

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

In re:

SUITABLE TECHNOLOGIES, INC.,¹

Debtor.

Chapter 11

Case No. 20-10432 (CTG)

Ref. Docket No. 415

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER CONFIRMING
THE CHAPTER 11 PLAN OF LIQUIDATION OF SUITABLE TECHNOLOGIES, INC.**

Upon consideration of the *Chapter 11 Plan of Liquidation of Suitable Technologies, Inc.* attached hereto as **Exhibit A** (together with the Plan Supplement, all other exhibits thereto, and as may be amended, modified or supplemented, the “**Plan**”), proposed by the above-captioned debtor and debtor in possession (the “**Debtor**”); and the Bankruptcy Court having approved the *Disclosure Statement for the Chapter 11 Plan of Liquidation of Suitable Technologies, Inc.*, attached as Exhibit 1 to the Disclosure Statement Order (the “**Disclosure Statement**”); and the Debtor having filed the Plan Supplement on June 1, 2021 [Docket No. 429]; and upon consideration of the affidavits of service filed reflecting compliance with the notice and solicitation requirements of the Disclosure Statement Order [Docket Nos. 417, 419 and 420] (the “**Notice Affidavits**”); and upon the *Notice of Order (I) Approving the Disclosure Statement; (II) Approving Solicitation and Voting Procedures, Including (A) Fixing the Record Date, (B) Approving the Solicitation Packages and Procedures for Distribution, (C) Approving the Form of Ballots and Establishing Procedures for Voting, and (D) Approving Procedures for Vote Tabulation; (III) Scheduling a Confirmation Hearing and Establishing Notice and Objection Procedures; and (IV) Granting Related Relief* [Docket No. 416] (the “**Confirmation Hearing Notice**”); and upon

¹ The last four digits of the Debtor’s United States federal tax identification number are 7816. The Debtor’s mailing address is 921 East Charleston Road, Palo Alto, CA 94303.

consideration of the following filed with the Bankruptcy Court on June 16, 2021: (i) the *Notice of Filing of Further Revised Plan* [Docket No. 444], (ii) the *Declaration of John Burlacu of Donlin, Recano & Company, Inc. Regarding the Solicitation and Tabulation of Votes Cast on Chapter 11 Plan of Liquidation of Suitable Technologies, Inc.* [Docket No. 445] (the “**Voting Declaration**”), (iii) the *Declaration of Charles C. Reardon in Support of Confirmation of the Chapter 11 Plan of Liquidation of Suitable Technologies, Inc.* [Docket No. 446] (the “**Reardon Declaration**”), and (iv) the *Memorandum of Law in Support of Confirmation of the Chapter 11 Plan of Liquidation of Suitable Technologies, Inc.* [Docket No. 447] (the “**Confirmation Memorandum**”); and any objections to the Plan having been resolved or overruled by the Bankruptcy Court pursuant to this Confirmation Order; and a hearing to consider Confirmation having been held on June 22, 2021 (the “**Confirmation Hearing**”); and upon the evidence adduced and proffered and the arguments of counsel made at the Confirmation Hearing; and the Bankruptcy Court having reviewed all documents in connection with Confirmation and having heard all parties desiring to be heard; and upon the record of the Chapter 11 Case; and after due deliberation and consideration of all of the foregoing; and sufficient cause appearing therefor; the Bankruptcy Court hereby makes the following:

Findings of Fact and Conclusions of Law

A. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record of the Confirmation Hearing, constitute the Bankruptcy Court’s findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute

conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. **Capitalized Terms.** Capitalized terms used herein, but not defined herein, shall have the meaning attributed to such terms in the Plan and the Disclosure Statement, as applicable.

C. **Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Bankruptcy Court may enter a final order consistent with Article III of the United States Constitution, and the Debtor consents to entry of this Confirmation Order under the Local Rules and Article III of the United States Constitution. Venue of this proceeding and the Chapter 11 Case is proper in this district and in this Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

D. **Chapter 11 Petition.** On February 26, 2020 (the “**Petition Date**”), the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtor continues to manage its property as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On March 24, 2020, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) filed a statement [Docket No. 76] indicating that a committee of unsecured creditors had not been appointed in the Chapter 11 Case. No request has been made for the appointment of a trustee or an examiner.

E. **Judicial Notice.** The Bankruptcy Court takes judicial notice of the docket in the Chapter 11 Case maintained by the Clerk of the Bankruptcy Court or its duly appointed agent,

including, without limitation, all pleadings, notices, and other documents filed and all orders entered.

F. **Plan Supplement.** Prior to the Confirmation Hearing, the Debtor filed the Plan Supplement, which consists solely of the Plan Administrator Agreement. The Plan Supplement complies with the terms of the Plan, and the filing and notice of the Plan Supplement was appropriate and complied with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and the Disclosure Statement Order, and no other or further notice is or shall be required. The Debtor is authorized to modify the Plan Administrator Agreement following entry of this Confirmation Order in a manner consistent with this Confirmation Order and the Plan.

G. **Mailing of Solicitation and Confirmation Materials.** As is evidenced by the Voting Declaration and the Notice Affidavits, the transmittal and service of the Plan, the Disclosure Statement, the Ballots, the Confirmation Hearing Notice and the Notice of Non-Voting Status (as defined in the Disclosure Statement Order) were adequate and sufficient under the circumstances, and all parties required to be given notice of the Plan and the Confirmation Hearing (including the deadline for filing and serving objections to Confirmation of the Plan) have been given due, proper, timely, and adequate notice thereof in accordance with the Disclosure Statement Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and other applicable law, and such parties have had an opportunity to appear and be heard with respect thereto. Except as otherwise provided herein, no other or further notice of the Plan and the Confirmation Hearing is required.

H. **Voting.** Votes on the Plan were solicited after disclosure of adequate information as defined in section 1125 of the Bankruptcy Code. The procedures by which the Ballots for acceptance or rejection of the Plan were distributed and tabulated, including as set forth in the

Voting Declaration, under the circumstances of the Chapter 11 Case were fair, properly conducted, and complied with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, applicable non-bankruptcy law and the Disclosure Statement Order. As more fully set forth in the Voting Declaration, Class 3 (Prepetition Secured Promissory Notes Claim) and Class 4 (General Unsecured Claims) voted to accept the Plan.

I. **Bankruptcy Rule 3016(a).** In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the proponent of the Plan.

J. **Burden of Proof.** The Debtor, as the proponent of the Plan, has met its burden of proving the satisfaction of the requirements for confirmation of the Plan set forth in section 1129 of the Bankruptcy Code by a preponderance of the evidence, which is the applicable standard. Further, each witness who testified on behalf of the Debtor at or in connection with the Confirmation Hearing (including by declaration or proffer) was credible, reliable and qualified to testify as to the topic addressed in the testimony of such witness.

K. **Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)).** As set forth below, the Plan complies with all of the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

L. **Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)).** The classification of Claims and Interests under the Plan is proper under the Bankruptcy Code. In addition to DIP Claims, Administrative Claims, Professional Fee Claims, and Priority Tax Claims, which need not be classified, the Plan designates six (6) Classes of Claims and Interests. The Claims or Interests placed in each Class are substantially similar to other Claims or 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 between Holders of Claims and Interests. Thus, the Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

M. **Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)).** Article II of the Plan specifies that Class 1 (Secured Claims) and Class 2 (Priority Claims) are Unimpaired under the Plan. Thus, section 1123(a)(2) of the Bankruptcy Code is satisfied.

N. **Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).** Article II of the Plan designates Class 3 (Prepetition Secured Promissory Notes Claim), Class 4 (General Unsecured Claims), Class 5 (Subordinated Claims), and Class 6 (Interests) as Impaired, and specifies the treatment of Claims and Interests in such Classes. Thus, section 1123(a)(3) of the Bankruptcy Code is satisfied.

O. **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. Thus, section 1123(a)(4) of the Bankruptcy Code is satisfied.

P. **Implementation of the Plan (11 U.S.C. § 1123(a)(5)).** The Plan, including, without limitation, Article V thereof, and the Plan Administrator Agreement provide adequate and proper means for the Plan's implementation. Thus, section 1123(a)(5) of the Bankruptcy Code is satisfied.

Q. **Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).** The Plan does not provide for the issuance of any securities, including non-voting securities, and the Debtor is being dissolved after the Effective Date as provided for in the Plan. Therefore, section 1123(a)(6) of the Bankruptcy Code is satisfied.

R. **Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)).** Section 5.4 of the Plan provides for the appointment of the Plan Administrator, who will serve as a fiduciary of the Debtor's Estate and the Post-Effective Date Debtor, and who shall be empowered, pursuant to and in accordance with the terms and provisions of the Plan and the Plan Administrator Agreement, to, among other things: (a) implement the terms of the Plan; (b) object to, compromise, or settle any Claims; (c) establish reserves; (d) liquidate Assets; (e) prosecute, compromise, resolve or withdraw any of the Retained Causes of Action; and (f) otherwise wind-down the Estate in accordance with the Plan and the Plan Administrator Agreement. The appointment of the Plan Administrator is consistent with the interest of Holders of Claims and Interests and with public policy and therefore, section 1123(a)(7) of the Bankruptcy Code is satisfied.

S. **Additional Plan Provisions (11 U.S.C. § 1123(b)).** The Plan's provisions are appropriate, in the best interests of the Debtor and its Estate, and consistent with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

T. **Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)).** The Debtor has exercised appropriate business judgment in determining to reject the Debtor's remaining executory contracts and unexpired leases as provided for in the Plan and this Confirmation Order, and any such rejections are justified and appropriate in the Chapter 11 Case.

U. **Compromises and Settlements Under and in Connection with the Plan (11 U.S.C. § 1123(b)(3)).** The settlements and compromises pursuant to and in connection with the Plan, including, without limitation, the Plan Settlement, comply with and satisfy the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019. The Plan Settlement is reasonable, designed to achieve a beneficial and efficient resolution of the Chapter 11 Case for all parties-in-interest, a sound exercise of the Debtor's business judgment and in the best interest of

the Estate. Accordingly, except as otherwise set forth in the Plan or herein, in exchange for the valuable consideration provided through the Additional Borrowing Amount and in the Wind-Down Budget and the Plan, including, without limitation, the funding of the Administrative, Priority and Secured Claims Reserve, the Professional Fee Reserve, and the General Unsecured Claims Distribution Amount, and the other benefits provided for under the Plan and the Plan Settlement, including, without limitation, the release, exculpation, and injunction provisions, and the Magicheart Parties waiving all rights to a Distribution on account of their Allowed Claims as provided for in the Plan, the Plan shall constitute a good faith compromise and settlement of all Claims and controversies resolved pursuant to the Plan. Each component of the Plan Settlement is an integral part of the development and implementation of the Plan and the Plan Settlement.

V. Based upon the representations and arguments of counsel to the Debtor and other interested parties with respect to Confirmation, all testimony at or in connection with the Confirmation Hearing (including by declaration or proffer), including, without limitation, the Voting Declaration, the Reardon Declaration and the Confirmation Memorandum, other evidence introduced at the Confirmation Hearing, and the record of the Chapter 11 Case, this Confirmation Order constitutes the Bankruptcy Court's approval of the Plan Settlement, because, among other things: (a) the Plan Settlement provides significant value to the Debtor and its Estate, favorably resolves the significant Allowed Claims of the Magicheart Parties against the Debtor's Estate, and enables the prompt and efficient wind-down of the Estate through the Plan, including the agreed-upon treatment of the DIP Claim, the Prepetition Promissory Notes Claims, and the Palo Alto Real Property Lease Claims, and the agreement of the Magicheart Parties to fund the Wind-Down Budget, including the Administrative, Priority and Secured Claims Reserve and the Professional Fee Reserve, and the General Unsecured Claims Distribution Amount; (b) absent the funding of

the Additional Borrowing Amount and the funding of the Wind-Down Budget and the General Unsecured Claims Distribution Amount in accordance with the Plan Settlement, the Debtor would lack sufficient funds to develop and implement the Plan, or any other chapter 11 plan, and believes that no distributions would be available for Holders of Allowed Secured Claims, Allowed Priority Tax Claims, Allowed Priority Claims, and Allowed General Unsecured Claims; (c) the releases to be provided by the Debtor and its Estate under the Plan Settlement and the contemplated dismissal of the Chancery Court Action are given in exchange for appropriate consideration; (d) the parties to the Plan Settlement are represented by counsel; (e) the Plan Settlement is the product of arm's-length bargaining and good faith negotiations among sophisticated parties, including the Debtor's independent director and Chief Restructuring Officer; and (f) the Plan Settlement is otherwise in the best interests of the Debtor, the Estate, Holders of Claims and Interests, and other parties-in-interest, and is fair, equitable, and reasonable under the facts and circumstances of the Chapter 11 Case. Based on the foregoing, the Plan Settlement satisfies the requirements of applicable Third Circuit law for approval of settlements and compromises pursuant to Bankruptcy Rule 9019.

W. Releases and Related Injunctions (11 U.S.C. § 1123(b)). Under the facts and circumstances of the Chapter 11 Case, the releases and related injunctions provided for in the Plan are: (a) within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (b) an appropriate exercise of the Debtor's business judgment in the case of the release provided by the Debtor and the Estate pursuant to section 11.10(a) of the Plan; (c) integral elements of the transactions incorporated into the Plan, including, without limitation, the Plan Settlement, and inextricably bound with the other provisions of the Plan; (d) in exchange for good and valuable consideration provided by the Released Parties; (e) in the best interests of the Debtor and the Estate; (f) fair, equitable, and reasonable; (g) given and made after due notice and an opportunity to object and be

heard with respect thereto, as the Disclosure Statement, the Confirmation Hearing Notice, the Ballots, and the Notice of Non-Voting Status each unambiguously state that the Plan contains certain release and injunction provisions; (h) are consistent with sections 105, 524, 1123, 1129, and 1141 and other applicable provisions of the Bankruptcy Code and other applicable law; and (i) a bar to any Person and Entity asserting against any of the Released Parties any claims, interests, obligations, rights, suits, damages, causes of action, remedies and liabilities released, dismissed, settled or waived under the Plan and this Confirmation Order as and to the extent provided for in the Plan and this Confirmation Order.

X. Exculpations and Related Injunction (11 U.S.C. § 1123(b)). Under the facts and circumstances of the Chapter 11 Case, the exculpations and related injunction provided for in the Plan are: (a) within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (b) appropriate under applicable law; (c) integral to the Plan, and inextricably bound with the other provisions of the Plan; (d) consistent with established practice in this jurisdiction; (e) given and made after due notice and an opportunity to object and be heard with respect thereto, as the Disclosure Statement, the Confirmation Hearing Notice, the Ballots, and the Notice of Non-Voting Status each unambiguously state that the Plan contains certain exculpation and injunction provisions; and (i) a permanent injunction against any Person or Entity commencing or continuing in any manner any suit, action, discovery, or other matter or Proceeding of any kind against the Exculpated Parties that has been exculpated pursuant to section 11.11 of the Plan.

Y. Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)). Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including, without limitation, sections 1122, 1123, 1124, 1125, and 1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order

governing notice, disclosure, and solicitation in connection with the Plan, the Disclosure Statement, the Plan Supplement, and all other matters considered by the Bankruptcy Court in connection with Confirmation.

Z. Plan Proposed in Good Faith and Not by Means Forbidden by Law (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 section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Case, the Plan itself, and the process leading to its formulation. The Plan is the result of extensive arm's-length and good faith negotiations among the Debtor and the Magicheart Parties, which were represented by separate counsel. It is clear that the Plan promotes the objectives and purposes of the Bankruptcy Code.

AA. Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). The procedures set forth in the Plan for the Bankruptcy Court's approval of the fees, costs, and expenses to be paid in connection with the Chapter 11 Case, or in connection with the Plan and incident to the Chapter 11 Case, satisfy the objectives of, and are in compliance with, section 1129(a)(4) of the Bankruptcy Code.

BB. Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)). Section 5.2.1 of the Plan provides that, on the Effective Date, Ronald Barliant and Charles C. Reardon shall be terminated automatically as a director and the Chief Restructuring Officer, respectively, of the Debtor. The Disclosure Statement identifies that Mr. Reardon will initially serve as the Plan

Administrator and is currently the Debtor's Chief Restructuring Officer. Thus, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

CC. **No Rate Changes (11 U.S.C. § 1129(a)(6)).** The Plan does not provide for any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

DD. **Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).** The "best interests" test is satisfied as to all Impaired Classes under the Plan, as each Holder of a Claim or Interest in such Impaired Classes will receive or retain property of a value, as of the Effective Date, that is not less than the amount that such Holder would so receive or retain if the Debtor was liquidated under chapter 7 of the Bankruptcy Code, as demonstrated by the Liquidation Analysis attached as Exhibit B to the Disclosure Statement, other than the Magicheart Parties which, pursuant to the Plan Settlement, have agreed to waive all rights to a Distribution on account of their Allowed Claims, including, without limitation, the DIP Claim and the Prepetition Secured Promissory Notes Claim (provided that, in accordance with sections 3.1.1 and 12.1(c) of the Plan, any amounts funded to the Debtor or the Post-Effective Date Debtor, as applicable, under the DIP Credit Agreement or the Wind-Down Budget, that remain unused or otherwise available after the Plan Administrator has fully administered the Debtor's affairs, the Plan and the Chapter 11 Case, shall be returned to Magicheart).

EE. **Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)).** Class 1 (Secured Claims) and Class 2 (Priority Claims) are left unimpaired under the Plan, and Class 3 (Prepetition Secured Promissory Notes Claim) and Class 4 (General Unsecured Claims) have voted to accept the Plan in accordance with the Bankruptcy Code, thereby satisfying section 1129(a)(8) as to those Classes. However, Class 5 (Subordinated Claims) and Class 6 (Interests) are deemed to have

rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Accordingly, section 1129(a)(8) of the Bankruptcy Code has not and cannot be satisfied. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of section 1129(b) of the Bankruptcy Code, as set forth below.

FF. Treatment of Administrative, Professional Fee, Priority Tax, and Priority Claims (11 U.S.C. § 1129(a)(9)). The treatment of Administrative Claims, Professional Fee Claims, Priority Tax Claims, and Priority Claims pursuant to Article II of the Plan satisfies section 1129(a)(9) of the Bankruptcy Code.

GG. Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)). Class 4 (General Unsecured Claims) is an Impaired Class of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any insider, including any of the Magicheart Parties. Therefore, section 1129(a)(10) of the Bankruptcy Code is satisfied.

HH. Feasibility (11 U.S.C. § 1129(a)(11)). The Plan provides for the dissolution of the Debtor after the Effective Date. Thus, section 1129(a)(11) of the Bankruptcy Code is satisfied.

II. Payment of Fees (11 U.S.C. § 1129(a)(12)). All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to the Plan, thus satisfying section 1129(a)(12) of the Bankruptcy Code.

JJ. Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(13)-(16)). Sections 1129(a)(13)-(16) of the Bankruptcy Code are inapplicable to Confirmation, as the Debtor: (a) does not provide “retiree benefits,” as defined in section 1114 of the Bankruptcy Code (§ 1129(a)(13));

(b) has no domestic support obligations (§ 1129(a)(14)); (c) is not an individual (§ 1129(a)(15)); and (d) is not a nonprofit corporation (§ 1129(a)(16)).

