments, damages, debts, rights, remedies or liabilities, and of all Interests or other rights of a Holder of an equity security or other ownership interest): (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding (including, without limitation, any judicial, arbitral, administrative or other proceeding) in any forum; (b) enforcing, attaching (including, without limitation, any prejudgment attachment), collecting, or in any way seeking to recover any judgment, award, decree, or other order; (c) creating, perfecting or in any way enforcing in any matter, directly or indirectly, any Lien; (d) setting off (to the extent a request for setoff is pending as of the Effective Date), seeking reimbursement or contributions from, or subrogation against, in any manner, directly or indirectly, any amount against any liability or obligation owed to any Person discharged, released, or exculpated under Sections 6.1 or 6.2 of the Plan; and (e) commencing or continuing in any manner, in any place of any judicial, arbitration or administrative proceeding in any forum, that does not comply with or is inconsistent with the provisions of the Plan or the Confirmation Order; *provided, however*, that, for the avoidance of doubt, nothing in the Plan, including Section 6.2(g), or the Confirmation Order, shall enjoin or otherwise impact (x) the continued prosecution of the Securities Litigation, against all defendants named or to be named

therein, (y) the rights of the Wind Down Entity with respect to the Wind Down Assets or (z) any rights the lead plaintiff in the Securities Litigation (on behalf of itself and the proposed class it represents in the Securities Litigation), the Debtor, the Debtor's Estate, or the Wind Down Entity may have to make a claim under, or receive the proceeds of, any insurance available in connection with the claims and causes of action asserted in the Securities Litigation or otherwise.

51. Securities and Exchange Commission. Notwithstanding any language to the contrary contained in the Disclosure Statement, the Plan or this Confirmation Order, no provision of the Plan or Confirmation Order shall (i) preclude the United States Securities and Exchange Commission from enforcing its police or regulatory powers; or (ii) enjoin, limit, impair or delay the United States Securities and Exchange Commission from commencing or continuing any claims, causes of action, proceedings or investigations against any non-debtor person or non-debtor entity in any forum.

52. Takeda. Notwithstanding anything to the contrary in the Plan or this Confirmation Order, including without limitation in Article VI of the Plan, (i) the rights of Takeda to assert recoupment or setoff as an affirmative defense to the Takeda Reconciliation Claim or any other claims of the Debtor against Takeda are hereby preserved, and the rights of the Debtor and Wind Down Entity to assert all available defenses thereto, including, without limitation, that Takeda's recoupment and/or setoff rights are barred under applicable law, are hereby preserved, and (ii) Takeda shall not be deemed to have granted any releases under Section 6.2(b) of the Plan to the Debtor or any other Released Parties under the Plan.

53. Exculpation. The exculpation provisions of Section 6.1 of the Plan, as set forth below, are approved, and are incorporated by reference into, and are an integral part of, this Confirmation Order. It is hereby ordered that such provisions shall be effective in accordance with their terms.

6.1 Exculpation and Limitation of Liability. EFFECTIVE AS OF THE EFFECTIVE DATE, THE EXCULPATED PARTIES SHALL NEITHER HAVE, NOR INCUR ANY LIABILITY TO ANY HOLDER OF A CLAIM OR AN INTEREST, THE DEBTOR, OR