KK. No Unfair Discrimination; Fair and Equitable Treatment (11 U.S.C. § 1129(b)). The classification and treatment of Claims and Interests in Class 5 (Subordinated Claims) and Class 6 (Interests), which are deemed to have rejected the Plan, is proper pursuant to section 1122 of the Bankruptcy Code, does not discriminate unfairly, and is fair and equitable pursuant to section 1129(b)(1) of the Bankruptcy Code. There is no Class of Claims or Interests junior to the Holders of Claims or Interests in Class 5 or Class 6 that will receive or retain property under the Plan on account of their Claims or Interests. Accordingly, the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to each Class that is deemed to have rejected the Plan. Thus, the Plan satisfies section 1129(b) of the Bankruptcy Code with respect to Class 5 and Class 6.

LL. Only One Plan (11 U.S.C. § 1129(c)). The Plan is the only chapter 11 plan currently proposed in the Chapter 11 Case, and section 1129(c) of the Bankruptcy Code is therefore satisfied.

MM. 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 or any other party has objected to Confirmation on any such grounds. Accordingly, section 1129(d) of the Bankruptcy Code is inapplicable.

NN. Satisfaction of Confirmation Requirements. Based upon the foregoing, the Plan satisfies the requirements for Confirmation set forth in section 1129 of the Bankruptcy Code, and should be confirmed.

OO. **Good Faith Solicitation (11 U.S.C. § 1125(e)).** The Debtor and its officers, directors, advisors, Professionals, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code, and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement 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 section 1125 of the Bankruptcy Code, and they are entitled to the benefits and protections afforded by section 1125(e) of the Bankruptcy Code and the injunction and exculpation provisions set forth in Article XI of the Plan and in this Confirmation Order.

PP. **Modifications to the Plan.** Any modifications to the Plan subsequent to the entry of the Disclosure Statement Order and solicitation of acceptances of the Plan, as reflected in the Plan attached hereto as **Exhibit A**, do not adversely change the treatment of any Holder of a Claim or Interest and, as such, should be deemed accepted by all Holders who have previously accepted the Plan.

QQ. **Retention of Jurisdiction.** The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article X of the Plan and section 1142 of the Bankruptcy Code.

Based upon the foregoing findings, and upon the record made before the Bankruptcy Court at or in connection with the Confirmation Hearing, and good and sufficient cause appearing therefor, it is hereby ORDERED, ADJUDGED AND DECREED THAT:

Confirmation of the Plan

1. The Plan is approved and confirmed pursuant to section 1129 of the Bankruptcy Code, and any objections to the Plan have been resolved or overruled by the Bankruptcy Court.
2. The terms of the Plan, including the Plan Settlement, are incorporated by reference into, and are an integral part of, this Confirmation Order.

Compromises and Settlements Under the Plan

3. Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, upon the Effective Date, all settlements and compromises set forth in the Plan, including, without limitation, the Plan Settlement, are approved in all respects, and constitute good faith compromises and settlements. The Debtor is authorized to execute and deliver such agreements, instruments and other documents as is necessary or appropriate to effectuate the Plan Settlement, including, without limitation, to dismiss the Chancery Court Action as soon as reasonably practicable after the Effective Date.

Classification and Treatment

4. The Plan's classification scheme is approved. The classifications set forth on the Ballots: (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 under the Plan for Distribution purposes; (c) may not be relied upon by any Holder as representing the actual classification of such Claim under the Plan for Distribution purposes; and (d) shall not be binding on the Debtor and the Plan Administrator except for Plan voting purposes.

Authorization to Implement the Plan

5. The Debtor, the Post-Effective Date Debtor, and the Plan Administrator, as applicable, are authorized to take or cause to be taken all corporate actions necessary or appropriate to implement all provisions of, and to consummate, the Plan, and to execute, enter into or otherwise make effective all documents arising in connection therewith, including, without limitation, the Plan Administrator Agreement, prior to, on, and after the Effective Date. Prior to the Effective Date, Ronald Barliant is authorized to execute the Plan Administrator Agreement on behalf of the Debtor as an authorized representative of the Debtor.

6. On the Effective Date, the Plan Administrator is authorized to do all things and to execute and deliver all agreements, documents, instruments, notices and certificates as are contemplated by the Plan and the Plan Administrator Agreement, and to take all necessary actions required in connection therewith, in the name of and on behalf of the Debtor or the Post-Effective Date Debtor, as applicable.

7. The approvals and authorizations specifically set forth in this Confirmation Order are not intended to limit the authority of the Debtor, the Post-Effective Date Debtor or the Plan Administrator to take any and all actions necessary or appropriate to implement, effectuate and consummate any and all documents or transactions contemplated by the Plan, the Plan Administrator Agreement or this Confirmation Order.

Enforceability of the Plan

8. Pursuant to sections 1123(a), 1141(a) and 1142 of the Bankruptcy Code, subject to the occurrence of the Effective Date, the Plan and the Plan Administrator Agreement shall be, and hereby are, valid, binding and enforceable.

Vesting of Assets

9. Except as otherwise provided in the Plan, on and after the Effective Date, all Assets, including all claims, rights, Retained Causes of Action and any property acquired by the Debtor under or in connection with the Plan, including as a result of the Plan Settlement, shall vest in the Post-Effective Date Debtor free and clear of all Claims, Liens, charges, other encumbrances, and Interests; provided, however, that any Liens and security interests securing the Allowed Claims of the Magicheart Parties (including the DIP Claim) shall attach to the Post-Effective Date Debtor's Assets with the same validity, priority, force and effect, which such Liens and security interests now have against the Debtor's assets.

Preservation of Retained Causes of Action

10. Except as otherwise provided in the Plan or this Confirmation Order: (a) in accordance with Section 1123(b)(3) of the Bankruptcy Code, any Retained Causes of Action that the Debtor may hold against any Person or Entity shall vest upon the Effective Date in the Post-Effective Date Debtor; and (b) after the Effective Date, the Post-Effective Date Debtor shall have the exclusive right to institute, prosecute, abandon, settle, dismiss or compromise any Retained Causes of Action, in accordance with the terms of the Plan and the Plan Administrator Agreement and without further order of or notice to the Bankruptcy Court, in any court or other tribunal, including, without limitation, in an adversary proceeding filed in the Chapter 11 Case. Notwithstanding anything to the contrary herein, all Avoidance Actions shall be waived by the Debtor as of the Effective Date, and shall not vest in the Post-Effective Date Debtor.

Reservation of Causes of Action

11. Unless a Retained Cause of Action against a Holder or other Person or Entity is expressly waived, relinquished, released, compromised or settled in the Plan, this Confirmation Order or a Final Order of the Bankruptcy Court, the Debtor, the Estate and the Post-Effective Date Debtor expressly reserve such Retained Cause of Action for later adjudication by the Post-Effective Date Debtor, including, without limitation, Retained Causes of Action of which the Debtor may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist. Therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise), laches or the like, shall apply to such Retained Causes of Action upon or after the entry of this Confirmation Order or Effective Date based on the Disclosure Statement, the Plan, or this Confirmation Order, except where such

Retained Causes of Action have been expressly waived, relinquished, released, compromised, dismissed or settled in the Plan, this Confirmation Order, a Final Order of the Bankruptcy Court or, following the Effective Date, in a written agreement duly executed by the Post-Effective Date Debtor which agreement, by its terms, is not subject to Bankruptcy Court approval.

Dissolution of the Debtor

12. Following the implementation of the Plan, the administration and Distribution of the Assets and the winding down of the Debtor, and without the need for any further Order of the Bankruptcy Court or action or formality which might otherwise be required under applicable non-bankruptcy laws, the Debtor shall be dissolved, and the Debtor shall not be required to pay any taxes or fees to cause such dissolution unless otherwise required by the laws of the State of Delaware. The Plan Administrator shall have no liability for taking any actions reasonably necessary to dissolve the Debtor in accordance with Section 5.3 of the Plan.

Cancellation of Interests

13. As of the Effective Date, all Interests of any kind shall be deemed cancelled, and the Holders thereof shall not receive or retain any property, interest in property, or other consideration in property under the Plan on account of such Interests.

Plan Distributions

14. The Plan Administrator or the Plan Administrator's designee, on behalf of the Post-Effective Date Debtor, shall serve as the disbursing agent under the Plan with respect to Distributions to Holders of Allowed Claims (provided that the Post-Effective Date Debtor may hire professionals or consultants to assist with making Distributions). The Post-Effective Date Debtor shall make all Distributions required to be made to such Holders of Allowed Claims pursuant to the Plan, this Confirmation Order and the Plan Administrator Agreement. The Post-Effective Date Debtor shall not be required to give any bond or surety or other security for the

performance of the Plan Administrator's duties as disbursing agent unless otherwise ordered by the Bankruptcy Court.

15. Except to the extent provided in section 506(b) of the Bankruptcy Code, the Plan, or this Confirmation Order, post-petition interest, penalties or fees shall not accrue or be paid on Allowed Claims, and no Holder of an Allowed Claim shall be entitled to interest accruing on any Allowed Claim from and after the Petition Date.

Implementation of the Plan and the Plan Administrator

16. The Plan Administrator Agreement, substantially in the form filed with the Plan Supplement, is hereby approved.

17. The appointment of Charles C. Reardon as the Plan Administrator is hereby approved. The Plan Administrator shall be a fiduciary of the Debtor's Estate and the Post-Effective Date Debtor and shall be compensated and reimbursed for expenses as set forth in, and in accordance with, the Plan Administrator Agreement. The Plan Administrator shall have all powers, rights, duties and protections afforded the Plan Administrator under the Plan, this Confirmation Order, and the Plan Administrator Agreement.

Executory Contracts and Unexpired Leases

18. Subject to the occurrence of the Effective Date, all executory contracts and unexpired leases of the Debtor that have not been assumed, assumed and assigned, or rejected, prior to the Effective Date, or that are not subject to a motion to assume or reject Filed before the Effective Date, shall be deemed rejected pursuant to this Confirmation Order, as of the Effective Date.

19. **Any Creditor asserting a Rejection Claim shall File a proof of such claim with the Debtor's claims and noticing agent, Donlin Recano & Company, Inc., at the address set forth in Section 6.1 of the Plan and in the Notice of Confirmation and Effective Date (as**

defined below), within thirty-five (35) days of the Effective Date, and shall also serve such proof of claim upon counsel for the Plan Administrator, at the address set forth in Section 6.1 of the Plan and in the Notice of Confirmation and Effective Date. Any Rejection Claims that are not timely Filed pursuant to Section 6.1 of the Plan and this Confirmation Order shall be forever disallowed and barred, absent a Final Order to the contrary.

Disputed Claims

20. Except as otherwise specifically provided in the Plan and the Plan Administrator Agreement, after the Effective Date, the Post-Effective Date Debtor shall have the authority to: (a) file, withdraw, or litigate to judgment objections to Claims; (ii) settle, compromise, or Allow any Claim or Disputed Claim without any further notice to or action, Order, or approval by the Bankruptcy Court; (iii) amend the Schedules in accordance with the Bankruptcy Code; and (iv) administer and adjust the claims register to reflect any such settlements or compromises without any further notice to or action, Order, or approval by the Bankruptcy Court. Any agreement entered into by the Post-Effective Date Debtor (acting in accordance with the terms of the Plan Administrator Agreement) with respect to the Allowance of any Claim shall be conclusive evidence and a final determination of the Allowance of such Claim.

21. All objections to Claims (other than Professional Fee Claims, which Professional Fee Claims shall be governed by Section 11.2 of the Plan) shall be Filed on or before the Claim Objection Deadline, which date may be extended by the Bankruptcy Court upon a motion filed by the Post-Effective Date Debtor on or before the Claim Objection Deadline with notice only to (i) those parties entitled to notice in the Chapter 11 Case pursuant to Bankruptcy Rule 2002 as of the filing of such motion and (ii) those Holders of Claims affected by such motion. The Filing of a motion to extend the Claim Objection Deadline shall automatically extend the Claim Objection Deadline until a Final Order is

entered by the Bankruptcy Court. In the event that such a motion to extend the Claim Objection Deadline is denied, the Claim Objection Deadline shall be the later of the then-current Claim Objection Deadline (as previously extended, if applicable) or thirty (30) days after entry of a Final Order denying the motion to extend the Claim Objection Deadline.

Administrative Claims

22. All requests for payment of an Administrative Claim must be Filed with the Bankruptcy Court and served on counsel to the Plan Administrator and counsel to the Magicheart Parties no later than thirty five (35) days after the Effective Date, at the address set forth in Section 11.1 of the Plan and in the Notice of Confirmation and Effective Date. In the event of an objection to allowance of an Administrative Claim, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim.

Professional Fee Claims

23. All final requests for payment of Professional Fee Claims pursuant to sections 327, 328, 330, 331, 503(b), or 1103 of the Bankruptcy Code must be made by application Filed with the Bankruptcy Court and served on counsel to the Plan Administrator and the Post-Effective Date Debtor, counsel to the Magicheart Parties, and the U.S. Trustee no later than thirty (30) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Objections to such applications must be Filed and served on counsel to the Plan Administrator, counsel to the Magicheart Parties, the U.S. Trustee and the requesting Professional on or before the date that is twenty-one (21) days after the date on which the applicable application was served (or such longer period as may be allowed by Order of the Bankruptcy Court or by agreement with the requesting Professional). For the avoidance of doubt, any party seeking compensation or reimbursement of expenses under sections

503(b)(3) or 503(b)(4) of the Bankruptcy Code must file a motion for approval of the same in accordance with the Bankruptcy Rules and the Local Rules.

24. All Professional Fee Claims shall be paid by the Estate to the extent approved by Order of the Bankruptcy Court within five (5) Business Days from entry of such Order.

25. On or before the Effective Date, the Debtor shall establish the Professional Fee Reserve, which shall only be used to pay (a) Professional Fee Claims and (b) Asgaard Capital Fee Claims, unless and until all Professional Fee Claims and Asgaard Capital Fee Claims have been paid in full, otherwise satisfied or withdrawn. The Professional Fee Reserve shall vest in the Estate and shall be maintained by the Post-Effective Date Debtor in accordance with the Plan and the Plan Administrator Agreement, subject to Magicheart's Liens and security interests in the Post-Effective Date Debtor's Assets as provided for in the Plan. The Professional Fee Reserve shall be funded on the Effective Date pursuant to the Plan Settlement in Cash in an amount that is determined by the Debtor and that approximates, as of the Effective Date, the total projected amount of unpaid Professional Fee Claims and unpaid Asgaard Capital Fee Claims minus the amount of any Cash, as of the Effective Date, in the pre-Effective Date professional fee reserve. To the extent there is any dispute over the amount by which the Professional Fee Reserve is to be funded, the Debtor shall submit the issue to the Bankruptcy Court, which, following notice and a hearing, shall fix the amount of the required Professional Fee Reserve. Any excess funds in the Professional Fee Reserve shall be released back to Magicheart in accordance with Section 3.1.1 of the Plan.

26. For the avoidance of doubt, Asgaard Capital shall not be required to file a final request for payment of any claims of Asgaard Capital for compensation or reimbursement of costs and expenses relating to services provided to the Debtor during the period from the Petition Date

through and including the Effective Date, but shall be required to file a fee statement for any period for which such a statement has not been filed, for services through and including the Effective Date, in accordance with the order approving the Debtor's retention of Asgaard Capital.

Release, Injunction, Exculpation and Related Provisions

27. The release, injunction, exculpation, and related provisions set forth in Article XI of the Plan are hereby approved and authorized in their entirety, and such provisions are effective and binding on all Persons and Entities as and to the extent provided for therein.

Payment of U.S. Trustee Fees

28. All U.S. Trustee Fees payable prior to the Effective Date shall be paid on or before the Effective Date. All U.S. Trustee Fees that arise after the Effective Date shall be paid by the Post-Effective Date Debtor and the Plan Administrator when due and payable. The Post-Effective Date Debtor and the Plan Administrator shall have the obligation to pay U.S. Trustee Fees until the earliest of the Chapter 11 Case being closed, dismissed or converted to a case under Chapter 7 of the Bankruptcy Code. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim or requests for payment of Administrative Claim in the Chapter 11 Case, and shall not be treated as providing any releases under the Plan. The Post-Effective Date Debtor and the Plan Administrator shall file with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee.

Notice of Entry of Confirmation Order and Effective Date

29. Pursuant to Bankruptcy Rules 2002 and 3020(c), the Debtor shall serve a notice of entry of this Confirmation Order and the occurrence of the Effective Date, substantially in the form attached hereto as **Exhibit B** (the "Notice of Confirmation and Effective Date"), no later than five (5) Business Days after the Effective Date, on all Holders of Claims against or Interests in the Debtor and all other Persons and Entities on which the Confirmation Hearing Notice was served.

The form of the Notice of Confirmation and Effective Date is hereby approved in all respects. The Notice of Confirmation and Effective Date shall constitute good and sufficient notice of the entry of this Confirmation Order and of the relief granted herein, including, without limitation, the rejection of executory contracts and unexpired leases as provided for in the Plan and this Confirmation Order, and any bar dates and deadlines established under the Plan and this Confirmation Order, and no other or further notice of the entry of this Confirmation Order, the occurrence of the Effective Date and any such rejections, bar dates and deadlines need be given.

Retention of Jurisdiction

30. Under sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of this Confirmation Order and occurrence of the Effective Date, and except as otherwise ordered by the Bankruptcy Court, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Case and the Plan to the fullest extent permitted by law, including, among other things, to take the actions specified in Section 10.1 of the Plan.

References to Plan Provisions

31. The failure specifically to include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, and such article, section, or provision shall have the same validity, binding effect, and enforceability as every other article, section, or provision of the Plan, it being the intent of the Bankruptcy Court that the Plan be confirmed in its entirety.

Rules Governing Conflicts Between Documents

32. In the event and to the extent that any provision of the Plan is inconsistent with the provisions of the Disclosure Statement, the Plan Supplement, or the Plan Administrator Agreement, the provisions of the Plan shall control and take precedence; provided, however, that

this Confirmation Order shall control and take precedence in the event of any inconsistency between this Confirmation Order, any provision of the Plan, and any of the foregoing documents.

Term of Injunctions or Stays

33. Unless otherwise provided in the Plan or in this Confirmation Order, all injunctions or stays provided for in the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code or otherwise, and extant on the Confirmation Date (including any injunctions or stays contained in or arising from the Plan or this Confirmation Order), shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or this Confirmation Order shall remain in full force and effect in accordance with their terms.

Section 1146 Exemption

34. Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of any security under the Plan or the making or delivery of any instrument of transfer pursuant to, in implementation of, or as contemplated by the Plan, or the re-vesting, transfer or sale of any real or personal property of the Debtor pursuant to, in implementation of, or as contemplated by the Plan, shall not be taxed under any state or local law imposing a stamp tax, transfer tax or any similar tax or fee.

Stout Risius Ross Advisors, LLC

35. Notwithstanding anything to the contrary in the Plan, to the extent that the Asgaard Capital Fee Claims are under the budgeted amount for Asgaard Capital in the pre-Effective Date professional fee reserve in the amount of at least \$25,000, the Debtor shall reserve \$25,000 (the “**Stout Indemnification Reserve**”) from Asgaard Capital’s under-budget amount for indemnification expenses which Stout Risius Ross Advisors, LLC (“**Stout**”) may seek pursuant to paragraph 20 of its engagement letter with the Debtor, dated February 19, 2020 [Docket No. 43-3] (the “**Stout Engagement Letter**”). Subject to the objection rights of the Debtor and the Post-

Effective Date Debtor, as applicable, and Magicheart, Stout is authorized to obtain reimbursement of its outside counsel's reasonable and documented fees incurred as a result of the litigation hold letter from Greenberg Glusker Fields Claman & Machtinger LLP, dated October 13, 2020, from the Stout Indemnification Reserve (the "**Litigation Hold Fees**"). Stout shall provide copies of its outside counsel's documented Litigation Hold Fees to the Debtor or the Post-Effective Date Debtor, as applicable, and Magicheart, which copies may (i) contain redactions to protect attorney-client privilege and (ii) be designated confidential by Stout at the time they are provided, in which case the information therein designated as confidential shall be subject to Local Rule 9018-1(f). If the Debtor or the Post-Effective Date Debtor, as applicable, or Magicheart do not object to Stout's Litigation Hold Fees within ten (10) days of receipt of invoices documenting such fees, the Debtor or the Post-Effective Date Debtor, as applicable, shall pay the Litigation Hold Fees from the Stout Indemnification Reserve. Nothing in this paragraph authorizes or approves any indemnification, advancement, contribution, or other claims or amounts sought by Stout, including any additional amounts from the Stout Indemnification Reserve, other than the Litigation Hold Fees as provided for herein. Notwithstanding anything contained in the Plan or this Confirmation Order to the contrary or as provided in section 7(c) of the Bankruptcy Court's order approving Stout's retention in the Chapter 11 Case [Docket No. 83], Stout shall not be required to file a proof of claim on account of any liquidated, unliquidated or contingent claim for indemnification under the Stout Engagement Letter. In accordance with sections 3.1.1 and 12.1(c) of the Plan, any amounts funded for the Stout Indemnification Reserve that remain unused or otherwise available after the Plan Administrator has fully administered the Debtor's affairs, the Plan and the Chapter 11 Case, shall be returned to Magicheart.

Headings

36. Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

No Stay of Confirmation Order

37. Notwithstanding Bankruptcy Rules 3020(e), 6004(h), and 7062 and any other Bankruptcy Rule to the contrary, to the extent applicable, there is no reason for delay in the implementation of this Confirmation Order and, thus, this Confirmation Order shall be effective and enforceable immediately upon entry.



**CRAIG T. GOLDBLATT
UNITED STATES BANKRUPTCY JUDGE**

**Dated: June 23rd, 2021
Wilmington, Delaware**

EXHIBIT A

Plan

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

In re:

SUITABLE TECHNOLOGIES, INC.,¹

Debtor.

Chapter 11

Case No. 20-10432 (CTG)

CHAPTER 11 PLAN OF LIQUIDATION OF SUITABLE TECHNOLOGIES, INC.

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Counsel to the Debtor and Debtor in Possession

Dated: June 16, 2021

¹ The last four digits of the Debtor's United States federal tax identification number are 7816. The Debtor's mailing address is 921 East Charleston Road, Palo Alto, CA 94303.

CHAPTER 11 PLAN OF LIQUIDATION OF SUITABLE TECHNOLOGIES, INC.

INTRODUCTION¹

The Debtor hereby proposes the Plan, which provides for, among other things, the resolution of Claims against and Interests in the Debtor. Reference is made to the Disclosure Statement for, among other things: (i) a discussion of the Debtor's history and business; (ii) a summary of the Plan, including the Plan Settlement; and (iii) certain related matters, including certain risk factors relating to the consummation of the Plan and Distributions to be made under the Plan.

The Plan provides for and implements the Plan Settlement, set forth in Article XII of the Plan, by and between the Debtor and the Magicheart Parties. Pursuant to the Plan Settlement, the Debtor and the Magicheart Parties have agreed to, among other things, resolve any and all claims, causes of action and disputes between the Debtor and the Magicheart Parties in exchange for (i) Magicheart funding (a) the Wind-Down Budget (with the Wind-Down Budget Amount deemed to be an additional borrowing under the DIP Credit Agreement and the DIP Order and included in the DIP Claim), including the Administrative, Priority and Secured Claims Reserve and the Professional Fee Reserve, and (b) the General Unsecured Claims Distribution Amount, (ii) except as otherwise provided in Sections 3.1.1 and 12.1(c) of the Plan, the Magicheart Parties waiving the right to any Distribution under the Plan on account of any and all claims held by such parties against the Debtor and the Estate, including, without limitation, the DIP Claim, the Prepetition Promissory Notes Claims, and the Palo Alto Real Property Lease Claims, and (iii) the releases set forth in Section 11.10 of the Plan and the dismissal of the Chancery Court Action, all as more fully provided for in Article XII of the Plan. The Plan serves as a motion to approve the Plan Settlement pursuant to Bankruptcy Rule 9019. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Plan Settlement, including each of the compromises and settlements provided for therein, and the Bankruptcy Court's findings in the Confirmation Order shall constitute its determination that the Plan Settlement is in the best interests of the Debtor, the Estate, Holders of Claims and Interests, and other parties in interest and is fair, equitable and reasonable.

The Debtor is the proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code.

All Holders of Claims who are entitled to vote on the Plan are encouraged to read the Plan and the Disclosure Statement in their entirety before voting to accept or reject the Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code, Bankruptcy Rule 3019, and Section 11.4 of the Plan, the Debtor reserves the right to alter, amend, modify, revoke or withdraw the Plan.

No solicitation materials, other than the Disclosure Statement and related materials transmitted therewith, have been approved for use in soliciting acceptances and rejections of the Plan. Nothing in the Plan should be construed as constituting a solicitation of acceptances of the

¹ Capitalized terms not defined in this Introduction shall have the meaning ascribed to them in the Plan.

Plan unless and until the Disclosure Statement has been approved by the Bankruptcy Court and distributed to Holders of Claims to the extent required by section 1125 of the Bankruptcy Code.

****THE DEBTOR BELIEVES THAT THE PLAN IS IN THE BEST INTERESTS OF CREDITORS AND THE ESTATE, AND ENCOURAGES HOLDERS OF GENERAL UNSECURED CLAIMS ENTITLED TO VOTE ON THE PLAN TO VOTE TO ACCEPT THE PLAN.****

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ARTICLE I

DEFINED TERMS AND RULES OF INTERPRETATION

For purposes of the Plan, except as expressly provided or unless the context otherwise requires:

(a) all capitalized terms used in the Plan and not otherwise defined in the Plan, the Bankruptcy Code or the Bankruptcy Rules shall have the meaning ascribed to them in this Article I of the Plan;

(b) any capitalized term used in the Plan that is not defined in the Plan, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable;

(c) whenever the context requires, such terms shall include the plural as well as the singular number, the masculine gender shall include the feminine, and the feminine gender shall include the masculine;

(d) any reference in the Plan to an existing document or exhibit means such document or exhibit as it may be amended, modified or supplemented from time to time;

(e) unless otherwise specified, all references in the Plan to sections, articles, schedules, and exhibits are references to sections, articles, schedules and exhibits of or to the Plan;

(f) the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan;

(g) captions and headings to articles and sections are inserted for convenience of reference only, and are not intended to be a part of or to affect the interpretation of the Plan; and

(h) the rules of construction set forth in section 102 of the Bankruptcy Code and in the Bankruptcy Rules shall apply.

The following capitalized terms used in the Plan shall have the following meaning:

1.1 Additional Borrowing Amount: \$490,415.00, as set forth in the Supplemental DIP Order.

1.2 Administrative Claim: A Claim (other than a Professional Fee Claim, but, for the avoidance of doubt, including Ordinary Course Professional Fee Claims) arising under sections 365, 503(b), 507(a)(2), 507(b) or 1114(e)(2) of the Bankruptcy Code, to the extent not previously paid, otherwise satisfied or withdrawn, including, but not limited to, U.S. Trustee Fees and Section 503(b)(9) Claims.

1.3 Administrative, Priority and Secured Claims Estimate: A good faith estimate by the Debtor of the total amount of Administrative Claims, Priority Claims, Priority Tax Claims and Secured Claims that may be Allowed against the Debtor, unless by the applicable Bar Date, any

of such claims are fixed, in which case, the estimate shall include such fixed amount, subject to the Bankruptcy Court ordering otherwise.

1.4 Administrative, Priority and Secured Claims Reserve: The reserve established by the Debtor under the Plan on the Effective Date and maintained by the Plan Administrator pursuant to Section 5.5 of the Plan for purposes of satisfying Allowed Administrative Claims, Allowed Priority Claims, Allowed Priority Tax Claims and Allowed Secured Claims, and funded in Cash by the Magicheart Parties as provided for in the Plan.

1.5 Allowed: With respect to any Claim, except as otherwise provided herein: (a) a Claim that is set forth in a timely filed proof of claim (including any proof of claim deemed timely filed by Final Order) as to which no objection has been filed on or before the Claim Objection Deadline and which is not otherwise a Disputed Claim; (b) a Claim that has been scheduled by the Debtor in its Schedules as other than disputed, contingent or unliquidated and as to which no objection has been filed on or before the Claim Objection Deadline and which is not otherwise a Disputed Claim; (c) a Claim that has been allowed by a Final Order; (d) a Claim that is allowed: (i) in any stipulation or other agreement executed by the Debtor prior to the Effective Date and approved by the Bankruptcy Court; (ii) in any stipulation or other agreement executed by the Post-Effective Date Debtor on or after the Effective Date; or (iii) in any contract, instrument, indenture or other agreement entered into or assumed by Debtor in connection with and in accordance with the Plan; or (e) a Claim that is allowed pursuant to the terms of the Plan.

1.6 Allowed Claim or Allowed [] Claim: A Claim that has been Allowed.

1.7 Asgaard Capital: Asgaard Capital LLC.

1.8 Asgaard Capital Fee Claim: A Claim of Asgaard Capital for compensation or reimbursement of costs and expenses relating to services provided to the Debtor during the period from the Petition Date through and including the Effective Date.

1.9 Asgaard Capital Parties: Charles C. Reardon, Asgaard Capital, its Related Parties, and any other Persons and Entities that have provided services to the Debtor on behalf of Asgaard Capital.

1.10 Asset Purchase Agreements: Those certain asset purchase agreements authorized and approved by the Bankruptcy Court in connection with the Prior Asset Sales pursuant to the Sale Orders.

1.11 Assets: Any and all right, title and interest of the Debtor and its Estate as of the Effective Date in and to property of whatever type or nature, including, without limitation, the Retained Causes of Action, the Debtor's books and records, and the benefits and rights of the Debtor and the Estate under the Plan Settlement, and any proceeds of any of the foregoing.

1.12 Avoidance Actions: Any and all avoidance or equitable subordination or recovery actions under sections 105(a), 502(d), 510, 542 through 551 and 553 of, and otherwise under, the Bankruptcy Code or any similar federal, state or common law causes of action.

1.13 Ballot: The ballot form distributed to each Holder of a Claim entitled to vote to accept or reject the Plan.

1.14 Bankruptcy Code: Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as may be amended).

1.15 Bankruptcy Court: The United States Bankruptcy Court for the District of Delaware, or in the event such court ceases to exercise jurisdiction over the Chapter 11 Case, such court or adjunct thereof that exercises jurisdiction over the Chapter 11 Case in lieu of the United States Bankruptcy Court for the District of Delaware.

1.16 Bankruptcy Rules: The Federal Rules of Bankruptcy Procedure (as may be amended).

1.17 Bar Date Order: That certain Order of the Bankruptcy Court entered on April 28, 2020 [D.I. 125] establishing (1) July 6, 2020 at 5:00 p.m. (Eastern Time) as the date and time by which each Person or Entity, other than governmental units, had to file a proof of claim based on claims against the Debtor that arose prior to the Petition Date, including requests for allowance and payment of Section 503(b)(9) Claims; and (2) August 24, 2020, at 5:00 p.m. (Eastern Time), as the deadline by which any Governmental Unit (as such term is defined in section 101(27) of the Bankruptcy Code) had to file proofs of claim against the Debtor.

1.18 Business Day: Any day, excluding Saturdays, Sundays or “legal holidays” (as defined in Bankruptcy Rule 9006(a)(6)) on which commercial banks are open for business in Wilmington, Delaware.

1.19 Cash: Cash and cash equivalents in certified or immediately available U.S. funds, including but not limited to bank deposits, checks and similar items.

1.20 Causes of Action: Includes, without limitation, any and all of the Debtor’s actions, causes of action, Avoidance Actions, controversies, liabilities, obligations, rights, suits, damages, judgments, claims and demands whatsoever, whether known or unknown, reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, secured or unsecured, whether assertible by the Debtor directly, indirectly, derivatively or in any representative or other capacity, now existing or hereafter arising, in law, equity or otherwise, based in whole or in part upon any act, failure to act, error, omission, transaction, occurrence or other event arising or occurring prior to or after the Petition Date.

1.21 Chancery Court Action: That certain civil action in the Court of Chancery of the State of Delaware styled *Huynh v. Hassan et al.*, Civil Action No. 2019-0893-JTL.

1.22 Chapter 11 Case: The voluntary chapter 11 bankruptcy case commenced by the Debtor under case caption *Suitable Technologies, Inc.*, Case No. 20-10432 (MFW).

1.23 Claim: A claim, as defined in section 101(5) of the Bankruptcy Code, against the Debtor or the Estate whether or not asserted or Allowed, whether or not arising before or after the Effective Date.

1.24 Claim Objection Deadline: The date that is one hundred fifty (150) days after the Effective Date, subject to extension as set forth in Section 8.2 of the Plan.

1.25 Class: A category of Claims or Interests designated pursuant to the Plan.

1.26 Collateral: Any property or interest in property of the Debtor's Estate that is subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable law.

1.27 Confirmation: Entry by the Bankruptcy Court of the Confirmation Order.

1.28 Confirmation Date: The date upon which the Confirmation Order is entered by the Bankruptcy Court.

1.29 Confirmation Hearing: Collectively, the hearing or hearings held by the Bankruptcy Court on confirmation of the Plan, as such hearing or hearings may be continued from time to time.

1.30 Confirmation Order: The Order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

1.31 Creditor: Any Holder of a Claim.

1.32 D&O Indemnification Obligations. The Debtor's indemnification obligations to Ronald Barliant and Charles C. Reardon in their capacity as a director and the Chief Restructuring Officer, respectively, of the Debtor (i) in effect immediately prior to the Effective Date pursuant to the Debtor's bylaws, certificate of incorporation or formation, and other organizational documents or pursuant to other agreements to which Ronald Barliant or Charles C. Reardon (or, in the case of Charles C. Reardon, Asgaard Capital) is a party, and (ii) pursuant to Section 6.4 of this Plan.

1.33 D&O Policy: The Debtor's directors and officers insurance policy issued by AIG Specialty Insurance Company (or any predecessors, successors and/or affiliates thereof), and all agreements, documents or instruments relating thereto.

1.34 Debtor: Suitable Technologies, Inc.

1.35 Debtor Released Parties: Each solely in their capacities as such, (i) the Debtor, the Estate and the Debtor's Related Parties; (ii) Ronald Barliant; (iii) the Magicheart Parties; (iv) the Asgaard Capital Parties; (v) Bo Preising; and (vi) the Professionals retained by the Debtor pursuant to an Order of the Bankruptcy Court pursuant to sections 327 or 328 of the Bankruptcy Code.

1.36 DIP Claim: The Allowed Claim of Magicheart under the DIP Credit Agreement and the DIP Order, including, without limitation, Claims for all principal amounts outstanding, interest, fees, reasonable and documented expenses, costs and other charges of Magicheart. For the avoidance of doubt, the DIP Claim includes the Additional Borrowing Amount and the Wind-Down Budget Amount.

1.37 DIP Credit Agreement: That certain *Debtor-in-Possession Credit and Security Agreement* dated as of February 26, 2020, between the Debtor and Magicheart, as amended, modified or supplemented from time to time on the terms and conditions set forth therein, and including any and all documents and instruments executed in connection therewith.

1.38 DIP Order: That certain *Final Order Authorizing Debtor to (A) Use Cash Collateral, (B) Obtain Senior Secured Superpriority Postpetition Financing, and (C) Grant Adequate Protection and Provide Security and Other Relief* [D.I. 74], as the same may be amended, modified or supplemented, including, without limitation, as supplemented by the Supplemental DIP Order.

1.39 Disclosure Statement: The *Disclosure Statement for the Chapter 11 Plan of Suitable Technologies, Inc.*, dated as of April 2, 2021, and all exhibits thereto, as the same may be amended, modified or supplemented.

1.40 Disclosure Statement Order: The Final Order of the Bankruptcy Court [D.I. 415] approving the Disclosure Statement as containing adequate information, pursuant to section 1125(a) of the Bankruptcy Code, and authorizing the Debtor to solicit acceptances of the Plan.

1.41 Disputed Claim: Any Claim included in a proof of claim, or included in the Debtor's Schedules, as to which an objection or request for estimation has been filed by the Claim Objection Deadline, or as to which the Debtor or the Post-Effective Date Debtor, as applicable, or other parties in interest in accordance with applicable law retain the ability to interpose a timely objection or request for estimation in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Plan or the Confirmation Order, and for which the objection, request for estimation or dispute has not been withdrawn or determined by a Final Order. To the extent that a Claim is held by a Holder that is or may be liable to the Debtor, the Estate or the Post-Effective Date Debtor on account of a Retained Cause of Action, such Claim shall be a Disputed Claim unless and until such Retained Cause of Action has been settled or withdrawn or has been determined by a Final Order, provided, however, that the Debtor shall inform the Holder of any such Claim by the Claim Objection Deadline that such Claim is being treated as a Disputed Claim until such Retained Cause of Action has been settled or withdrawn or has been determined by a Final Order.

1.42 Distribution: A transfer of Cash or other property by the Post-Effective Date Debtor under the Plan to a Holder of an Allowed Claim.

1.43 Effective Date: The date that is the first Business Day on which each condition set forth in Article IX of the Plan has been satisfied or waived as set forth therein.

1.44 Effective Date Notice: The notice of the Effective Date, in substantially the form attached as an exhibit to the Confirmation Order, to be filed with the Bankruptcy Court on the Effective Date and served no later than three (3) business days thereafter.

1.45 Entity: Shall have the meaning set forth in section 101(15) of the Bankruptcy Code. Unless otherwise specified herein, any reference to an Entity as a Holder of a Claim or Interest includes such Entity's successors, assigns and affiliates.

1.46 Estate: The chapter 11 estate of the Debtor created pursuant to section 541 of the Bankruptcy Code.

1.47 Exculpated Parties: Each of, solely in their capacities as such, and solely in connection with Section 11.11 of the Plan: (i) the Debtor and the Estate; (ii) Ronald Barliant; (iii) the Asgaard Capital Parties; (iv) Bo Preising, solely to the extent Mr. Preising acted as a fiduciary of the Estate during the Chapter 11 Case; and (v) the Professionals retained by the Debtor pursuant to an Order of the Bankruptcy Court pursuant to sections 327 or 328 of the Bankruptcy Code.

1.48 Expenses: Liabilities, damages, claims, costs, losses and other expenses (including, without limitation, attorneys' fees, retainers, expert and witness fees, disbursements and expenses of counsel, judgments, fines, taxes, penalties, and amounts paid or to be paid in settlement) actually incurred or suffered.