ANY OTHER PARTY-IN-INTEREST, OR ANY OF THEIR RESPECTIVE RELATED PERSONS, FOR ANY PREPETITION OR POSTPETITION ACT OR OMISSION IN CONNECTION WITH, RELATING TO, OR ARISING OUT OF, THE CASE, THE DECISION TO FILE THE CASE, THE ACTIONS TAKEN IN PREPARATION TO FILE THE CASE, THE FORMULATION, NEGOTIATION, OR IMPLEMENTATION OF THE DISCLOSURE STATEMENT OR THE PLAN, THE SOLICITATION OF ACCEPTANCES OF THE PLAN, THE PURSUIT OF CONFIRMATION OF THE PLAN, THE CONFIRMATION OF THE PLAN, THE CONSUMMATION OF THE PLAN, THE PURSUIT OF THE SALE OR THE SALE, OR THE ADMINISTRATION OF THE PLAN OR THE PROPERTY TO BE DISTRIBUTED UNDER THE PLAN, EXCEPT FOR ACTS OR OMISSIONS THAT ARE THE RESULT OF WILLFUL MISCONDUCT, GROSS NEGLIGENCE, FRAUD OR CRIMINAL ACTS; *PROVIDED, HOWEVER*, THAT (I) THE FOREGOING IS NOT INTENDED TO LIMIT OR OTHERWISE IMPACT ANY DEFENSE OF QUALIFIED IMMUNITY THAT MAY BE AVAILABLE UNDER APPLICABLE LAW; (II) EACH EXCULPATED PARTY SHALL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL CONCERNING HIS, HER OR ITS DUTIES PURSUANT TO, OR IN CONNECTION WITH THE CASE, THE DECISION TO FILE THE CASE, THE ACTIONS TAKEN IN PREPARATION TO FILE THE CASE, THE FORMULATION, NEGOTIATION, OR IMPLEMENTATION OF THE DISCLOSURE STATEMENT OR THE PLAN, THE SOLICITATION OF ACCEPTANCES OF THE PLAN, THE PURSUIT OF CONFIRMATION OF THE PLAN, THE CONFIRMATION OF THE PLAN, THE CONSUMMATION OF THE PLAN, THE PURSUIT OF THE SALE OR THE SALE, OR THE ADMINISTRATION OF THE PLAN OR THE PROPERTY TO BE DISTRIBUTED UNDER THE PLAN; AND (III) THE FOREGOING EXCULPATION SHALL NOT BE DEEMED TO, RELEASE, AFFECT, OR LIMIT ANY OF THE RIGHTS AND OBLIGATIONS OF THE EXCULPATED PARTIES FROM, OR EXCULPATE THE EXCULPATED PARTIES WITH RESPECT TO, ANY OF THE EXCULPATED PARTIES' OBLIGATIONS OR COVENANTS ARISING PURSUANT TO THE PLAN, THE CONFIRMATION ORDER, OR THE WIND DOWN ENTITY AGREEMENT.

Notwithstanding the definition contained in the Disclosure Statement, as used in the Plan and this Confirmation Order, "Exculpated Parties" shall mean: (a) the Debtor and its Estate, (b) the Creditors' Committee, (c) the members of the Creditors' Committee (in such capacity), (d) the Wind Down Administrator (in such capacity), (e) the Wind Down Committee, (f) the members of the Wind Down Committee (in such capacity), (g) the Sole Continuing Director (in such capacity), (h) the Sole Continuing Officer (in such capacity), (i) the 401(k) Administrator (in such capacity), and (j) KCC (in its capacity as Claims Agent, Noticing Agent, Balloting Agent and Plan distribution agent), including any and all Related Persons of each of the foregoing in such capacities.

54. No Discharge. Notwithstanding any other provision of the Plan or this Confirmation Order, pursuant to section 1141(d)(3) of the Bankruptcy Code, the Debtor shall not receive a discharge.

55. Cancellation of Interests. Pursuant to Section 1.5 of the Plan, on the Effective Date, all Interests shall be cancelled, terminated and of no further force and effect.

56. Failure to Timely File Proof of Claim. Consistent with paragraph 19 of the Bar Date Order, and except as set forth in paragraph 66 of this Confirmation Order, any person or entity that is required to file a proof of claim in this Chapter 11 Case but failed to do so in a timely manner shall be forever barred, estopped, and enjoined from: (a) asserting any Prepetition Claim, Rejection Damages Claim and/or 503(b)(9) Claim (each as defined in the Bar Date Order) (and from filing a proof of claim for a Prepetition Claim or a Rejection Damages Claim with respect thereto), against the Debtor or Wind Down Entity, and (b) voting upon, or receiving distributions under, the Plan, or distribution in any other manner in respect of its Prepetition Claim, Rejection Damages Claim and/or 503(b)(9) Claim. Any proof of claim filed after the applicable bar date is hereby Disallowed and expunged and shall not be entitled to receive any distribution from the Debtor's Estate, the Wind Down Entity or their respective assets.

57. Objection to Claims. Any objections to a proof of claim shall be filed on or before that date that is 120 days after the Effective Date, or such later deadline for objecting to claims as may be fixed by an order of this Court upon a motion (whether filed before or after the expiration of the deadline) filed by the Wind Down Administrator, which motion may be approved without a hearing and without notice to any party. Absent further order of this Court, any Claim that is not the subject of a timely filed objection by such deadline shall be an Allowed Claim in the amount set forth on the proof of claim filed by the Holder of such Claim or as listed on the Schedules if no such proof of claim has been filed. If a Disputed Claim becomes Allowed, in full or in part, such Claim shall be treated, to the extent Allowed, in accordance with the treatment of its Class.

58. Plan Implementation Authorization. All implementing actions required or contemplated by the Plan are hereby authorized and approved in all respects in accordance with the Plan. All documents and agreements necessary to implement the Plan, including, without limitation, the Wind Down Entity Documents, and all other relevant and necessary documents, have been negotiated in good faith and at arm's-length and are in the best interests of the Debtor and its Estate and shall, upon execution, be valid, binding, and enforceable documents and agreements not in conflict with any federal or state law. The Wind Down Administrator is hereby authorized to execute, deliver, file or record such documents, contracts, instruments, releases and other agreements, and take such other actions as may be necessary to effectuate, implement, and further evidence the terms and conditions of the Plan. On the Effective Date, the Wind Down Administrator is authorized and empowered to issue, execute, file and deliver or record such documents, contracts, instruments, releases and other agreements in the name of and on behalf of the Wind Down Entity. Prior to the Effective Date, the Sole Continuing Director and the Sole Continuing Officer of the Debtor shall be authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such other actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan and this Confirmation Order.

59. Governmental Approvals Not Required. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules or regulations of any State or any other governmental authority with respect to the implementation or consummation of the Plan and any documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in or contemplated by the Plan, the Disclosure Statement and any documents, instruments or agreements, and any amendments or modifications thereto.

60. Debtor's Status Prior to and After Effective Date. 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 the Effective Date without the need for any further action or approval or filings with the secretary of state or other governmental official or authorities in the Debtor's state of incorporation. For the avoidance of doubt, the entry of the Final Decree in this Chapter 11 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. After the Effective Date, the Wind Down Entity and/or Wind Down Administrator shall, in the discretion of the Wind Down Administrator, 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 Entity and/or Wind Down Administrator to file motions or substitutions of parties and counsel. Following the Effective Date, none of the Wind Down Entity, Wind Down Administrator or the Wind Down Advisors shall be required to file fee applications or have their fees approved by the Court.

61. Corporate Existence Preserved. After the Effective Date, the Debtor, with the assistance of the Wind Down Entity, shall preserve its corporate existence under Delaware law and the Internal Revenue Code until such time as the Wind Down Entity, on the Debtor's behalf, has collected all material Tax Refunds due to the Debtor and has obtained the approval of the 401(k) Administrator.

62. Dissolution of the Creditors' Committee. On the Effective Date, the Creditors' Committee shall be dissolved automatically, and its members, professionals, and agents shall be deemed released of any continuing duties, responsibilities and obligations in connection with the Chapter 11 Case, the Plan and its implementation, except with respect to (i) prosecuting applications for payment of fees and reimbursement of expenses of Professionals, or Creditors' Committee members, 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, or (ii) any appeals of this Confirmation Order and/or motions seeking reconsideration thereof through the date such appeals and/or motions are finally decided, settled, withdrawn or otherwise resolved. On the Effective Date, the retention and employment of the Creditors' Committee's attorneys, accountants and other agents shall terminate, except with respect to: (i) prosecuting applications for payment of fees and reimbursement of expenses of Professionals, or Creditors' Committee members, 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, or (ii) 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.

63. Exemption from Certain Transfer Taxes. Pursuant to 11 U.S.C. § 1146(a), any transfers of property pursuant to, in contemplation of, or in connection with the Plan, shall not be taxed under any law imposing a stamp tax, real estate transfer tax, mortgage recording tax, sales or use tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or government assessment, and the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment. Such exemption specifically applies, without limitation, to all documents necessary to evidence and implement distributions under the Plan, including the documents contained in the Plan Supplement and all documents necessary to evidence and implement any of the transactions and actions described in the Plan or the Plan Supplement. For the avoidance of doubt, all pre-confirmation transfers or sales do not qualify for an exemption pursuant to section 1146(a) of the Bankruptcy Code.

64. Compliance with Tax Requirements. Any Person making any distribution under the Plan shall comply with all applicable withholding and reporting requirements imposed by any federal, state or local taxing authority, and all distributions under the Plan shall be subject to any withholding or reporting requirements. Notwithstanding the above, each Holder of an Allowed Claim that is to receive a distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations, on account of such distribution. Any Person making any distribution under the Plan has the right, but not the obligation, to not make a distribution until such Holder has made arrangements satisfactory to such issuing or distributing party for payment of any such tax obligations.