1.49 File, Filed or Filing: File, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

1.50 Face Amount: When used in reference to an Allowed Claim, the amount of such Claim that is Allowed, and, when used in reference to a Disputed Claim, (i) the liquidated amount set forth in the proof of claim or request for payment relating to the Disputed Claim (if any); (ii) an amount agreed to by the Post-Effective Date Debtor and the Holder of the Disputed Claim; or (iii) if a request for estimation is Filed with respect to such Disputed Claim, the amount at which such Disputed Claim is estimated by the Bankruptcy Court.

1.51 Final Decree: The Order entered pursuant to section 350 of the Bankruptcy Code, Bankruptcy Rule 3022 and Local Rule 3022-1 closing the Chapter 11 Case.

1.52 Final Order: An Order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, that is not subject to stay or appeal, and for which the applicable time within which to take such action has expired, or for which such actions have been adjudicated by the highest court with jurisdiction over the matter.

1.53 General Unsecured Claim: Any unsecured, non-priority Claim against the Debtor or the Estate that is not a Subordinated Claim.

1.54 General Unsecured Claims Distribution Amount: The \$306,517.40 Cash payment from Magicheart to the Debtor, in accordance with the terms of the Plan Settlement, to be distributed Pro Rata to the Holders of Allowed General Unsecured Claims (other than any Allowed General Unsecured Claims of the Magicheart Parties), as provided in the Plan.

1.55 Greenheart: Greenheart Investments, LLC.

1.56 Holder: The Person or Entity that is the owner of record of a Claim or Interest, as applicable.

1.57 Impaired: Any Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

1.58 Insurance Contract: All insurance policies that have been issued at any time to or that provide coverage to the Debtor, and all agreements, documents or instruments relating thereto.

1.59 Insured Claim: Any Claim or portion of a Claim (other than a Claim held by an employee of the Debtor for workers' compensation coverage under the workers' compensation program applicable in the particular state in which the employee is or was employed by the Debtor) that is insured under any Insurance Contract, but only to the extent of such coverage.

1.60 Insurer: Any company or other entity that issued an Insurance Contract, any third party administrator and any respective predecessors, successors and/or affiliates thereof.

1.61 Interests: All previously issued and outstanding interests (whether legal, equitable, contractual or other rights) of any Holders of any class of equity securities of the Debtor represented by shares of common or preferred stock or other instruments evidencing an ownership interest in the Debtor, whether or not certificated, transferable, voting or denominated "stock" or a similar security, and any Claim or cause of action related to or arising from the foregoing, or any option, warrant or right, contractual or otherwise, to acquire any such Interest.

1.62 Landings: Landings Investments, LLC.

1.63 Lien: Any lien, security interest, pledge, title retention agreement, encumbrance, charge, mortgage or hypothecation to secure payment of a debt or performance of an obligation other than, in the case of securities and any other equity ownership interests, any restrictions imposed by applicable United States or foreign securities laws.

1.64 Local Rules: The Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, as amended from time to time.

1.65 Magicheart: Magicheart Investments, LLC.

1.66 Magicheart Parties: Magicheart, Greenheart, Landings and Scott Hassan and each of their respective non-Debtor Related Parties.

1.67 Magicheart Released Parties: Each solely in their capacities as such, (i) Ronald Barliant; (ii) the Asgaard Capital Parties; (iii) Bo Preising; and (iv) the Professionals retained by the Debtor pursuant to an Order of the Bankruptcy Court pursuant to sections 327 or 328 of the Bankruptcy Code.

1.68 Order: An order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in the Chapter 11 Case or the docket of any other court of competent jurisdiction.

1.69 Ordinary Course Professional: Any Ordinary Course Professional, as that term is defined in (i) that certain *Order (I) Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business Effective as of the Petition Date and (II) Waiving Certain Information Requirements of Local Rule 2016-2 [D.I. 66]* or (ii) that certain *Supplemental Order (I) Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business*

Effective as of the Petition Date and (II) Waiving Certain Information Requirements of Local Rule 2016-2 [D.I. 82].

1.70 Ordinary Course Professional Fee Claim: A Claim of an Ordinary Course Professional for compensation or reimbursement of costs and expenses incurred during the period from the Petition Date through and including the Effective Date.

1.71 Palo Alto Real Property Lease: That certain *Month-to-Month Lease Agreement*, dated June 1, 2011, between the Debtor and Landings, for the non-residential real property located at 921 East Charleston Road, Palo Alto, California 94303 and 850 San Antonio Road, Palo Alto, California 94303, rejected effective as of October 30, 2020 [D.I. 300].

1.72 Palo Alto Real Property Lease Claims: All Claims of Landings under the Palo Alto Real Property Lease, including, without limitation, the Palo Alto Real Property Lease Administrative Claim and the Palo Alto Real Property Lease General Unsecured Claim.

1.73 Palo Alto Real Property Lease Administrative Claim: The Allowed Administrative Claim of Landings under the Palo Alto Real Property Lease in the aggregate amount of not less than \$244,183.

1.74 Palo Alto Real Property Lease General Unsecured Claim: The Allowed General Unsecured Claim of Landings under the Palo Alto Real Property Lease in the aggregate amount of not less than \$3,418,862.

1.75 Person: An individual or Entity, limited liability company, corporation, partnership, association, trust or unincorporated organization, joint venture or other person or a government or any agency or political subdivision thereof.

1.76 Petition Date: February 26, 2020, the date on which the Debtor Filed its voluntary chapter 11 petition for relief in the Bankruptcy Court.

1.77 Plan: This *Chapter 11 Plan of Suitable Technologies, Inc.*, dated as of June 16, 2021, and all exhibits thereto, and any Plan Supplement, as the same may be amended, modified or supplemented.

1.78 Plan Administrator: Charles C. Reardon.

1.79 Plan Administrator Agreement: The agreement by and among the Debtor, the Post-Effective Date Debtor and the Plan Administrator specifying the rights, duties and responsibilities of the Plan Administrator under the Plan.

1.80 Plan Administrator Professionals: The agents, financial advisors, attorneys, consultants, independent contractors, representatives and other professionals of the Plan Administrator or the Post-Effective Date Debtor (in each case, solely in their capacities as such).

1.81 Plan Administrator Professional Fees: The reasonable fees and expenses of the Plan Administrator Professionals retained or employed by the Plan Administrator.

1.82 Plan Settlement: The settlement by and among the Debtor and the Magicheart Parties that resolves any and all claims, causes of action and disputes between the Debtor and the Magicheart Parties on the terms provided for in Article XII of the Plan.

1.83 Plan Supplement: The ancillary documents necessary to the implementation and effectuation of the Plan, including the Plan Administrator Agreement, which shall be Filed on or before the date that is seven (7) days prior to the Voting Deadline.

1.84 Post-Effective Date Debtor: The Debtor, on and after the Effective Date.

1.85 Prepetition Promissory Notes Claims: Collectively, the Prepetition Secured Promissory Notes Claim and the Prepetition Unsecured Promissory Notes Claim.

1.86 Prepetition Secured Promissory Notes: Collectively, that certain Secured Promissory Note dated January 14, 2019 between the Debtor and Magicheart, that certain Secured Line of Credit Promissory Note dated October 22, 2019 between the Debtor and Magicheart, and that certain Secured Line of Credit Promissory Note dated January 20, 2020 between the Debtor and Magicheart.

1.87 Prepetition Secured Promissory Notes Claim: The Allowed Claim of Magicheart under the Prepetition Secured Promissory Notes in the aggregate amount of not less than \$3,775,000.

1.88 Prepetition Unsecured Promissory Notes: Collectively, any unsecured promissory note between Magicheart or Greenheart or their affiliates and the Debtor entered into prior to the Petition Date.

1.89 Prepetition Unsecured Promissory Notes Claim: The Allowed General Unsecured Claim of Magicheart and Greenheart under the Prepetition Unsecured Promissory Notes in the aggregate amount of not less than \$85,057,221.

1.90 Prior Asset Sales: The Debtor's sales of assets pursuant to the Sale Orders and the respective asset purchase agreements authorized and approved by the Sale Orders.

1.91 Priority Claim: A Claim that is entitled to priority under section 507(a) of the Bankruptcy Code, other than an Administrative Claim or a Priority Tax Claim.

1.92 Priority Tax Claim: A Claim that is entitled to priority under section 507(a)(8) of the Bankruptcy Code, including any penalties allowed by section 507(a)(8)(G) of the Bankruptcy Code.

1.93 Proceeding: Any threatened, pending, actual or completed action, suit, inquiry or other proceeding of any type or kind, whether civil, criminal, administrative or investigative, whether public or private, arising in law, equity, or pursuant to any other theory of law, including, without limitation, any threatened, pending, actual or completed action, suit, inquiry or other proceeding by or in the right of (x) the Debtor, (y) any Creditor, Interest Holder, or other party, or (z) any party to the Chancery Court Action or the divorce proceedings between Scott Hassan and Allison Huynh.

1.94 Professional: Any professional (other than an Ordinary Course Professional) retained by the Debtor in the Chapter 11 Case pursuant to sections 327 or 328 of the Bankruptcy Code, including, without limitation, Young Conaway Stargatt & Taylor, LLP and Stout Risius Ross Advisors, LLC, or any professional or other Person or Entity (in each case, other than an Ordinary Course Professional) seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to section 503(b)(4) of the Bankruptcy Code.

1.95 Professional Fee Claim: A Claim of a Professional for compensation or reimbursement of costs and expenses relating to services incurred during the period from the Petition Date through and including the Effective Date.

1.96 Professional Fee Reserve: The reserve established by the Debtor on the Effective Date pursuant to Sections 5.6 and 11.2 of the Plan, and funded in Cash by the Magicheart Parties as provided for in the Plan.

1.97 Pro Rata: The proportion that the Allowed Claim in a particular Class bears to the aggregate amount of (a) Allowed Claims in such Class as of the date of determination, plus (b) Disputed Claims in such Class as of the date of determination, in their aggregate Face Amounts or such other amount: (i) as calculated by the Post-Effective Date Debtor on or before the date of any such Distribution; (ii) as determined by an Order of the Bankruptcy Court estimating such Disputed Claim; or (iii) as directed by a Final Order of the Bankruptcy Court.

1.98 Rejection Claim: Any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Plan and the Confirmation Order.

1.99 Related Parties: With respect to any Person or Entity, such Person's or Entity's current and former officers, managers, directors, employees, lenders, partners, affiliates, professionals, advisors, agents, members, shareholders and other representatives, including, without limitation, attorneys, accountants, consultants, independent contractors, investment bankers and financial advisors and the successors, assigns or heirs of such Person or Entity. Related Parties shall not include Allison Huynh.

1.100 Released Parties: The Debtor Released Parties and the Magicheart Released Parties.

1.101 Retained Causes of Action: Other than (i) Avoidance Actions and (ii) any claims, interests, obligations, rights, suits, damages, causes of action, remedies and liabilities released pursuant to Section 11.10(a) of the Plan or exculpated pursuant to Section 11.11 of the Plan, all rights, including rights of setoff and rights of recoupment, refunds, claims, counterclaims, demands, Causes of Action and rights to collect damages of the Debtor against third parties, including, without limitation: (a) all litigation, arbitration or other types of adversarial or dispute resolution Proceedings disclosed on the Debtor's Schedules and the Debtor's *Statements of Financial Affairs*; and (b) all litigation, arbitration or other types of adversarial or dispute resolution Proceedings arising in law, equity or pursuant to any other theory of law and all other rights (including, without limitation, defenses, cross-claims and counter-claims), regardless of whether they (or the facts underlying them) were disclosed in the Debtor's Schedules, its *Statements of Financial Affairs* or otherwise during the Chapter 11 Case, against or related to any party that (i) owed to the Debtor or its Estate (or any of them) a fiduciary, contractual or statutory

duty, whether imposed by law or in equity; or (ii) committed a tort or other unlawful or actionable conduct against or related to the Debtor or its Estate (or any of them); provided, however, that all rights, including rights of setoff and rights of recoupment, refunds, claims, counterclaims, demands, Causes of Action and rights to collect damages of the Debtor released, dismissed, exculpated, settled or waived under the Plan, the Confirmation Order or any Final Order, including, without limitation, pursuant to the Plan Settlement, shall be excluded and shall not constitute Retained Causes of Action.

1.102 Sale Orders: That certain (i) *Order (I) Approving APA, (II) Authorizing the Sale of Certain of the Debtor's Assets Free and Clear of All Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief [D.I. 225]* and (ii) *Order (I) Approving Asset Purchase Agreement, (II) Authorizing the Sale of Certain Assets Free and Clear of All Encumbrances, and (III) Granting Related Relief [D.I. 226]*.

1.103 Schedules: The Schedules of Assets and Liabilities Filed by the Debtor, as such Schedules may be amended from time to time in accordance with Bankruptcy Rule 1009.

1.104 Section 503(b)(9) Claim: A Claim that is entitled to priority under section 503(b)(9) of the Bankruptcy Code.

1.105 Secured Claim: A Claim that is (i) secured by a valid, perfected and enforceable Lien on property in which the Debtor or the Estate has an interest that is not subject to avoidance, or (ii) subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Creditor's interest in such property or to the extent of the amount subject to setoff, as applicable, all as determined pursuant to sections 506(a) and 1111(b) of the Bankruptcy Code and other applicable law.

1.106 Subordinated Claim: Any Claim or Interest that is subordinated to General Unsecured Claims pursuant to section 510 of the Bankruptcy Code or Final Order of the Bankruptcy Court.

1.107 Supplemental DIP Order: That certain *Order (I) Authorizing and Approving an Amendment to the DIP Credit Agreement Increasing the DIP Commitment, (II) Supplementing the Final DIP Order on Account of the Amendment and the Increased DIP Commitment, (III) Modifying the Automatic Stay to Implement the Terms of the Amendment and the Supplemental DIP Order, and (IV) Granting Related Relief [D.I. 387]*.

1.108 Unimpaired: Any Class of Claims that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

1.109 U.S. Trustee: The Office of the United States Trustee for the District of Delaware.

1.110 U.S. Trustee Fees: Fees and charges assessed against the Estate under chapter 123 of title 28 of the United States Code.

1.111 Voting Deadline: The date and time by which all Ballots to accept or reject the Plan must be received to be counted as set by the Disclosure Statement Order.

1.112 Wind-Down Budget: That certain wind-down budget attached hereto as **Exhibit A**, which budget, among other things, provides for funding of the Administrative, Priority and Secured Claims Reserve and the Professional Fee Reserve. In addition to the Wind-Down Budget Amount, the Wind-Down Budget shall be deemed to include all previously funded but unused Cash, as of the Effective Date, under the Budget (as defined in the DIP Order) in effect immediately prior to the Effective Date, including, without limitation, the Budget approved by the Supplemental DIP Order.

1.113 Wind-Down Budget Amount: \$409,350.00, as set forth in **Exhibit A** attached hereto.

ARTICLE II

CLASSIFICATION OF CLAIMS AND INTERESTS

2.1 Unclassified Claims. Holders of the following Claims are not entitled to vote on the Plan:

1. *DIP Claim*
2. *Administrative Claims*
3. *Professional Fee Claims*
4. *Priority Tax Claims*

2.2 Unimpaired Classes of Claims. Holders of Claims in the following Unimpaired Classes of Claims are deemed to have accepted the Plan and, therefore, are not entitled to vote on the Plan:

1. *Secured Claims (Class 1)*
2. *Priority Claims (Class 2)*

2.3 Impaired/Voting Class of Claims. Holders of Claims in the following Impaired Class of Claims are entitled to vote on the Plan:

1. *Prepetition Secured Promissory Notes Claim (Class 3)*
2. *General Unsecured Claims (Class 4)*

2.4 Impaired/Non-Voting Classes of Claims and Interests. Holders of Claims and Interests in the following Impaired Classes of Claims and Interests are deemed to have rejected the Plan and, therefore, are not entitled to vote on the Plan:

1. *Subordinated Claims (Class 5)*
2. *Interests (Class 6)*

ARTICLE III

TREATMENT OF CLAIMS AND INTERESTS

3.1 Unclassified Claims.

3.1.1 DIP Claim. Subject to the following sentence, pursuant to the Plan Settlement, the Magicheart Parties have agreed to forego any distribution with respect to the DIP Claim; provided, however, the Liens and security interests securing the DIP Claim shall attach to the Post-Effective Date Debtor's Assets with the same validity, priority, force and effect, which such Liens and security interests now have against the Debtor's assets. Notwithstanding the foregoing or anything in the Plan to the contrary, any amounts funded to the Debtor or the Post-Effective Date Debtor, as applicable, under the DIP Credit Agreement or the Wind-Down Budget, including any amounts funded for the Administrative, Priority and Secured Claims Reserve and the Professional Fee Reserve, and any remnant Assets not otherwise distributed under the Plan, including any unused retainer held by any Professional, that remain unused or otherwise available after the Plan Administrator has wound-up the affairs of the Debtor, filed final tax returns for the Debtor, made Distributions under the Plan on account of Allowed Administrative Claims, Professional Fee Claims, Asgaard Capital Fee Claims, Priority Tax Claims, Secured Claims and Priority Claims in the Chapter 11 Case, paid all U.S. Trustee Fees due, and otherwise fully administered the Debtor's affairs, the Plan and the Chapter 11 Case, shall be returned to Magicheart (or any Person or Entity designated in writing by Magicheart). For the avoidance of doubt, the obligations described in the preceding sentence shall be secured by the Liens and security interests securing the DIP Claim. For the further avoidance of doubt, no portion of the General Unsecured Claims Distribution Amount shall be returnable to Magicheart.

3.1.2 Administrative Claims. Except as otherwise provided for herein, the Confirmation Order, or separate Order of the Bankruptcy Court, on, or as soon as reasonably practicable after, the later of (i) the Effective Date and (ii) thirty (30) days following the date on which an Administrative Claim becomes an Allowed Administrative Claim, the Holder of such Allowed Administrative Claim, other than the Magicheart Parties, shall receive from the Post-Effective Date Debtor, in full satisfaction of such Allowed Administrative Claim (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Administrative Claim or (b) such other less favorable treatment as to which such Holder and the Post-Effective Date Debtor shall have agreed upon in writing. Pursuant to the Plan Settlement, the Magicheart Parties shall not be entitled to and shall not receive any further property or interest in property on account of any Allowed Administrative Claims held by such parties, including, without limitation, the Palo Alto Real Property Lease Administrative Claim.

3.1.3 Professional Fee Claims and Asgaard Capital Fee Claims. Professional Fee Claims and Asgaard Capital Fee Claims shall be paid by the Post-Effective Date Debtor as set forth in Section 11.2 of the Plan.

3.1.4 Priority Tax Claims. In full satisfaction of such Claims, Holders of Allowed Priority Tax Claims shall be paid by the Post-Effective Date Debtor, at the Post-Effective Date Debtor's discretion, as follows: (i) Cash equal to the unpaid portion of the Face Amount of such Allowed Priority Tax Claim on the later of the Effective Date or thirty (30) days following the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim; (ii) in regular installment payments in Cash over a period not exceeding five (5) years after the Petition Date, plus interest on the unpaid portion thereof at the rate determined under applicable non-bankruptcy law as of the calendar month in which the Confirmation Date occurs, and in a manner consistent with section 1129(a)(9)(C) of the Bankruptcy Code; and (iii) such other treatment as to which the Holder of an Allowed Priority Tax Claim and the Post-Effective Date Debtor shall have agreed upon in writing.