65. Rejection of Executory Contracts and Unexpired Leases. All executory contracts and unexpired leases of the Debtor which have not been assumed and assigned, or rejected, prior to the Confirmation Date shall be deemed rejected as of the Confirmation Date; *provided, however,* that to the extent any insurance policies of the Debtor, including but not limited to any directors' and officers' liability insurance policies, are considered to be executory contracts, no such insurance policies shall be rejected or otherwise impacted pursuant to the Plan and all such insurance policies shall be deemed assumed on the Effective Date. The Debtor has exercised its reasonable business judgment prior to the Confirmation Hearing in determining to reject all remaining executory contracts and unexpired leases, other than any insurance policies of the Debtor, to the extent they are executory, including, but not limited, to any directors' and officers' liability insurance policies, which shall be deemed assumed on the Effective Date. Each rejection of an executory contract or unexpired lease pursuant to this Confirmation Order and in accordance with the Plan or otherwise shall be legal, valid and binding upon the Debtor, the Wind Down Entity and all non-Debtor entities party to such executory contract or unexpired lease.

66. Claims Based on Rejection of Executory Contracts and Unexpired Leases. Any Creditor asserting a Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease deemed rejected pursuant to the Plan (and not on or before the Confirmation Date) shall file a proof of claim substantially in the form of Official Form 410 with the Claims Agent, and serve it upon Debtor's counsel and the Wind Down Administrator by overnight mail by no later than 20 days after the Confirmation Date. Any Rejection Claim not timely filed pursuant to Section 3.2 of the Plan shall be forever disallowed and barred. If one or more Rejection Claims are filed pursuant to Section 3.2 of the Plan, notwithstanding Section

2.13 of the Plan, the Wind Down Administrator may file one or more objections to any such Rejection Claims, and shall serve any objection upon the claimant and the claimant's counsel, if any, by overnight mail no later than 120 days after the Confirmation Date. Any response by the claimant to any such objection shall be filed and served by overnight mail upon the Wind Down Administrator no later than 15 days after service of such objection has been completed. If any such objection is timely filed and cannot be resolved consensually by the parties, a hearing shall be held by the Bankruptcy Court as soon as is reasonably practicable, but in no event later than 45 days after service of such objection has been completed, to determine whether any such Rejection Claim is Allowed or Disallowed, in full or in part. The foregoing deadlines may be extended for cause or with the consent of the parties. If a Rejection Claim is determined to be Allowed, the date of such determination shall be deemed to be the Record Date and the Holder of the Claim on the date of such determination shall be deemed to be the Record Holder of such Claim. If a Rejection Claim becomes Allowed, in full or in part, such Claim shall be an Allowed General Unsecured Claim to the extent that such Claim becomes Allowed and the Record Holder of such Claim shall receive the treatment set forth in Section 2.4 of the Plan.

67. Transfers by Debtor; Vesting of Assets. All transfers of property of the Estate pursuant to the Plan and this Confirmation Order (a) are legal, valid and effective transfers of property, (b) vest the transferees with good title to such property free and clear of all Claims, interests, Liens, charges or other encumbrances, except as expressly provided in the Plan or this Confirmation Order, (c) do not and will not constitute avoidable transfers under the Bankruptcy Code or under applicable law, (d) do not and will not subject the Debtor or Wind Down Administrator to any liability by reason of such transfer under the Bankruptcy Code or under applicable nonbankruptcy law, including, without limitation, any laws affecting successor,

transferee, stamp or recording tax liability, and (e) are for good consideration and value. Except as otherwise provided in the Plan or in this Confirmation Order, from and after the Effective Date, the Wind Down Entity shall be vested with the Wind Down Assets free and clear of all Claims, Liens, encumbrances, charges and any other Claims of Creditors or Interest holders of the Debtor, except as expressly provided in the Plan or this Confirmation Order.

68. Plan Classifications Controlling. The classification of Claims and Interests for purposes of distributions made under the Plan shall be governed solely by the terms of the Plan. The classifications set forth on the Ballots tendered to or returned by the Holders of Claims entitled to vote under the Plan (a) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan, (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims and Interests under the Plan for distribution purposes and (c) shall not be binding on the Debtor or the Wind Down Administrator.

69. Treatment in Full Satisfaction. The treatment of Claims and Interests set forth in the Plan is in full and complete satisfaction of the legal, contractual and equitable rights that each Holder of a Claim or Interest may have against the Debtor, the Debtor's Estate and their respective property, including any property transferred under the Plan, Confirmation Order and Wind Down Entity Documents to the Wind Down Entity, on account of such Claim or Interest.

70. No Action. Pursuant to the appropriate provisions of the General Corporation Law of the State of Delaware, section 1142(b) of the Bankruptcy Code, and any other applicable law, no action of the directors, managers, officers, members or stockholders of the Debtor shall be required to authorize the Debtor to enter into, execute, deliver, file, adopt, amend, restate, consummate, or effectuate, as the case may be, the Plan, Wind Down Entity Documents or any

contract, instrument, or other document to be executed, delivered, adopted or amended in connection with the implementation of the Plan, Wind Down Entity Documents or this Confirmation Order.

71. Retention and Preservation of Causes of Action. The Causes of Action shall be and are hereby preserved and retained, and shall, upon the Effective Date, be transferred to, the Wind Down Entity, subject, however, to the releases provided in the Plan, this Confirmation Order, or any other Final Order of the Court. After the Effective Date, the Wind Down Entity shall have the exclusive authority to pursue, compromise and settle, otherwise resolve, discontinue, abandon or dismiss all such Causes of Action in accordance with the Plan and Wind Down Entity Documents. Excluded Causes of Action shall not vest in the Wind Down Entity.

72. Precedence. The provisions of the Plan and of this Confirmation Order shall be construed in a manner consistent with each other so as to effect the purposes of each; *provided, however,* that if there is determined to be any inconsistency between any Plan provision and any provision of this Confirmation Order that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of this Confirmation Order shall govern and any such provision of this Confirmation Order shall be deemed a modification of the Plan and the Confirmation Order shall control and take precedence. In the event and to the extent that any provision of the Plan are inconsistent with the provisions of the Disclosure Statement, the Wind Down Entity Documents (solely with respect to the creation of the Wind Down Entity) or any other agreement to be executed by any Person pursuant to the Plan, the provisions of the Plan shall control and take precedence; *provided, however,* in the event and to the extent that any provision of the Plan is inconsistent with the provisions of the Wind Down Entity Documents with respect to administration of the Wind Down Entity or the Wind Down Assets, the Wind

Down Entity Documents shall control and take precedence. In the event of any inconsistency between any provision of any of the foregoing documents, and any provision of this Confirmation Order, this Confirmation Order shall control and take precedence. Nothing in this Confirmation Order, the Plan, the Disclosure Statement or the Wind Down Entity Documents shall modify or be deemed to modify in any regard any term or provision of the DIP Order or any of the stipulations authorizing the Debtor's use of Cash Collateral, as approved by the Court, including, without limitation, any and all provisions respecting the reimbursement of fees and expenses of the Required Prepetition Secured Noteholders. In the event of any inconsistency between the Plan Settlement and the Plan or this Confirmation Order, the Plan Settlement shall control and take precedence.

73. Modifications to the Plan Prior to the Confirmation Date. Any modifications to the Plan since the commencement of solicitation of ballots, including, without limitation, those modifications set forth herein and in the Plan (collectively, the "Modifications"), constitute immaterial modifications and do not adversely affect or change the treatment of any Claims or Interests. Pursuant to section 1127(b) of the Bankruptcy Code and Bankruptcy Rule 3019, the Modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or the resolicitation of acceptances or rejections of the Plan under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims against or Interests in the Debtor be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The filing of the Modifications and the disclosure of the Modifications on the record at the Confirmation Hearing constitute due and sufficient notice thereof under the circumstances of the Chapter 11 Case. Accordingly, the Plan (which consists of the Plan as modified by the

Modifications) is properly before the Court, and all votes cast with respect to the Plan shall be binding and shall apply with respect to the Plan as modified.

74. Modifications to the Plan Following the Confirmation Date. After entry of this Confirmation Order, the Debtor, through the Effective Date, and after the Effective Date, the Wind Down Administrator may, upon order of the Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code. Notwithstanding the foregoing, the Debtor or the Wind Down Administrator, as the case may be, may make appropriate technical adjustments, remedy any defect or omission, or reconcile any inconsistencies in the Plan, any and all exhibits to the Plan, any other Plan-related documents (including, without limitation, the Plan Supplement and Wind Down Entity Documents) and/or this Confirmation Order, as may be necessary to carry out the purposes and effects of the Plan, provided, however, that such action does not materially and adversely affect the treatment of Holders of Allowed Claims pursuant to the Plan or beneficiaries under the Wind Down Entity Agreement and are taken in a manner that is consistent with any applicable “amendment or waiver” provisions in any affected agreement.