3.2 Unimpaired Classes of Claims.

3.2.1 Class 1: Secured Claims. On, or as soon as reasonably practicable after, the later of (i) the Effective Date and (ii) thirty (30) days following the date on which a Secured Claim becomes an Allowed Secured Claim, the Holder of such Allowed Secured Claim shall receive from the Post-Effective Date Debtor, at the discretion of the Post-Effective Date Debtor, in full satisfaction of such Allowed Secured Claim (i) Cash equal to the value of such Claim; (ii) the return of the Holder's Collateral securing such Claim; or (iii) such other less favorable treatment as to which such Holder and the Post-Effective Date Debtor shall have agreed upon in writing. *Class 1 is Unimpaired, and therefore Holders of Secured Claims are conclusively presumed to have accepted the Plan.*

3.2.2 Class 2: Priority Claims. On, or as soon as reasonably practicable after, the later of (i) the Effective Date and (ii) thirty (30) days following the date on which a Priority Claim becomes an Allowed Priority Claim, the Holder of such Allowed Priority Claim shall receive from the Post-Effective Date Debtor, in full satisfaction of such Allowed Priority Claim, either (i) Cash equal to the unpaid portion of the Face Amount of such Allowed Priority Claim or (ii) such other less favorable treatment as to which such Holder and the Post-Effective Date Debtor shall have agreed upon in writing. *Class 2 is Unimpaired, and therefore Holders of Priority Claims are conclusively presumed to have accepted the Plan.*

3.3 Impaired/Voting Classes of Claims.

3.3.1 Class 3: Prepetition Secured Promissory Notes Claim. Pursuant to the Plan Settlement, Magicheart shall not be entitled to and shall not receive any further property or interest in property on account of the Prepetition Secured Promissory Notes Claim. *Class 3 is Impaired, and therefore the Holder of the Prepetition Secured Promissory Notes Claim is entitled to vote on the Plan.*

3.3.2 Class 4: General Unsecured Claims. The Holder of an Allowed General Unsecured Claim, other than the Magicheart Parties, shall receive from the Post-Effective Date Debtor, in satisfaction of such Allowed General Unsecured Claim, on, or as soon as reasonably practicable after, the Effective Date, its Pro Rata share of the General Unsecured Claims Distribution Amount, or such other less favorable treatment as to which such Holder and the Post-Effective Date Debtor shall have agreed upon in writing. Pursuant to the Plan Settlement, the Magicheart Parties shall not be entitled to and shall not receive any further property or interest in property on account of any Allowed General Unsecured Claims held by such parties, including, without limitation, the

Prepetition Unsecured Promissory Notes Claim and the Palo Alto Real Property Lease General Unsecured Claim. ***Class 4 is Impaired, and therefore Holders of General Unsecured Claims are entitled to vote on the Plan.***

3.4 Impaired/Non-Voting Classes of Claims and Interests.

3.4.1 Class 5: Subordinated Claims. Holders of Subordinated Claims shall not be entitled to and shall not receive or retain any property or interest in property under the Plan on account of such Subordinated Claims. ***Class 5 is deemed to have rejected the Plan, and therefore Holders of Subordinated Claims are not entitled to vote on the Plan.***

3.4.2 Class 6: Interests. As of the Effective Date, all Interests of any kind shall be deemed cancelled, and the Holders thereof shall not receive or retain any property, interest in property or other consideration under the Plan on account of such Interests. ***Class 6 is deemed to have rejected the Plan, and therefore Holders of Interests are not entitled to vote on the Plan.***

3.5 Special Provisions Regarding Insurance.

(a) For the avoidance of doubt, subject to the automatic stay under section 362 of the Bankruptcy Code and the injunction under Section 11.9 of the Plan, if there is available insurance, any party with rights against or under the applicable Insurance Contract, including, without limitation, the Estate, the Post-Effective Date Debtor and Holders of Insured Claims, may pursue such rights, and the Post-Effective Date Debtor may, but shall not be required to, move to limit an Insured Claim to the Face Amount of such Insured Claim less the total coverage available with respect to that Insured Claim under the Debtor's applicable Insurance Contract.

(b) Nothing in this Section 3.5 shall constitute a waiver of any causes of action the Debtor or the Post-Effective Date Debtor may hold against any Person or Entity, including the Debtor's Insurers; and subject to the automatic stay under section 362 of the Bankruptcy Code and the injunction under Section 11.9 of the Plan, nothing in this Section 3.5 is intended to, shall or shall be deemed to preclude any Holder of an Allowed Insured Claim from seeking and/or obtaining a distribution or other recovery from any Insurer in addition to (but not in duplication of) any Distribution such Holder may receive under the Plan; provided, however, that the Debtor, its Estate and the Post-Effective Date Debtor do not waive, and expressly reserve their rights, to assert that any insurance coverage is an Asset and property of the Estate to which they are entitled.

(c) Except as otherwise set forth herein, the Plan shall not modify the scope of, or alter in any other way, the rights and obligations of the Insurers under the Insurance Contracts, and the Insurers shall retain any and all rights, claims and defenses to liability and/or coverage that such Insurers may have, including the right to contest and/or litigate with any party, including the Debtor and the Post-Effective Date Debtor, the existence, primacy and/or scope of liability and/or available coverage under any alleged applicable Insurance Contract.

3.6 Provision Governing Allowance and Defenses to Claims. On and after the Effective Date, the Post-Effective Date Debtor shall have all of the Debtor's and the Estate's rights under section 558 of the Bankruptcy Code. Nothing under the Plan shall affect the rights and defenses of the Debtor, the Estate and the Post-Effective Date Debtor in respect of any Claim not Allowed

by Final Order, including all rights in respect of legal and equitable objections, defenses, setoffs or recoupment against such Claims. The Post-Effective Date Debtor may, but shall not be required to, setoff against any Claim (for purposes of determining the Allowed amount of such Claim on which Distribution shall be made) any claims of any nature whatsoever that the Estate or the Post-Effective Date Debtor may have against the Claim Holder, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Post-Effective Date Debtor of any such Claim it may have against such Claim Holder; provided, however, that the Post-Effective Date Debtor shall provide written notice of any such setoff to the Holder of such Claim, and all rights of such Holder to seek relief from the Bankruptcy Court with respect to such setoff shall be reserved. The Post-Effective Date Debtor (i) may designate any Claim as Allowed at any time from and after the Effective Date and (ii) may file an objection to any Claim, thereby making it a Disputed Claim and not Allowed at any time from and after the Effective Date until the Claim Objection Deadline.

ARTICLE IV

ACCEPTANCE OR REJECTION OF THE PLAN

4.1 Impaired Class of Claims Entitled to Vote. Only the votes of Holders of Claims in Classes 3 and 4 shall be solicited with respect to the Plan.

4.2 Acceptance by an Impaired Class. In accordance with section 1126(c) of the Bankruptcy Code, and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class shall have accepted the Plan if the Plan is accepted by the Holders of at least two-thirds ($\frac{2}{3}$) in dollar amount and more than one-half ($\frac{1}{2}$) in number of the Claims allowed for purposes of Plan voting pursuant to the Disclosure Statement Order that have timely and properly voted to accept or reject the Plan.

4.3 Presumed Acceptances by Unimpaired Classes. Class 1 and Class 2 are Unimpaired under the Plan. *Under section 1126(f) of the Bankruptcy Code, the Holders of Claims in such Unimpaired Classes are conclusively presumed to have accepted the Plan, and therefore the votes of the Holders of such Claims shall not be solicited.*

4.4 Impaired Classes Deemed to Reject Plan. Holders of Subordinated Claims and Interests in Class 5 and Class 6 are not entitled to receive or retain any property or interests in property under the Plan. *Under section 1126(g) of the Bankruptcy Code, such Holders are deemed to have rejected the Plan, and therefore the votes of such Holders shall not be solicited.*

4.5 Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code. Because at least one Impaired Class is deemed to have rejected the Plan, the Debtor will request Confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code. The Debtor reserves the right to alter, amend, modify, revoke or withdraw the Plan, the Plan Supplement or any schedule or exhibit, including to amend or modify it to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

4.6 Elimination of Vacant Classes. Any Class of Claims that does not contain, as of the date of the commencement of the Confirmation Hearing, a Holder of a Claim allowed for purposes of

Plan voting pursuant to the Disclosure Statement Order shall be deemed eliminated from the Plan for purposes of determining acceptance of the Plan by such Class under section 1129(a)(8) of the Bankruptcy Code.

ARTICLE V

IMPLEMENTATION OF THE PLAN AND THE PLAN ADMINISTRATOR

5.1 Implementation of the Plan. The Plan will be implemented by, among other things, the approval of the Plan Settlement, the appointment of the Plan Administrator and the making of Distributions to Holders of Allowed Claims from the Cash consideration provided by the Magicheart Parties as provided for in the Plan Settlement.

Except as otherwise provided in the Plan, on and after the Effective Date, all Assets, including all claims, rights, Retained Causes of Action and any property acquired by the Debtor under or in connection with the Plan, including as a result of the Plan Settlement, shall vest in the Post-Effective Date Debtor, free and clear of all Claims, Liens, charges, other encumbrances and Interests; provided, however, that any Liens and security interests securing the Allowed Claims of the Magicheart Parties (including the DIP Claim) shall attach to the Post-Effective Date Debtor's Assets with the same validity, priority, force and effect, which such Liens and security interests now have against the Debtor's assets.

Notwithstanding anything to the contrary herein, all Avoidance Actions shall be waived by the Debtor as of the Effective Date and shall not vest in the Post-Effective Date Debtor.

5.2 The Debtor's Post-Effective Date Corporate Affairs.

5.2.1 Debtor's Current Director and Officer. On the Effective Date, Ronald Barliant and Charles C. Reardon shall be terminated automatically as a director and the Chief Restructuring Officer, respectively, of the Debtor without the need for any corporate action or approval and without the need for any corporate filings, and shall have no continuing obligations to the Debtor in such capacities following the occurrence of the Effective Date.

5.2.2 Post-Effective Date Debtor's Director and Officer. On the Effective Date, the organizational documents of the Debtor shall be deemed amended, to the extent necessary, to require only one director and one officer, which shall be the Plan Administrator.

5.3 Dissolution of the Debtor. Following the implementation of the Plan, the administration and Distribution of the Assets and the winding down of the Debtor, and without the need for any further Order of the Bankruptcy Court or action or formality which might otherwise be required under applicable non-bankruptcy laws, the Debtor shall be dissolved, and the Debtor shall not be required to pay any taxes or fees to cause such dissolution unless otherwise required by the laws of the State of Delaware. The Plan Administrator shall have no liability for taking any actions reasonably necessary to dissolve the Debtor in accordance with this Section 5.3.

5.4 Plan Administrator.

5.4.1 Appointment. Charles C. Reardon will initially serve as the Plan Administrator.

5.4.2 Resignation of Plan Administrator. The Plan Administrator may resign at any time before the Debtor's affairs are fully administered; provided, however, that such resignation shall not be effective until (i) the Plan Administrator appoints a successor Plan Administrator or (ii) thirty (30) days following the date on which the Plan Administrator provides notice to the Bankruptcy Court that the Plan Administrator intends to resign without appointing a successor Plan Administrator. Upon the appointment of any successor Plan Administrator, the successor Plan Administrator, without the need for any further action by or notice to the Bankruptcy Court, shall become fully vested with all of the rights, powers, duties and obligations of the predecessor Plan Administrator under the Plan, and all duties and responsibilities of the predecessor Plan Administrator relating to the Post-Effective Date Debtor shall cease. To the extent a successor Plan Administrator is appointed, such successor shall not be any of the following: (i) one of the Magicheart Parties; (ii) a Holder of a Claim or Interest; or (iii) the Professionals retained by the Debtor pursuant to an Order of the Bankruptcy Court pursuant to sections 327 or 328 of the Bankruptcy Code.

5.4.3 Termination of Plan Administrator Role. The Plan Administrator role shall terminate upon the earlier of (i) the Debtor's affairs being fully administered, as determined in the Plan Administration's sole discretion, and (ii) the Bankruptcy Court entering an order terminating the Plan Administrator role. Upon such termination, all duties and responsibilities of the Plan Administrator relating to the Post-Effective Date Debtor shall cease.

5.4.4 Plan Administrator Agreement.

(a) Plan Administrator as a Fiduciary. The Plan Administrator shall be a fiduciary of the Debtor's Estate and the Post-Effective Date Debtor and shall be compensated and reimbursed for expenses as set forth in, and in accordance with, the Plan Administrator Agreement.

(b) Provisions of the Plan Administrator Agreement and Confirmation Order. The Plan Administrator Agreement and the Confirmation Order shall provide that: (i) the Plan Administrator shall have no duties in the Plan Administrator's capacity as such until the occurrence of the Effective Date and on and after the Effective Date shall be a fiduciary of the Post-Effective Date Debtor and the Estate; (ii) if the Plan is withdrawn or otherwise abandoned prior to the occurrence of the Effective Date, the Plan Administrator position shall thereafter be dissolved; and (iii) on and after the Effective Date, the Plan Administrator shall have the power and responsibility to do all acts contemplated by the Plan to be done by the Plan Administrator and all other acts that may be necessary or appropriate in connection with the disposition of the Assets and the distribution of the proceeds thereof, as contemplated by the Plan and in accordance with the Plan Administrator Agreement. In all circumstances, the Plan Administrator shall act in the Plan Administrator's reasonable discretion in the best interests of the Estate pursuant to the terms of the Plan and the Plan Administrator Agreement.

5.4.5 Powers and Duties of Plan Administrator.

(a) General Powers and Duties. From and after the Effective Date, except as expressly set forth in the Plan or the Confirmation Order, pursuant to and in accordance with the terms and provisions of the Plan and the Plan Administrator Agreement, the Plan Administrator shall be empowered and directed to: (i) take all steps and execute all instruments and documents necessary to make Distributions to Holders of Allowed Claims and to perform the duties assigned to the Plan Administrator under the Plan or the Plan Administrator Agreement; (ii) comply with the Plan and the obligations under the Plan; (iii) employ, retain or replace professionals to represent the Plan Administrator with respect to the Plan Administrator's responsibilities; (iv) object to Claims as provided in the Plan and prosecute such objections; (v) compromise and settle any issue or dispute regarding the amount, validity, priority, treatment or allowance of any Claim; (vi) establish or release the Administrative, Priority and Secured Claims Reserve and the Professional Fee Reserve, as provided in the Plan, as applicable; (vii) exercise such other powers as may be vested in the Plan Administrator pursuant to the Plan, the Plan Administrator Agreement or any other Order of the Bankruptcy Court, including the Confirmation Order, or otherwise act on behalf of and for the Debtor and the Post-Effective Date Debtor from and after the Effective Date; (viii) file applicable tax returns for the Debtor; (ix) liquidate any of the Assets (other than the Avoidance Actions); and (x) prosecute, compromise, resolve or withdraw any of the Retained Causes of Action. The Plan Administrator may, without the need for further Court approval, retain or employ agents, financial advisors, attorneys, consultants, independent contractors, representatives and other professionals to advise the Plan Administrator in the performance of the Plan Administrator's duties, which may include Asgaard Capital, Persons and Entities that have provided services to the Debtor on behalf of Asgaard Capital, counsel for the Debtor, and other advisors for the Debtor.

(b) Distributions. Pursuant to the terms and provisions of the Plan and the Plan Administrator Agreement, the Plan Administrator shall make the required Distributions specified under the Plan and in accordance with the Plan.

(c) Reserves. On the Effective Date, the Plan Administrator shall establish the Administrative, Priority and Secured Claims Reserve and the Professional Fee Reserve, as required by the Plan.

5.4.6 Compensation of the Plan Administrator. The Estate and the Post-Effective Date Debtor shall pay the undisputed reasonable fees and expenses of the Plan Administrator and the Plan Administrator Professionals, which fees and expenses, in the Plan Administrator's sole discretion, may, but shall not be required to, be paid, in the case of the Plan Administrator and Asgaard Capital, from any remaining retainer amounts held by Asgaard Capital in connection with its employment and retention in the Chapter 11 Case, or, in the case of any other Plan Administrator Professional, from any remaining retainer amounts held by such Plan Administrator Professional. If a party disputes the reasonableness of any such invoice and such dispute is not resolved by agreement, the Plan Administrator or the affected professional may submit such dispute to the Bankruptcy Court for a determination of the reasonableness of any such invoice, and the disputed portion of such invoice shall not be paid until the dispute is resolved. The undisputed portion of such reasonable fees and expenses shall be paid as provided herein.

5.4.7 Indemnification of the Plan Administrator and Related Parties. The Debtor and the Post-Effective Date Debtor shall indemnify and hold harmless: (i) the Plan Administrator (solely in the Plan Administrator's capacity as such) and (ii) the Plan Administrator Professionals (solely in their capacities as such) (each, an "**Indemnified Party**"), with respect to any and all Expenses arising out of or due to their post-Effective Date actions or omissions, or consequences of such actions or omissions, taken in connection with the Plan, the Plan Administrator Agreement and the Confirmation Order, other than any such acts or omissions, or consequences of any such actions or omissions, resulting from such Indemnified Party's willful misconduct, actual fraud or gross negligence. To the extent that an Indemnified Party asserts a claim for indemnification as provided above, (i) any payment on account of such claim shall be paid solely from the Estate or, in the case of the Plan Administrator, any available insurance under the D&O Policy, and (ii) the Expenses incurred by counsel to the Plan Administrator in monitoring and participating in the defense of such claims giving rise to the asserted right of indemnification shall be advanced to such Indemnified Party (and such Indemnified Party undertakes to repay such amounts if it ultimately shall be determined that such Indemnified Party is not entitled to be indemnified therefore) out of the Estate or any available insurance. The indemnification provisions of the Plan Administrator Agreement shall remain available to and be binding upon any former Plan Administrator or the estate of any decedent of the Plan Administrator and shall survive the termination of the Plan Administrator Agreement.

5.4.8 Insurance. The Plan Administrator shall be authorized to obtain and pay for, out of the funds of the Estate, all reasonably necessary insurance coverage for the Plan Administrator, the Plan Administrator Professionals, and the Debtor, its officers and directors, including, but not limited to, coverage with respect to: (i) any property that is or may in the future become the property of the Debtor or its Estate; and (ii) the Expenses, duties and obligations of the Plan Administrator and the Plan Administrator Professionals under the Plan Administrator Agreement, the latter of which insurance coverage may remain in effect for a reasonable period of time after the termination of the Plan Administrator Agreement, as determined by the Plan Administrator.

5.4.9 Preservation of Retained Causes of Action. Except as expressly set forth in the Plan or the Confirmation Order, including, without limitation, with respect to the Plan Settlement and the Avoidance Actions, the Post-Effective Date Debtor or the Plan Administrator, as applicable: (i) shall retain all Retained Causes of Action, and nothing contained in the Plan or the Confirmation Order shall be deemed to be a release, waiver or relinquishment of any such Retained Causes of Action; and (ii) shall have, retain, reserve and be entitled to assert all Retained Causes of Action as fully as if the Chapter 11 Case had not been commenced, and all of the Post-Effective Date Debtor's legal and equitable rights respecting any Claim that are not specifically waived or relinquished by the Plan, the Confirmation Order, or any Final Order (including settlement or other agreements authorized thereby) may be asserted after the Effective Date to the same extent as if the Chapter 11 Case had not been commenced. Notwithstanding anything to the contrary herein, all Avoidance Actions shall be waived by the Debtor as of the Effective Date, and shall not vest in the Post-Effective Date Debtor.

5.5 Funding of Administrative, Priority and Secured Claims Reserve. On the Effective Date, the Magicheart Parties shall fund the Administrative, Priority and Secured Claims Reserve in Cash in the amount of the aggregate Administrative, Priority and Secured Claims Estimate. The

Plan Administrator shall, subject to the terms and conditions of the Plan Administrator Agreement and the Plan, pay the Allowed Administrative Claims, Allowed Priority Claims, Allowed Priority Tax Claims and Allowed Secured Claims, each as provided for in Article III of the Plan.

5.6 Funding of Professional Fee Reserve. On the Effective Date, the Magicheart Parties shall fund the Professional Fee Reserve in Cash in the aggregate amount provided for in Section 11.2 of the Plan. The Plan Administrator shall pay the Professional Fee Claims and the Asgaard Capital Fee Claims in accordance with Section 11.2 of the Plan.

5.7 Funding of General Unsecured Claims Distribution Amount. On the Effective Date, the Magicheart Parties shall fund the General Unsecured Claims Distribution Amount. The Plan Administrator shall distribute the General Unsecured Claims Distribution Amount Pro Rata to the Holders of Allowed General Unsecured Claims (other than any Allowed General Unsecured Claims of the Magicheart Parties), as provided for in the Plan.

ARTICLE VI

EXECUTORY CONTRACTS AND UNEXPIRED LEASES; D&O INDEMNIFICATION OBLIGATIONS

6.1 Executory Contracts and Unexpired Leases. Subject to the occurrence of the Effective Date, all executory contracts and unexpired leases of the Debtor that have not been assumed, assumed and assigned, or rejected, prior to the Effective Date, or that are not subject to a motion to assume or reject Filed before the Effective Date, shall be deemed rejected pursuant to the Confirmation Order, as of the Effective Date. ***Any Creditor asserting a Rejection Claim shall File a proof of claim with the Debtor's claims and noticing agent, Donlin Recano & Company, Inc., at the address below, within thirty-five (35) days of the Effective Date, and shall also serve such proof of claim upon counsel for the Plan Administrator, at the addresses below.*** The Debtor shall provide notice of such deadline in the Effective Date Notice.

<u>Donlin Recano & Company, Inc.:</u> Suitable Technologies, Inc. Claims Processing Center c/o Donlin Recano & Company, Inc. P.O. Box 199043, Blythebourne Station Brooklyn, NY 11219	<u>Counsel for the Plan Administrator:</u> Young Conaway Stargatt & Taylor, LLP 1000 North King Street Wilmington, DE 19801 Attention: Robert F. Poppiti, Jr. and Betsy L. Feldman
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6.2 Rejection Claims. Any Rejection Claims that are not timely Filed pursuant to Section 6.1 of the Plan shall be forever disallowed and barred, absent a Final Order to the contrary. If one or more Rejection Claims are timely Filed pursuant to Section 6.1 of the Plan, the Post-Effective Date Debtor may File an objection to any Rejection Claim on or prior to the Claim Objection Deadline.

6.3 D&O Policy. Notwithstanding anything contained in the Plan or the Confirmation Order to the contrary, the D&O Policy shall not terminate on the Effective Date, and shall not be modified, impaired, or otherwise affected in any way by the Plan and Confirmation Order. To the

extent the D&O Policy is considered to be an executory contract, then, notwithstanding anything contained in this Plan or the Confirmation Order to the contrary, this Plan shall constitute a motion to assume the D&O Policy, and no cure amounts shall be due and owing with respect to any assumption of the D&O Policy. To the extent applicable, the entry of the Confirmation Order shall constitute approval of the foregoing assumption pursuant to section 365(a) of the Bankruptcy Code and a finding by the Bankruptcy Court that such assumption is in the best interest of the Debtor, the Estate and all parties in interest in the Chapter 11 Case.

6.4 D&O Indemnification Obligations. Solely to the extent that there is available insurance under the D&O Policy or, in the case of Charles C. Reardon, any remaining retainer amounts held by Asgaard Capital in connection with its employment and retention in the Chapter 11 Case:

(a) in addition to (and not in lieu of) the Debtor's indemnification obligations to them in effect immediately prior to the Effective Date pursuant to the Debtor's bylaws, certificate of incorporation or formation, and other organizational documents, Ronald Barliant and Charles C. Reardon in their capacity as a director and the Chief Restructuring Officer, respectively, of the Debtor shall be entitled to indemnity, contribution, reimbursement and advancement and any other similar right in defense of or in connection with their acts or omissions prior to or during the Chapter 11 Case, arising in, from or related to (x) any Proceeding (whether against any of them, involving them as a witness, which any of them may monitor in their reasonable judgment, or otherwise) by any Creditor, any Interest Holder, or any other party, (y) the Chancery Court Action, or (z) the divorce proceedings between Scott Hassan and Allison Huynh; and

(b) all D&O Indemnification Obligations, including those set forth in the immediately preceding subsection, shall be assumed by the Post Effective-Date Debtor, effective as of the Effective Date, shall remain in full force and effect, shall not be modified, reduced, impaired, or otherwise affected in any way by the Plan and Confirmation Order, shall not have to be asserted in any proof of claim or motion or request for allowance of any Administrative Claim, in any Professional Fee Claim or in any final fee application, report, statement or the like, and shall survive Confirmation, irrespective of when such obligation arose, subject in each case to the terms of the applicable Indemnification Obligation. For the avoidance of doubt, notwithstanding anything to the contrary herein, Charles C. Reardon shall be entitled to satisfy any D&O Indemnification Obligations, including those set forth in the immediately preceding subsection, from any remaining retainer amounts held by Asgaard Capital in connection with its employment and retention in the Chapter 11 Case.

ARTICLE VII

CERTAIN PROVISIONS GOVERNING DISTRIBUTIONS

7.1 Interest on Claims. Except to the extent provided in section 506(b) of the Bankruptcy Code, the Plan or the Confirmation Order, post-petition interest, penalties or fees shall not accrue or be paid on Allowed Claims, and no Holder of an Allowed Claim shall be entitled to interest accruing on any Allowed Claim from and after the Petition Date.

7.2 Distributions by Post-Effective Date Debtor. The Plan Administrator or the Plan Administrator's designee, on behalf of the Post-Effective Date Debtor, shall serve as the disbursing

agent under the Plan with respect to Distributions to Holders of Allowed Claims (provided that the Post-Effective Date Debtor may hire professionals or consultants to assist with making Distributions). The Post-Effective Date Debtor shall make all Distributions required to be made to such Holders of Allowed Claims pursuant to the Plan, the Confirmation Order and the Plan Administrator Agreement. The Post-Effective Date Debtor shall not be required to give any bond or surety or other security for the performance of the Plan Administrator's duties as disbursing agent unless otherwise ordered by the Bankruptcy Court.

7.3 Means of Cash Payment.

(a) Cash payments under the Plan shall be made, at the option, and in the sole discretion, of the Post-Effective Date Debtor, by wire, check or such other method as the Post-Effective Date Debtor deems appropriate under the circumstances. Cash payments to foreign creditors may be made at the option, and in the sole discretion, of the Post-Effective Date Debtor, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction. Cash payments made pursuant to the Plan in the form of checks issued by the Post-Effective Date Debtor shall be null and void if not cashed within ninety (90) days of the date of the issuance thereof. Requests for reissuance of any check within ninety days (90) of the date of the issuance thereof shall be made directly to the Post-Effective Date Debtor.

(b) For purposes of effectuating Distributions under the Plan, any Claim denominated in foreign currency shall be converted to U.S. Dollars pursuant to the applicable exchange rate in effect at the Post-Effective Date Debtor's bank on the Petition Date.

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

7.5 De Minimis Distributions. Notwithstanding anything to the contrary contained in the Plan, the Post-Effective Date Debtor shall not be required to distribute, and shall not distribute, Cash or other property to the Holder of any Allowed Claim if the amount of Cash or other property to be distributed on account of such Claim is less than \$25. Any Holder of an Allowed Claim on account of which the amount of Cash or other property to be distributed is less than \$25 shall be forever barred from asserting such Claim against the Estate.

7.6 Delivery of Distributions. All Distributions to Holders of Allowed Claims shall be made at the address of such Holder as set forth in the claims register maintained in the Chapter 11 Case (subject to, after the Effective Date, a change of address notification provided by a Holder in a manner reasonably acceptable to the Post-Effective Date Debtor) or, in the absence of a filed-proof of claim, the Schedules or any alternative address that was provided to the Debtors, in writing, after the Schedules were filed. If a Distribution is returned as undeliverable, the Post-Effective Date Debtor shall use commercially reasonable efforts to determine such Holder's then-current address but shall have no affirmative obligation to locate such current address. If the Post-Effective Date Debtor cannot determine, or is not notified of, a Holder's then-current address within ninety (90) days after the date the undeliverable Distribution was made, the Distribution

reserved for such Holder shall be deemed an unclaimed Distribution. The responsibility to provide the Post-Effective Date Debtor a current address of a Holder of Claims shall always be the responsibility of such Holder. Except as set forth above, nothing contained in the Plan shall require the Post-Effective Date Debtor to attempt to locate any Holder of an Allowed Claim. Amounts in respect of undeliverable Distributions made by the Post-Effective Date Debtor shall be held in trust on behalf of the Holder of the Allowed Claim to which they are payable by the Post-Effective Date Debtor until the earlier of the date that such undeliverable Distributions are claimed by such Holder and ninety (90) days after the date the undeliverable Distributions were made. The Post-Effective Date Debtor shall have no obligation to recognize the sale or transfer of any Claim that occurs after the Confirmation Date.

7.7 Withholding, Payment and Reporting Requirements with Respect to Distributions.

All Distributions under the Plan shall, to the extent applicable, comply with all tax withholding, payment and reporting requirements imposed by any federal, state, provincial, local or foreign taxing authority, and all Distributions shall be subject to any such withholding, payment and reporting requirements. The Post-Effective Date Debtor shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment and reporting requirements. The Post-Effective Date Debtor may require, in the Post-Effective Date Debtor's sole and absolute discretion and as a condition to the receipt of any Distribution, that the Holder of an Allowed Claim complete and return to the Post-Effective Date Debtor the appropriate Form W-8 or Form W-9, as applicable, to each Holder, by providing notice of the same to such Holder, in writing, sent to the address to which Distributions shall be delivered under the Plan. Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations, on account of such Distribution, and including, in the case of any Holder of a Disputed Claim that has become an Allowed Claim, any tax obligation that would be imposed upon the Estate in connection with such Distribution; and (b) no Distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements reasonably satisfactory to the Post-Effective Date Debtor for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon the Estate in connection with such Distribution.

7.8 Setoffs. The Post-Effective Date Debtor may, but shall not be required to, set off against any Allowed Claim any Retained Causes of Actions held, or Distributions or other payments to be made pursuant to the Plan, by the Post-Effective Date Debtor in respect of such Claim; provided, however, that (i) the Post-Effective Date Debtor shall provide written notice of any such setoff to the Holder of such Allowed Claim, and all rights of such Holder to seek relief from the Bankruptcy Court with respect to such setoff shall be reserved; (ii) neither the failure to do so, nor the allowance of any Claim under the Plan, shall constitute a waiver or release by the Debtor, the Estate or the Post-Effective Date Debtor of any rights, claims or defenses that it may have against such Holder; (iii) if the Post-Effective Date Debtor sets off any Retained Cause of Action against the recovery to any Holder of an Allowed Claim pursuant to this Section 7.8, the Post-Effective Date Debtor shall not be deemed to have impaired, estopped, waived or released any rights to prosecute the same such Retained Cause of Action against any other Person or Entity.

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

7.10 Allocation of Distributions. All Distributions received under the Plan by Holders of Claims shall be deemed to be allocated first to the principal amount of such Claim as determined for United States federal income tax purposes and then to accrued interest, if any, with respect to such Claim.

7.11 Forfeiture of Distributions. If the Holder of an Allowed Claim fails to cash a check payable to it within the time period set forth in Section 7.3 of the Plan, fails to claim an undeliverable Distribution within the time limit set forth in Section 7.6 of the Plan, or fails to complete and return to the Post-Effective Date Debtor the appropriate Form W-8 or Form W-9 within ninety (90) days of the written request by the Post-Effective Date Debtor for the completion and return to it of the appropriate form pursuant to Section 7.7 of the Plan, then such Holder shall be deemed to have forfeited its right to any Distributions from the Estate (or the proceeds thereof) and the Post-Effective Date Debtor. The forfeited Distributions shall become unrestricted Assets, and shall be redistributed to Holders of Allowed Claims in accordance with the terms of the Plan after reserving as necessary for payment of expenses of the Plan Administrator and otherwise in compliance with the Plan and the Plan Administrator Agreement. In the event the Post-Effective Date Debtor determines, in the Post-Effective Date Debtor's sole discretion, that any such amounts are too small in total to economically redistribute to the Holders of Allowed Claims, the Post-Effective Date Debtor may instead donate such amounts to a charitable organization(s) (except that such charitable organization(s) shall not be affiliated with the Debtor, the Plan Administrator, the Professionals retained by the Debtor pursuant to an Order of the Bankruptcy Court pursuant to sections 327 or 328 of the Bankruptcy Code, or the Magicheart Parties), free of any restrictions thereon, notwithstanding any federal or state escheat laws to the contrary, or may use such amounts in connection with winding up and administering the affairs of the Debtor.

ARTICLE VIII

PROCEDURES FOR RESOLVING DISPUTED, CONTINGENT AND UNLIQUIDATED CLAIMS AND DISTRIBUTIONS WITH RESPECT THERETO

8.1 Claims Administration Responsibility. Except as otherwise specifically provided in the Plan and the Plan Administrator Agreement, after the Effective Date, the Post-Effective Date Debtor shall have the authority (i) to file, withdraw or litigate to judgment objections to Claims; (ii) to settle, compromise or Allow any Claim or Disputed Claim without any further notice to or action, Order or approval by the Bankruptcy Court; (iii) to amend the Schedules in accordance with the Bankruptcy Code; and (iv) to administer and adjust the claims register to reflect any such settlements or compromises without any further notice to or action, Order or approval by the Bankruptcy Court. Any agreement entered into by the Post-Effective Date Debtor (acting in accordance with the terms of the Plan Administrator Agreement) with respect to the allowance of any Claim shall be conclusive evidence and a final determination of the Allowance of such Claim.

8.2 Claim Objections. All objections to Claims (other than Professional Fee Claims, which Professional Fee Claims shall be governed by Section 11.2 of the Plan) shall be Filed on or before

the Claim Objection Deadline, which date may be extended by the Bankruptcy Court upon a motion filed by the Post-Effective Date Debtor on or before the Claim Objection Deadline with notice only to (i) those parties entitled to notice in the Chapter 11 Case pursuant to Bankruptcy Rule 2002 as of the filing of such motion and (ii) those Holders of Claims affected by such motion. The Filing of a motion to extend the Claim Objection Deadline shall automatically extend the Claim Objection Deadline until a Final Order is entered by the Bankruptcy Court. In the event that such a motion to extend the Claim Objection Deadline is denied, the Claim Objection Deadline shall be the later of the then-current Claim Objection Deadline (as previously extended, if applicable) or thirty (30) days after entry of a Final Order denying the motion to extend the Claim Objection Deadline.

8.3 No Distributions Pending Allowance. Notwithstanding any other provision of the Plan or the Plan Administrator Agreement, no payments or Distributions shall be made with respect to a Disputed Claim unless and until all objections to such Disputed Claim have been settled, withdrawn or determined by a Final Order, and the Disputed Claim has become an Allowed Claim, provided, however, that the Plan Administrator may, in the Plan Administrator's sole discretion, pay the Allowed portion of any Claim while the balance of such claim is a Disputed Claim. To the extent that a Claim is not a Disputed Claim but is held by a Holder that is or may be liable to the Debtor or the Post-Effective Date Debtor on account of a Retained Cause of Action, no payments or Distributions shall be made with respect to all or any portion of such Claim unless and until such Claim and liability have been settled or withdrawn or have been determined by Final Order of the Bankruptcy Court or such other court having jurisdiction over the matter.

8.4 Estimation of Contingent or Unliquidated Claims. The Post-Effective Date Debtor may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to section 502(c) of the Bankruptcy Code, regardless of whether the Debtor has previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event the Bankruptcy Court so estimates any contingent or unliquidated Claim, that estimated amount shall constitute the Allowed amount of such Claim, unless otherwise ordered by the Court. All of the Claims objection, estimation and resolution procedures in this Article VIII are cumulative and are not necessarily exclusive of one another.

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

ARTICLE IX

CONDITIONS PRECEDENT TO THE OCCURRENCE OF THE EFFECTIVE DATE

9.1 Conditions to Confirmation. The following are conditions precedent to confirmation of the Plan, each of which must be satisfied or duly waived, as applicable, in accordance with Section 9.3 of the Plan:

(i) the provisions of the Confirmation Order that relate to the Plan Settlement shall be in form and substance acceptable to the Magicheart Parties;

(ii) the Confirmation Order must provide that the Debtor is authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the agreements or documents created under or in connection with the Plan, including, without limitation, the Plan Settlement; and

(iii) the Confirmation Order must provide that, notwithstanding Bankruptcy Rule 3020(e), the Confirmation Order shall be immediately effective, subject to the terms and conditions of the Plan, and the Confirmation Order shall have been entered by the Bankruptcy Court.

9.2 Conditions to the Occurrence of the Effective Date. The occurrence of the Effective Date shall not occur and the Plan shall not be consummated unless and until each of the following conditions has been satisfied or duly waived, as applicable, in accordance with Section 9.3 of the Plan:

(i) the Bankruptcy Court shall have entered the Confirmation Order;

(ii) the Confirmation Order shall not be subject to any stay;

(iii) the Plan Administrator Agreement shall have been executed;

(iv) the Plan Administrator shall have established the Administrative, Priority and Secured Claims Reserve and the Professional Fee Reserve;

(v) the Magicheart Parties shall have funded the Administrative, Priority and Secured Claims Reserve in Cash pursuant to and in accordance with Section 5.5 of the Plan and the Plan Settlement;

(vi) the Magicheart Parties shall have funded the Professional Fee Reserve in Cash pursuant to and in accordance with Sections 5.6 and 11.2 of the Plan and the Plan Settlement;

(vii) the Magicheart Parties shall have funded in Cash the Wind-Down Budget Amount and the General Unsecured Claims Distribution Amount; and

(viii) all actions, documents, and agreements necessary to implement the provisions of the Plan to be effectuated on or prior to the Effective Date shall be satisfactory to the Debtor, and such actions, documents, and agreements shall be effective or executed and delivered.

9.3 Waiver of Conditions to the Occurrence of the Effective Date. The conditions to Confirmation and the Effective Date set forth in Sections 9.1 and 9.2, respectively, of the Plan may be waived by the Debtor, with the consent of the Magicheart Parties in writing, at any time without further Order.

9.4 Effect of Non-Occurrence of Conditions to the Effective Date. If each of the conditions to the Effective Date is not satisfied or duly waived in accordance with Sections 9.2 and 9.3 of the Plan, the Debtor reserves all rights to seek an Order from the Bankruptcy Court directing that the

Confirmation Order be vacated. If the Confirmation Order is vacated pursuant to this Section 9.4 of the Plan, (i) the Plan shall be null and void in all respects; and (ii) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims or any Interests or (b) prejudice in any manner the rights of the Debtor, the Estate or any other Person or Entity.

ARTICLE X

RETENTION OF JURISDICTION

10.1 Scope of Retained Jurisdiction. Under sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, and except as otherwise ordered by the Bankruptcy Court, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Case and the Plan to the fullest extent permitted by law, including, among other things, exclusive jurisdiction to do the following:

(a) allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured or unsecured status of any Claim not otherwise Allowed under the Plan, including the resolution of any request for payment of any Administrative Claim, Professional Fee Claim or Rejection Claim and the resolution of any objections to the allowance or priority of Claims;

(b) hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under sections 327, 328, 330, 331, 503(b), 1103 and 1129(a)(4) of the Bankruptcy Code;

(c) hear and determine all matters with respect to the assumption, assignment or rejection of any executory contract or unexpired lease to which the Debtor is a party or with respect to which the Debtor may be liable, including, if necessary, the nature or amount of any required cure or the liquidation or allowance of any Claims arising therefrom;

(d) effectuate performance of and payments under the provisions of the Plan and any agreement or Order of the Bankruptcy Court with respect to a sale of the Debtor's Assets prior to the Effective Date, including, without limitation, the Sale Orders, and enforce rights and remedies upon any default under the Plan and any such sale agreement or Order;

(e) hear and determine any and all adversary proceedings, motions, applications, requests for discovery, and any other matters or proceedings of any kind arising out of, under or related to, the Chapter 11 Case, including, without limitation, with respect to the Sale Orders, the Prior Asset Sales, the Plan, the Confirmation Order, and the Retained Causes of Action;

(f) enter such Orders as may be necessary or appropriate to execute, implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents created, executed or contemplated in connection with the Plan, the Disclosure Statement or the Confirmation Order, including, without limitation, the Plan Settlement;

(g) hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Prior Asset Sales, the Sale Orders, the Plan, and the Confirmation Order, including, without limitation, disputes arising under agreements, documents or instruments executed in connection with the foregoing, including, without limitation, the Plan Settlement;

(h) consider any modifications of the Plan, cure any defect or omission, or reconcile any inconsistency in any Order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(i) issue injunctions, enter and implement other Orders or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with the implementation, consummation or enforcement of the Prior Asset Sales, the Sale Orders, the Plan or the Confirmation Order;

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

(k) hear and determine any matters arising in connection with or relating to the Plan, the Plan Supplement, the Plan Administrator Agreement, the Disclosure Statement, the Confirmation Order, any agreement to which the Debtor is a party, or any Final Order of the Bankruptcy Court, including, without limitation, the Sale Orders, or any contract, instrument, release or other agreement or document created, executed or contemplated in connection with any of the foregoing documents and Orders;

(l) enforce, interpret and determine any disputes arising in connection with any stipulations, Orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Case, including, without limitation, in connection with the Prior Asset Sales, the Sale Orders, the Plan or the Confirmation Order;

(m) except as otherwise limited herein, recover all Assets of the Debtor, wherever located;

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

(o) hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under provisions of the Bankruptcy Code;

(p) resolve any cases, controversies, suits, or disputes related to the Estate, including, but not limited to, the Prior Asset Sales, the Sale Orders, the Plan, the Confirmation Order, or the Debtor's Assets; and

(q) enter a Final Decree closing the Chapter 11 Case.

10.2 Failure of the Bankruptcy Court to Exercise Jurisdiction. If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under or related to the Chapter 11 Case, including the matters set forth in Section 10.1 of the Plan, the provisions of this Article X shall have no effect upon and

shall not control, prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

ARTICLE XI

MISCELLANEOUS PROVISIONS

11.1 Administrative Claims Bar Date. *All requests for payment of an Administrative Claim must be Filed with the Bankruptcy Court and served on counsel to the Plan Administrator and counsel to the Magicheart Parties no later than thirty five (35) days after the Effective Date, at the addresses set forth below.* The Debtor shall provide notice of such deadline in the Effective Date Notice. In the event of an objection to allowance of an Administrative Claim, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim.

<u>Counsel to the Plan Administrator:</u> Young Conaway Stargatt & Taylor, LLP 1000 North King Street Wilmington, DE 19801 Attention: Robert F. Poppiti, Jr. and Betsy L. Feldman	<u>Counsel to the Magicheart Parties:</u> Morris, Nichols, Arsht & Tunnell LLP 1201 North Market Street, Suite 1600 Wilmington, DE 19801 Attention: Curtis S. Miller and Paige N. Topper
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11.2 Professional Fee Claims.

(a) *All final requests for payment of Professional Fee Claims pursuant to sections 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code must be made by application Filed with the Bankruptcy Court and served on counsel to the Plan Administrator and the Post-Effective Date Debtor, counsel to the Magicheart Parties, and the U.S. Trustee no later than thirty (30) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court.* The Debtor shall provide notice of such deadline in the Effective Date Notice. **Objections to such applications must be Filed and served on counsel to the Plan Administrator, counsel to the Magicheart Parties, the U.S. Trustee and the requesting Professional on or before the date that is twenty-one (21) days after the date on which the applicable application was served (or such longer period as may be allowed by Order of the Bankruptcy Court or by agreement with the requesting Professional).** For the avoidance of doubt, any party seeking compensation or reimbursement of expenses under sections 503(b)(3) or 503(b)(4) of the Bankruptcy Code must file a motion for approval of the same in accordance with the Bankruptcy Rules and the Local Rules.

(b) All Professional Fee Claims shall be paid by the Estate to the extent approved by Order of the Bankruptcy Court within five (5) Business Days from entry of such Order.

(c) On or before the Effective Date, the Debtor shall establish the Professional Fee Reserve, which shall only be used to pay (i) Professional Fee Claims and (ii) Asgaard Capital Fee Claims, unless and until all Professional Fee Claims and Asgaard Capital Fee Claims have been paid in full, otherwise satisfied or withdrawn. The Professional Fee Reserve shall vest in the Estate and shall be maintained by the Post-Effective Date Debtor in accordance with the Plan and the Plan

Administrator Agreement. The Professional Fee Reserve shall be funded on the Effective Date pursuant to the Plan Settlement in Cash in an amount that is determined by the Debtor and that approximates, as of the Effective Date, the total projected amount of unpaid Professional Fee Claims and unpaid Asgaard Capital Fee Claims. To the extent there is any dispute over the amount by which the Professional Fee Reserve is to be funded, the Debtor shall submit the issue to the Bankruptcy Court, which, following notice and a hearing, shall fix the amount of the required Professional Fee Reserve. Any excess funds in the Professional Fee Reserve shall be released back to Magicheart in accordance with Section 3.1.1 of the Plan.

(d) For the avoidance of doubt, Asgaard Capital shall not be required to file a final request for payment of any claims of Asgaard Capital for compensation or reimbursement of costs and expenses relating to services provided to the Debtor during the period from the Petition Date through and including the Effective Date, but shall be required to file a fee statement for any period for which such a statement has not been filed, for services through and including the Effective Date, in accordance with the order approving the Debtor's retention of Asgaard Capital.

11.3 Payment of Statutory Fees. All U.S. Trustee Fees payable prior to the Effective Date shall be paid on or before the Effective Date. All U.S. Trustee Fees that arise after the Effective Date shall be paid by the Post-Effective Date Debtor and the Plan Administrator when due and payable. The Post-Effective Date Debtor and the Plan Administrator shall have the obligation to pay U.S. Trustee Fees until the earliest of the Chapter 11 Case being closed, dismissed or converted to a case under Chapter 7 of the Bankruptcy Code. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim or requests for payment of Administrative Claim in the Chapter 11 Case, and shall not be treated as providing any releases under the Plan. The Post-Effective Date Debtor and the Plan Administrator shall file with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee.

11.4 Modifications and Amendments.

(a) The Debtor may alter, amend or modify the Plan under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date. All alterations, amendments or modifications to the Plan must comply with section 1127 of the Bankruptcy Code. The Debtor shall provide parties in interest with notice of such amendments or modifications as may be required by the Bankruptcy Rules or Order of the Bankruptcy Court. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, modified or clarified, if the proposed alteration, amendment, modification or clarification does not materially and adversely change the treatment of the Claim of such Holder.

(b) After the Confirmation Date and prior to substantial consummation (as defined in section 1101(2) of the Bankruptcy Code) of the Plan, the Debtor or the Post-Effective Date Debtor, as applicable, may, under section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure Statement approved with respect to the Plan or the Confirmation Order, and such matters as may be necessary to carry out the purpose and effect of the Plan. Such proceedings must comply with section 1127 of the Bankruptcy Code. To the extent required, prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or an Order of the

Bankruptcy Court. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, modified or clarified, if the proposed alteration, amendment, modification or clarification does not materially and adversely change the treatment of the Claim of such Holder.

11.5 Severability of Plan Provisions. If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, at the request of the Debtor, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted, is valid and enforceable pursuant to its terms.

11.6 Successors and Assigns. The rights, benefits and obligations of any Person or Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, personal representative, successor or assign of such Person or Entity.

11.7 Post-Effective Date Compromises and Settlements. From and after the Effective Date, the Post-Effective Date Debtor may compromise and settle Claims against the Debtor and its Estate, as well as the Retained Causes of Action, without any further approval by or notice to the Bankruptcy Court.

11.8 Binding Effect of Plan. Upon the Effective Date, section 1141 of the Bankruptcy Code shall become applicable with respect to the Plan and the Plan shall be binding on all parties to the fullest extent permitted by section 1141(a) of the Bankruptcy Code.

11.9 Non-Discharge of the Debtor; Injunction.

(a) In accordance with section 1141(d)(3) of the Bankruptcy Code, the Plan does not discharge the Debtor.

(b) No Person or Entity holding a Claim or Interest may receive any payment from, or seek recourse against, any Assets or property of the Debtor and its Estate or the Post-Effective Date Debtor other than Assets or property required to be distributed to that Person or Entity under the Plan. Except as otherwise expressly provided for in the Plan or the Confirmation Order, all Persons and Entities are permanently enjoined, on and after the Effective Date, on account of any Claim or Interest, or on account of any claim, interest, obligation, right, suit, damages, cause of action, remedy or liability released, dismissed, exculpated, settled or waived under the Plan or the Confirmation Order, from:

(i) asserting any such Claim or Interest, or any such claim, interest, obligation, right, suit, damages, cause of action, remedy or liability released, dismissed, exculpated, settled or waived under the Plan or the Confirmation

Order, against any assets or property of the Debtor, its Estate, the Post-Effective Date Debtor, the Released Parties, and their successors and assigns;

(ii) commencing or continuing in any manner any suit, action, discovery, or other matter or proceeding of any kind against the Debtor, its Estate, the Post-Effective Date Debtor, the Released Parties, their successors and assigns and any of their assets and properties;

(iii) enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against the Debtor, its Estate, the Post-Effective Date Debtor, the Released Parties, their successors and assigns and any of their assets and properties;

(iv) creating, perfecting or enforcing any encumbrance of any kind against the Debtor, its Estate, the Post-Effective Date Debtor, the Released Parties, their successors and assigns and any of their assets and properties; or

(v) asserting any right of setoff or subrogation of any kind against any obligation due from the Debtor, its Estate, the Post-Effective Date Debtor, the Released Parties or their successors and assigns, or against any of their assets and properties, except to the extent that a right to setoff or subrogation is timely asserted under applicable law.

Notwithstanding anything to the contrary in the Plan or the Confirmation Order, but subject to, and not in any way modifying or otherwise affecting, the terms of (a) Sections 3.1.1, 11.10 and 11.11 of the Plan or (b) the DIP Order, the following claims are not precluded, enjoined, released, or dismissed pursuant to the Plan or the Confirmation Order: any and all direct claims that Allison Huynh may have (i) against any party other than the Debtor and the Estate or (ii) against such other party's assets except for any such party's assets that were acquired from the Debtor and the Estate pursuant to the Sale Orders (collectively, the "Direct Huynh Claims"), provided, however, that the Direct Huynh Claims shall not include, and shall expressly exclude, any derivative claims or claims asserted or assertible by or on behalf of the Debtor and the Estate or that Allison Huynh would have been legally entitled to assert derivatively on behalf of the Debtor and the Estate or otherwise by or through the Debtor and the Estate. For the avoidance of doubt, notwithstanding the preceding sentence, the Post-Effective Date Debtor is authorized and directed to return, or cause to be returned, to Magicheart (or any Person or Entity designated in writing by Magicheart) any amounts or assets that are to be returned to Magicheart pursuant to Section 3.1.1 of the Plan.

11.10 Releases and Related Matters.

(a) Releases by Debtor and the Estate. As of the Effective Date, for good and valuable consideration, including the contributions of the Debtor Released Parties in facilitating the administration of the Chapter 11 Case and other actions contemplated by the Plan and the other contracts, instruments, releases, agreements or documents executed and delivered in connection with the Chapter 11 Case, the Plan or the Confirmation Order, including, without

limitation, the Prior Asset Sales and the Plan Settlement, the Debtor Released Parties are forever released by the Debtor and the Estate, and anyone claiming by or through the Debtor and the Estate, from any and all claims, interests, obligations, rights, suits, damages, causes of action (including, without limitation, any and all causes of action under chapter 5 of the Bankruptcy Code), remedies and liabilities whatsoever, including, without limitation, any derivative claims or claims asserted or assertible on behalf of the Debtor and the Estate, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing or hereinafter arising, in law, equity or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or that a Holder of any Claim or Interest would have been legally entitled to assert derivatively on behalf of the Debtor or otherwise by or through the Debtor, based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the Estate, the Chapter 11 Case (including, without limitation, the Prior Asset Sales), the Plan, the Confirmation Order, the Disclosure Statement or related agreements, instruments or other documents in the Chapter 11 Case (including, without limitation, the Asset Purchase Agreements), except for any such act, omission, transaction, event or other occurrence that is determined in a Final Order to have constituted actual fraud, gross negligence or willful misconduct, provided that such exception shall not apply to the Magicheart Parties.

(b) Release by Magicheart Parties. As of the Effective Date, for good and valuable consideration, including the contributions of the Magicheart Released Parties in facilitating the administration of the Chapter 11 Case and other actions contemplated by the Plan and the other contracts, instruments, releases, agreements or documents executed and delivered in connection with the Chapter 11 Case, the Plan or the Confirmation Order, including, without limitation, the Prior Asset Sales and Plan Settlement, the Magicheart Released Parties are forever released by the Magicheart Parties, and anyone claiming by or through the Magicheart Parties, from any and all claims, interests, obligations, rights, suits, damages, causes of action, remedies and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing or hereinafter arising, in law, equity or otherwise, that the Magicheart Parties would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of and anyone claiming by or through the Magicheart Parties, based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the Estate, the Chapter 11 Case (including, without limitation, the Prior Asset Sales), the Plan, the Disclosure Statement or related agreements, instruments or other documents in the Chapter 11 Case (including, without limitation, the Asset Purchase Agreements); provided, however, that the foregoing is not intended and shall not be deemed to be a release of (i) the DIP Claim, the Prepetition Promissory Notes Claims, or the Palo Alto Real Property Lease Claims or (ii) any rights of the Magicheart Parties under the Plan or the Confirmation Order, including, without limitation, the rights of Magicheart under Sections 3.1.1 and 12.1(c) of the Plan.

(c) Each Person and Entity deemed to grant a release under this Section 11.10 shall be deemed to have granted such release notwithstanding that such Person or Entity may

hereafter discover facts in addition to, or different from, those which such Person or Entity now knows or believes to be true, and without regard to the subsequent discovery or existence of such different or additional facts, and such Person or Entity expressly waives any and all rights that such Person or Entity may have under any statute or common law principle, including, without limitation, section 1542 of the California Civil Code, to the extent such section is applicable, which would limit the effect of such releases to those claims or causes of action actually known or suspected to exist at the time of Confirmation. Section 1542 of the California Civil Code generally provides as follows: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN THE CREDITOR’S FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY THE CREDITOR MUST HAVE MATERIALLY AFFECTED THE CREDITOR’S SETTLEMENT WITH THE DEBTOR.”

(d) Entry of the Confirmation Order shall constitute the Bankruptcy Court’s approval of the releases set forth in this Section 11.10.

(e) As soon as reasonably practicable after the Effective Date, the Post-Effective Date Debtor shall cause the Chancery Court Action to be dismissed with prejudice, and the Plan Administrator is authorized to file any pleadings with the Chancery Court Action necessary to cause such dismissal.

11.11 Exculpation and Limitation of Liability. On the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, to the maximum extent permitted by law, the Exculpated Parties shall be exculpated from any liability to any Person or Entity, including, without limitation, to any Holder of a Claim or an Interest, for any act or omission occurring on or after the Petition Date through and including the Effective Date in connection with, relating to, or arising out of the Chapter 11 Case (including, without limitation, the Prior Asset Sales), the formulation, negotiation, preparation, dissemination, solicitation of acceptances, implementation, confirmation or consummation of the Plan (including, without limitation, the Plan Settlement), the Disclosure Statement, the Plan Administrator Agreement or any contract, instrument, release or other agreement or document created, executed or contemplated in connection with the Chapter 11 Case (including, without limitation, the Asset Purchase Agreements), the Plan, the Confirmation Order, or the administration of the Plan or the Assets and property to be distributed under the Plan; provided, however, that the exculpation provisions of this Section 11.11 shall not apply to acts or omissions constituting actual fraud, willful misconduct or gross negligence by any Exculpated Party, as determined by a Final Order. The Confirmation Order and the Plan shall serve as a permanent injunction against any Person or Entity commencing or continuing in any manner any suit, action, discovery, or other matter or Proceeding of any kind against the Exculpated Parties that has been exculpated pursuant to this Section 11.11 of the Plan.

11.12 Term of Injunctions or Stays. Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code or otherwise, and extant on the Confirmation Date (including any injunctions or stays contained in or arising from the Plan or the Confirmation Order), shall remain in full force

and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

11.13 Revocation, Withdrawal or Non-Consummation. The Debtor reserves the right to revoke or withdraw the Plan at any time prior to the Confirmation Date and to file subsequent chapter 11 plans. If the Debtor revokes or withdraws the Plan prior to the Confirmation Date, or if Confirmation or the Effective Date does not occur, then (a) the Plan shall be null and void in all respects immediately upon the Debtor filing a notice on the docket of the Chapter 11 Case that the Effective Date will not occur; (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims) and any document or agreement executed pursuant to the Plan shall be deemed null and void; and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims against, or any Interests in, the Debtor, or any causes of action or other claims by or against the Debtor or any Person or Entity, (ii) prejudice in any manner the rights of the Debtor or any Person or Entity in any further Proceedings involving the Debtor or (iii) constitute an admission of any sort by the Debtor or any other Person or Entity.

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

11.15 Headings. The headings of articles, paragraphs and subparagraphs of the Plan are inserted for convenience only and shall not affect the interpretation of any provision of the Plan.

11.16 Governing Law. Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules), and except as otherwise provide herein, the laws of the State of Delaware shall govern (i) the construction and implementation of the Plan and (except as may be provided otherwise in any such agreements, documents or instruments) any agreements, documents and instruments executed in connection with the Plan and (ii) corporate governance matters, in each case without giving effect to the principles of conflicts of law thereof.

11.17 Preservation of Retained Causes of Action.

11.17.1 Vesting of Causes of Action.

- (a) Except as otherwise provided in the Plan or Confirmation Order, in accordance with section 1123(b)(3) of the Bankruptcy Code, any Retained Causes of Action that the Debtor may hold against any Person or Entity shall vest upon the Effective Date in the Post-Effective Date Debtor.
- (b) Except as otherwise provided in the Plan or Confirmation Order, after the Effective Date, the Post-Effective Date Debtor shall have the exclusive right to institute, prosecute, abandon, settle, dismiss or compromise any Retained Causes of Action, in accordance with the terms of the Plan and the Plan Administrator Agreement and without further order of or notice to the Bankruptcy Court, in any court or other tribunal, including, without limitation, in an adversary proceeding filed in the Chapter 11 Case.

- (c) Notwithstanding anything to the contrary herein, all Avoidance Actions shall be waived by the Debtor as of the Effective Date, and shall not vest in the Post-Effective Date Debtor.

11.17.2 Reservation of Causes of Action. Unless a Retained Cause of Action against a Holder or other Person or Entity is expressly waived, relinquished, released, compromised, dismissed or settled in the Plan, the Confirmation Order or any Final Order, the Debtor, the Estate and the Post-Effective Date Debtor expressly reserve such Retained Cause of Action for later adjudication by the Post-Effective Date Debtor, including, without limitation, Retained Causes of Action of which the Debtor may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist. Therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise), laches or the like, shall apply to such Retained Causes of Action upon or after the entry of the Confirmation Order or Effective Date based on the Disclosure Statement, Plan, or Confirmation Order, except where such Retained Causes of Action have been expressly waived, relinquished, released, compromised, dismissed or settled in the Plan, the Confirmation Order, a Final Order of the Bankruptcy Court or, following the Effective Date, in a written agreement duly executed by the Post-Effective Date Debtor which agreement, by its terms, is not subject to Bankruptcy Court approval.

11.18 Bar Date Order. Nothing herein extends or otherwise modifies a bar date established in the Bar Date Order or other Final Order of the Bankruptcy Court.

11.19 Section 1146 Exemption. Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of any security under the Plan or the making or delivery of any instrument of transfer pursuant to, in implementation of, or as contemplated by the Plan, or the re-vesting, transfer or sale of any real or personal property of the Debtor pursuant to, in implementation of, or as contemplated by the Plan, shall not be taxed under any state or local law imposing a stamp tax, transfer tax or any similar tax or fee.

11.20 Conflicts with the Plan. In the event and to the extent that any provision of the Plan is inconsistent with the provisions of the Disclosure Statement, the Plan Supplement, or the Plan Administrator Agreement, the provisions of the Plan shall control and take precedence; provided, however, that the Confirmation Order shall control and take precedence in the event of any inconsistency between the Confirmation Order, any provision of the Plan, and any of the foregoing documents.

11.21 No Stay of Confirmation Order. The Debtor will request that the Bankruptcy Court waive any stay of enforcement of the Confirmation Order otherwise applicable, including, without limitation, pursuant to Bankruptcy Rules 3020(e), 6004(h) and 7062.

ARTICLE XII

THE PLAN SETTLEMENT

12.1 The Plan Settlement. Following good faith and arm's length negotiations, in exchange for the Additional Borrowing Amount and for the releases and other valuable consideration provided for in the Wind-Down Budget and the Plan, including, without limitation, the funding of the Administrative, Priority and Secured Claims Reserve, the Professional Fee Reserve, and the General Unsecured Claims Distribution Amount, the Debtor and the Magicheart Parties have agreed to the following settlement (the "**Plan Settlement**"):

- (a) the Magicheart Parties shall vote to accept the Plan and accept the treatment provided for herein for the Magicheart Parties in full and final satisfaction and resolution of all Claims of the Magicheart Parties;
- (b) the DIP Claim, the Prepetition Promissory Notes Claims, and the Palo Alto Real Property Lease Claims shall be Allowed and otherwise treated as provided for in the Plan;
- (c) the Magicheart Parties shall not be entitled to and shall not receive any distributions on account of any Allowed Claims of the Magicheart Parties, including, without limitation, the DIP Claim, the Prepetition Promissory Notes Claims, and the Palo Alto Real Property Lease Claims; provided, however, that any Liens and security interests securing the Allowed Claims of the Magicheart Parties (including the DIP Claim) shall attach to the Post-Effective Date Debtor's Assets with the same validity, priority, force and effect, which such Liens and security interests now have against the Debtor's assets. Notwithstanding the foregoing or anything in the Plan to the contrary, any amounts funded to the Debtor or the Post-Effective Date Debtor, as applicable, under the DIP Credit Agreement or the Wind-Down Budget, including the Administrative, Priority and Secured Claims Reserve and the Professional Fee Reserve, and any remnant Assets not otherwise distributed under the Plan, including any unused retainer held by any Professional, that remain unused or otherwise available after the Plan Administrator has wound-up the affairs of the Debtor, filed final tax returns for the Debtor, made Distributions under the Plan on account of Allowed Administrative Claims, Professional Fee Claims, Asgaard Capital Fee Claims, Priority Tax Claims, Secured Claims and Priority Claims in the Chapter 11 Case, paid all U.S. Trustee Fees, and otherwise fully administered the Debtor's affairs, the Plan and the Chapter 11 Case, shall be returned to Magicheart. For the avoidance of doubt, no portion of the General Unsecured Claims Distribution Amount shall be returnable to Magicheart;
- (d) the Magicheart Parties shall fund (i) the Wind-Down Budget, including the Administrative, Priority and Secured Claims Reserve and the Professional Fee Reserve, and (ii) the General Unsecured Claims Distribution Amount, in each case as provided for in the Plan and the Confirmation Order. The Wind-Down Budget Amount shall be (i) deemed to be an additional borrowing under the DIP Credit Agreement and the DIP Order and (ii) included in the DIP Claim, and the DIP Credit Agreement and the other Postpetition Documents (as defined in the DIP Order) shall be deemed to include the Wind-Down Budget Amount for all purposes under the DIP Order;

- (e) other than funding (i) (a) the Administrative, Priority and Secured Claims Reserve, (b) the Professional Fee Reserve, (c) the Wind-Down Budget Amount, and (d) the General Unsecured Claims Distribution Amount, in each case as provided for in the Plan and the Confirmation Order, and (ii) the Additional Borrowing Amount, as provided for in the Supplemental DIP Order and the related amendment to the DIP Credit Agreement, the Magicheart Parties shall have no obligation whatsoever to advance or fund any other amounts under the DIP Credit Agreement or otherwise to the Debtor, the Estate, the Post-Effective Date or the Plan Administrator in connection with the Plan or the Chapter 11 Case;
- (f) the Released Parties shall receive the releases set forth in Section 11.10 of the Plan; and
- (g) the Chancery Court Action shall be dismissed as soon as reasonably practicable after the Effective Date.

The Plan Settlement provides significant value to the Debtor and its Estate, favorably resolves significant Claims against the Debtor's Estate, and enables the prompt and efficient wind-down of the Debtor's Estate through the Plan. The Plan Settlement is integral to the development and implementation of the Plan. The Plan, taken together with the Disclosure Statement, shall serve as a motion to approve the Plan Settlement pursuant to Bankruptcy Rule 9019. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Plan Settlement, including each of the compromises and settlements provided for in the Plan Settlement, and the Bankruptcy Court's findings shall constitute its determination that the Plan Settlement is in the best interests of the Debtor, its Estate, Holders of Claims and Interests and other parties in interest, is supported by good and valuable consideration, and is fair, equitable, and reasonable.

ARTICLE XIII

REQUEST FOR CONFIRMATION

13.1 Request for Confirmation. The Debtor requests Confirmation of the Plan in accordance with section 1129(b) of the Bankruptcy Code.

IN WITNESS WHEREOF, the Debtor has executed the Plan this 16th day of June, 2021.

By: /s/ Charles C. Reardon
Charles C. Reardon, Chief Restructuring Officer
Suitable Technologies, Inc.

EXHIBIT A

Wind-Down Budget

Suitable Technologies, Inc.
Wind-Down Budget

	W/E 7/10	W/E 7/17	W/E 7/24	W/E 7/31	Jul Total	W/E 8/7	W/E 8/14	W/E 8/21	W/E 8/28	Aug Total
Wind-Down Budget Amount	409,350	0	0	0	409,350	0	0	0	0	0
Total Cash Receipts	<u>409,350</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>409,350</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
CRO and Additional Personnel	12,040	12,040	12,040	12,040	48,160	10,990	10,990	10,990	10,990	43,960
Independent Contractors	1,850	0	0	0	1,850	1,850	0	0	0	1,850
Other Miscellaneous Expenses	0	0	0	850	850	0	0	0	850	850
Restructuring Professional Fees	5,000	5,000	5,000	5,000	20,000	5,000	5,000	5,000	4,000	19,000
US Trustee Fees	375	375	375	375	1,500	375	375	375	375	1,500
Total Disbursements	<u>19,265</u>	<u>17,415</u>	<u>17,415</u>	<u>18,265</u>	<u>72,360</u>	<u>18,215</u>	<u>16,365</u>	<u>16,365</u>	<u>16,215</u>	<u>67,160</u>
Net cash flow	<u>390,085</u>	<u>(17,415)</u>	<u>(17,415)</u>	<u>(18,265)</u>	<u>336,990</u>	<u>(18,215)</u>	<u>(16,365)</u>	<u>(16,365)</u>	<u>(16,215)</u>	<u>(67,160)</u>
Beg Cash Balance (Book)	0	390,085	372,670	355,255	0	336,990	318,775	302,410	286,045	336,990
Net cash flow	390,085	(17,415)	(17,415)	(18,265)	336,990	(18,215)	(16,365)	(16,365)	(16,215)	(67,160)
End Cash Balance (Book)	<u>390,085</u>	<u>372,670</u>	<u>355,255</u>	<u>336,990</u>	<u>336,990</u>	<u>318,775</u>	<u>302,410</u>	<u>286,045</u>	<u>269,830</u>	<u>269,830</u>

Suitable Technologies, Inc.
Wind-Down Budget

	W/E 9/4	W/E 9/11	W/E 9/18	W/E 9/25	W/E 10/2	Sep Total	W/E 10/9	W/E 10/16	W/E 10/23	W/E 10/30	Oct Total
Wind-Down Budget Amount	0	0	0	0	0	0	0	0	0	0	0
Total Cash Receipts	0	0	0	0	0	0	0	0	0	0	0
CRO and Additional Personnel	10,000	10,000	10,000	9,475	8,205	47,680	10,000	10,000	10,000	10,000	40,000
Independent Contractors	1,850	0	0	0	0	1,850	1,850	0	0	0	1,850
Other Miscellaneous Expenses	0	0	0	850	0	850	0	0	0	850	850
Restructuring Professional Fees	5,000	5,000	5,000	5,000	4,000	24,000	5,000	5,000	5,000	4,000	19,000
US Trustee Fees	375	375	375	375	375	1,875	125	125	125	125	500
Total Disbursements	17,225	15,375	15,375	15,700	12,580	76,255	16,975	15,125	15,125	14,975	62,200
Net cash flow	(17,225)	(15,375)	(15,375)	(15,700)	(12,580)	(76,255)	(16,975)	(15,125)	(15,125)	(14,975)	(62,200)
Beg Cash Balance (Book)	269,830	252,605	237,230	221,855	206,155	269,830	193,575	176,600	161,475	146,350	193,575
Net cash flow	(17,225)	(15,375)	(15,375)	(15,700)	(12,580)	(76,255)	(16,975)	(15,125)	(15,125)	(14,975)	(62,200)
End Cash Balance (Book)	252,605	237,230	221,855	206,155	193,575	193,575	176,600	161,475	146,350	131,375	131,375

Suitable Technologies, Inc.
Wind-Down Budget

	W/E 11/6	W/E 11/13	W/E 11/20	W/E 11/27	Nov Total	W/E 12/4	W/E 12/11	W/E 12/18	W/E 12/25	W/E 12/31	Dec Total	6 Month Total
Wind-Down Budget Amount	0	0	0	0	0	0	0	0	0	0	0	409,350
Total Cash Receipts	0	0	0	0	0	0	0	0	0	0	0	409,350
CRO and Additional Personnel	10,000	10,000	10,000	10,000	40,000	9,475	9,475	9,475	9,475	8,950	46,850	266,650
Independent Contractors	1,850	0	0	0	1,850	1,850	0	0	0	0	1,850	11,100
Other Miscellaneous Expenses	0	0	0	850	850	0	0	0	0	850	850	5,100
Restructuring Professional Fees	5,000	5,000	5,000	4,000	19,000	3,800	3,800	3,800	3,800	3,800	19,000	120,000
US Trustee Fees	125	125	125	125	500	125	125	125	125	125	625	6,500
Total Disbursements	16,975	15,125	15,125	14,975	62,200	15,250	13,400	13,400	13,400	13,725	69,175	409,350
Net cash flow	(16,975)	(15,125)	(15,125)	(14,975)	(62,200)	(15,250)	(13,400)	(13,400)	(13,400)	(13,725)	(69,175)	0
Beg Cash Balance (Book)	131,375	114,400	99,275	84,150	131,375	69,175	53,925	40,525	27,125	13,725	69,175	0
Net cash flow	(16,975)	(15,125)	(15,125)	(14,975)	(62,200)	(15,250)	(13,400)	(13,400)	(13,400)	(13,725)	(69,175)	0
End Cash Balance (Book)	114,400	99,275	84,150	69,175	69,175	53,925	40,525	27,125	13,725	0	0	0

EXHIBIT B

Notice of Confirmation and Effective Date

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

In re:

SUITABLE TECHNOLOGIES, INC.,¹

Debtor.

Chapter 11

Case No. 20-10432 (CTG)

Ref. Docket No.

**NOTICE OF (I) CONFIRMATION AND EFFECTIVE DATE OF THE
CHAPTER 11 PLAN OF LIQUIDATION OF SUITABLE TECHNOLOGIES, INC.,
(II) DEADLINE UNDER THE PLAN AND CONFIRMATION ORDER TO FILE
ADMINISTRATIVE CLAIMS, REJECTION CLAIMS AND PROFESSIONAL FEE CLAIMS**

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. **Entry of Confirmation Order.** On June 18, 2021, the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) entered an order [Docket No. [●]] (the “**Confirmation Order**”) confirming the *Chapter 11 Plan of Liquidation of Suitable Technologies, Inc.*, attached as Exhibit A to the Confirmation Order (together with the Plan Supplement, all other exhibits thereto, and as may be amended, modified or supplemented, the “**Plan**”),² in the chapter 11 case of the above-captioned debtor and debtor in possession (the “**Debtor**”).

2. **Effective Date of the Plan.** The Effective Date of the Plan was [●], 2021.

3. **Administrative Claim Bar Date.** As provided for in Section 11.1 of the Plan and in the Confirmation Order, *all requests for payment of an Administrative Claim must be Filed with the Bankruptcy Court and served on counsel to the Plan Administrator and counsel to the Magicheart Parties no later than [●], 2021 (i.e., thirty-five (35) days after the Effective Date), at the following addresses:*

Counsel to the Plan Administrator: Young Conaway Stargatt & Taylor, LLP 1000 North King Street Wilmington, DE 19801 Attention: Robert F. Poppiti, Jr. (rpoppiti@ycst.com) Betsy L. Feldman (bfeldman@ycst.com)	Counsel to the Magicheart Parties: Morris, Nichols, Arsht & Tunnell LLP 1201 North Market Street, Suite 1600 Wilmington, DE 19801 Attention: Curtis S. Miller (cmiller@morrisnichols.com) Paige N. Topper (ptopper@morrisnichols.com)
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4. **Deadline to File Rejection Claims.** As provided for in Article VI of the Plan and in the Confirmation Order: *(i) all executory contracts and unexpired leases of the Debtor that have not been assumed, assumed and assigned, or rejected, prior to the Effective Date, or that are not subject to a motion to assume or reject Filed before the Effective Date, shall be deemed rejected pursuant to the*

¹ The last four digits of the Debtor’s United States federal tax identification number are 7816. The Debtor’s mailing address is 921 East Charleston Road, Palo Alto, CA 94303.

² Unless otherwise defined in this notice, capitalized terms used herein shall have the meaning ascribed to them in the Plan.

Confirmation Order, as of the Effective Date; (ii) any Creditor asserting a Rejection Claim shall File a proof of claim with the Debtor's claims and noticing agent, Donlin Recano & Company, at the address below, no later than [●], 2021 (i.e., thirty-five (35) days after the Effective Date) and shall also serve such proof of claim upon counsel for the Plan Administrator, at the addresses below; and (iii) any Rejection Claims that are not timely Filed shall be forever disallowed and barred, absent a Final Order to the contrary.

<u>Donlin Recano & Company, Inc.:</u> Suitable Technologies, Inc. Claims Processing Center c/o Donlin Recano & Company, Inc. P.O. Box 199043, Blythebourne Station Brooklyn, NY 11219	<u>Counsel for the Plan Administrator:</u> Young Conaway Stargatt & Taylor, LLP 1000 North King Street Wilmington, DE 19801 Attention: Robert F. Poppiti, Jr. (rpoppiti@ycst.com) Betsy L. Feldman (bfeldman@ycst.com)
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5. **Deadline to File Professional Fee Claims.** As provided for in Section 11.2 of the Plan and in the Confirmation Order, ***all final requests for payment of Professional Fee Claims pursuant to sections 327, 328, 330, 331, 503(b), or 1103 of the Bankruptcy Code must be made by application Filed with the Bankruptcy Court and served on counsel to the Plan Administrator and the Post-Effective Date Debtor, counsel to the Magicheart Parties, and the U.S. Trustee no later than [●], 2021 (i.e., thirty (30) days after the Effective Date), unless otherwise ordered by the Bankruptcy Court. Objections to such applications must be Filed and served on counsel to the Plan Administrator, counsel to the Magicheart Parties, the U.S. Trustee and the requesting Professional on or before the date that is twenty-one (21) days after the date on which the applicable application was served (or such longer period as may be allowed by Order of the Bankruptcy Court or by agreement with the requesting Professional).***

6. **Inquiries by Interested Parties.** Copies of the Confirmation Order (to which the Plan is attached as Exhibit A) may be examined free of charge at <https://www.donlinrecano.com/Clients/sti/PlanOfReorg>. The Confirmation Order is also on file with the Bankruptcy Court and may be viewed by accessing the Bankruptcy Court's website at www.deb.uscourts.gov. To access documents on the Bankruptcy Court's website, you will need a PACER password and login, which can be obtained at www.pacer.psc.uscourts.gov.

Dated: [●], 2021
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Robert S. Brady (No. 2847) (rbrady@ycst.com)
Robert F. Poppiti, Jr. (No. 5052) (rpoppiti@ycst.com)
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Counsel to the Debtor