75. Reversal. If any or all of the provisions of this Confirmation Order are hereafter reversed, modified or vacated by subsequent order of the Court or any other court, in the absence of a stay of this Confirmation Order, such reversal, modification or vacatur shall not affect the validity of the acts or obligations incurred or undertaken in good faith under or in connection with the Plan prior to the Debtor’s or the Wind Down Entity’s (as the case may be) receipt of written notice of any such order. Notwithstanding any such reversal, modification or vacatur of this Confirmation Order, in the absence of a stay of this Confirmation Order, any such act or obligation incurred or undertaken in good faith pursuant to, and in reliance on, this Confirmation Order prior to the effective date of such reversal, modification or vacatur shall be governed in all

respects by the provisions of this Confirmation Order and the Plan or any amendments or modifications thereto.

76. Authorization to Consummate Plan; Waiver of Stay and Final Order. Notwithstanding Bankruptcy Rule 3020(e), this Confirmation Order shall take effect immediately upon its entry and the Debtor is authorized, but not directed, to consummate the Plan immediately after entry of this Confirmation Order and the satisfaction or waiver of all other conditions to the Effective Date of the Plan, in accordance with the terms of the Plan. The Plan shall only become effective on the Effective Date. This Confirmation Order is a Final Order and the period in which an appeal must be filed shall commence upon the entry hereof.

77. Administrative Expense Claim Bar Date. Requests for payment of Administrative Expense Claims (other than Professional Fee Claims) that have accrued between the Petition Date and the Effective Date of the Plan must be filed with the Bankruptcy Court no later than 4:00 p.m. (prevailing Eastern time) on the date that is twenty-one (21) days after the Effective Date and served in accordance with Section 7.5 of the Plan. The objection deadline for Administrative Expense Claims (other than Professional Fee Claims) shall be the Claims Objection Deadline. Holders of Administrative Expense Claims (other than Professional Fee Claims) that do not file such requests for the allowance and payment on or before the Administrative Expense Claim Bar Date shall forever be barred from asserting and being paid on account of such Administrative Expense Claims against the Debtor, its Estate, or the Wind Down Entity.

78. Bar Date for Professional Fee Claims. Any and all applications for the final allowance of Professional Fee Claims shall be filed and served upon counsel to the Debtor, counsel to the Creditors' Committee, the United States Trustee, and all Persons on the Debtor's

Bankruptcy Rule 2002 service list on or before the date that is 60 days after the Effective Date, which shall be the “Professional Fee Claim Bar Date”. The Final Fee Hearing shall be held on _____, 2019. The Debtor’s counsel shall file a notice of the Professional Fee Claim Bar Date and Final Fee Hearing. Such notice shall be posted on the Noticing Agent Website and the Debtor shall not be required to provide further notice of the Professional Fee Claim Bar Date or the Final Fee Hearing.

79. Applicable Non-Bankruptcy Law. Pursuant to sections 1123(a) and 1142(a) of the Bankruptcy Code, the provisions of this Confirmation Order, the Plan and all Plan-related documents (including, without limitation, the Plan Supplement and Wind Down Entity Documents) or any amendments or modifications thereto shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

80. Notice of Effective Date. Within five (5) Business Days following the occurrence of the Effective Date, the Debtor or the Wind Down Administrator shall file a notice of the Effective Date with the Court and serve a copy of such notice on the parties that have requested notice pursuant to Bankruptcy Rule 2002; which notice shall also serve as notice of the entry of this Confirmation Order under Bankruptcy Rule 2002(f).

81. Substantial Consummation. Substantial consummation of the Plan shall be deemed to occur on the Effective Date.

82. Final Decree. Subsequent to the Effective Date, the Final Fee Hearing, and the distribution of the proceeds of the Wind Down 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.

83. Continuation of Automatic Stay. All injunctions and stays provided for in the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Court enters a final decree closing the Chapter 11 Case and shall be supplemented by the injunctions, discharges, releases, and exculpations in Article VI of the Plan. After the Court enters a final decree closing the Chapter 11 Case, such injunctions or stays under sections 105 or 362 of the Bankruptcy Code, or otherwise, shall be replaced by the injunctions, discharges, releases, and exculpations in Article VI of the Plan.

84. Retention of Jurisdiction. Notwithstanding the entry of this Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, this Court (including any successor hereto) shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Case and the Plan pursuant to sections 105(a) and 112 of the Bankruptcy Code, including jurisdiction of those matters set forth in Section 5.3 of the Plan.

Dated: May __, 2019
Wilmington, Delaware

THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE