

**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)

**DISCLOSURE STATEMENT FOR THE CHAPTER 11 PLAN
OF LIQUIDATION OF SUITABLE TECHNOLOGIES, INC.**

Dated: April 2, 2021
Wilmington, Delaware

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DISCLAIMER

THE DISCLOSURE STATEMENT PROVIDES INFORMATION REGARDING THE CHAPTER 11 PLAN OF LIQUIDATION OF SUITABLE TECHNOLOGIES, INC. ("SUITABLE" OR THE "DEBTOR") THAT THE DEBTOR IS SEEKING TO HAVE CONFIRMED BY THE BANKRUPTCY COURT. THE INFORMATION CONTAINED IN THE DISCLOSURE STATEMENT IS INCLUDED FOR PURPOSES OF SOLICITING ACCEPTANCES TO, AND CONFIRMATION OF, THE PLAN, AND MAY NOT BE RELIED ON FOR ANY OTHER PURPOSE. APPROVAL OF THE DISCLOSURE STATEMENT DOES NOT CONSTITUTE A DETERMINATION OR RECOMMENDATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR THE MERITS OF THE PLAN.

THE DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN, CERTAIN STATUTORY PROVISIONS AND CERTAIN DOCUMENTS RELATING TO THE PLAN. ALTHOUGH THE DEBTOR BELIEVES THAT THESE SUMMARIES ARE FAIR AND ACCURATE AND PROVIDE ADEQUATE INFORMATION WITH RESPECT TO THE PROVISIONS AND THE DOCUMENTS SUMMARIZED, SUCH SUMMARIES ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF, OR ARE INCONSISTENT WITH, THE PLAN, SUCH STATUTES, OR SUCH DOCUMENTS. TO THE EXTENT THERE IS ANY CONFLICT, INCONSISTENCY, OR DISCREPANCY BETWEEN THE TERMS AND PROVISIONS IN THE PLAN AND THE DISCLOSURE STATEMENT, THE PLAN SHALL GOVERN FOR ALL PURPOSES. ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN SHOULD CAREFULLY READ THE DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING ON THE PLAN.

THE STATEMENTS CONTAINED HEREIN HAVE BEEN MADE AS OF THE DATE HEREOF UNLESS OTHERWISE SPECIFIED. HOLDERS OF CLAIMS AND INTERESTS REVIEWING THE DISCLOSURE STATEMENT SHOULD NOT INFER AT THE TIME OF SUCH REVIEW THAT THERE HAVE BEEN NO CHANGES IN THE FACTS SET FORTH HEREIN. ALTHOUGH THE DEBTOR HAS MADE AN EFFORT TO DISCLOSE WHERE CHANGES IN PRESENT CIRCUMSTANCES COULD REASONABLY BE EXPECTED TO AFFECT MATERIALLY ANY RECOVERIES UNDER THE PLAN, THE DEBTOR DOES NOT PURPORT TO PREDICT WITH ACCURACY CHANGES IN PRESENT CIRCUMSTANCES, AND UNDERTAKES NO OBLIGATION TO AMEND THE DISCLOSURE STATEMENT TO REFLECT SUCH CIRCUMSTANCES.

THE DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-BANKRUPTCY LAW. THE DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE “SEC”) OR ANY FEDERAL, STATE, LOCAL OR FOREIGN REGULATORY AGENCY, NOR HAS THE SEC OR ANY OTHER SUCH AGENCY PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED IN THE DISCLOSURE STATEMENT. PERSONS OR ENTITIES HOLDING OR TRADING IN, OR OTHERWISE PURCHASING, SELLING, OR TRANSFERRING, SECURITIES OR CLAIMS OF THE DEBTOR SHOULD EVALUATE THE DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE PURPOSE FOR WHICH THEY WERE PREPARED.

THE DEBTOR MAKES STATEMENTS IN THE DISCLOSURE STATEMENT THAT MAY BE CONSIDERED FORWARD-LOOKING STATEMENTS UNDER THE FEDERAL SECURITIES LAWS. STATEMENTS CONCERNING THESE AND OTHER MATTERS ARE NOT GUARANTEES, AND REPRESENT THE DEBTOR’S ESTIMATES AND ASSUMPTIONS ONLY AS OF THE DATE SUCH STATEMENTS WERE MADE AND INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES AND OTHER UNKNOWN FACTORS THAT COULD IMPACT THE DEBTOR’S PLAN OR DISTRIBUTIONS THEREUNDER. IN ADDITION TO STATEMENTS THAT EXPLICITLY DESCRIBE SUCH RISKS AND UNCERTAINTIES, READERS ARE URGED TO CONSIDER STATEMENTS LABELED WITH THE TERMS “BELIEVES,” “BELIEF,” “EXPECTS,” “INTENDS,” “ANTICIPATES,” “PLANS” OR SIMILAR TERMS TO BE UNCERTAIN AND FORWARD-LOOKING. CREDITORS AND OTHER INTERESTED PARTIES SHOULD ALSO SEE THE SECTION OF THE DISCLOSURE STATEMENT ENTITLED “RISK FACTORS” FOR A DISCUSSION OF CERTAIN FACTORS THAT MAY AFFECT THE PLAN AND DISTRIBUTIONS THEREUNDER.

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
A. Overview of the Plan	1
1. General Structure of the Plan	1
2. Material Terms of the Plan	2
3. Summary of Treatment of Claims and Interests Under the Plan	4
B. Plan Voting Instructions and Procedures	5
1. Voting Rights	5
2. Solicitation Materials	6
3. Voting Instructions and Procedures	7
4. Confirmation Hearing and Deadline for Objections to Confirmation	9
II. GENERAL HISTORICAL INFORMATION ABOUT THE DEBTOR.....	9
A. Corporate Structure and Governance.....	9
B. Business Overview.....	9
C. Prepetition Debt Structure.....	10
1. Secured Claims	10
2. Unsecured Debt.....	10
D. Circumstances Leading to the Chapter 11 Case	11
III. THE CHAPTER 11 CASE	11
A. First Day Orders.....	12
B. Post-Petition Financing and Cash Collateral	12
C. Additional Orders.....	13
D. Sale Transactions	14
E. Settlement with Magicheart	14
F. United States Trustee	17
G. No Appointment of Committee	17
H. Meeting of Creditors	18

I.	Schedules, Statements of Financial Affairs, and Certain Claims Bar Dates	18
IV.	SUMMARY OF THE CHAPTER 11 PLAN	18
A.	Purpose and Effect of the Plan.....	19
B.	Plan Administrator	19
1.	Appointment, Resignation and Termination.....	19
2.	Plan Administrator Agreement	20
3.	Powers and Duties of Plan Administrator.....	20
4.	Compensation of the Plan Administrator.....	21
5.	Indemnification of the Plan Administrator and Related Parties	21
6.	Insurance	22
7.	Preservation of Retained Causes of Action	22
C.	Funding of Administrative, Priority and Secured Claims Reserve.....	22
D.	Funding of Professional Fee Reserve	23
E.	Funding of General Unsecured Claims Distribution Amount	23
F.	Estimated Recoveries for Holders of General Unsecured Claims	23
G.	Treatment of Unclassified Claims	23
1.	DIP Claim	24
2.	Administrative Claims	24
3.	Professional Fee Claims and Asgaard Capital Fee Claims	24
4.	Priority Tax Claims.....	25
H.	Classification and Treatment of Claims and Interests	25
1.	Class 1: Secured Claims.....	26
2.	Class 2: Priority Claims	26
3.	Class 3: Prepetition Secured Promissory Notes Claim	26
4.	Class 4: General Unsecured Claims.....	26
5.	Class 5: Subordinated Claims	27
6.	Class 6: Interests	27

7.	Special Provisions Regarding Insurance.....	27
8.	Provision Governing Allowance and Defenses to Claims	28
I.	Acceptance or Rejection of the Plan	28
1.	Impaired Class of Claims Entitled to Vote	28
2.	Acceptance by an Impaired Class	28
3.	Presumed Acceptances by Unimpaired Classes	28
4.	Impaired Classes Deemed to Reject Plan	28
5.	Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code	29
6.	Elimination of Vacant Classes	29
J.	Implementation of the Plan	29
1.	Implementation of the Plan	29
2.	The Debtor’s Post-Effective Date Corporate Affairs.....	29
K.	Executory Contracts and Unexpired Leases; D&O Indemnification Obligations	30
1.	Executory Contracts and Unexpired Leases	30
2.	D&O Policy	30
3.	Rejection Claims	31
4.	D&O Indemnification Obligations	31
L.	Provisions Governing Distributions.....	31
1.	Interest on Claims	31
2.	Distributions by Post-Effective Date Debtor	32
3.	Means of Cash Payment.....	32
4.	Fractional Distributions	32
5.	De Minimis Distributions	32
6.	Delivery of Distributions	32
7.	Withholding, Payment, and Reporting Requirements with Respect to Distributions.....	33

8.	Setoffs	33
9.	No Distribution in Excess of Allowed Amounts	34
10.	Allocation of Distributions	34
11.	Forfeiture of Distributions	34
M.	Procedures for Resolving Disputed, Contingent, and Unliquidated Claims and Distributions with Respect Thereto.....	34
1.	Claims Administration Responsibility	34
2.	Claim Objections	35
3.	No Distributions Pending Allowance	35
4.	Estimation of Contingent or Unliquidated Claims.....	35
5.	Amendments to Claims.....	36
N.	Conditions Precedent to the Occurrence of the Effective Date	36
1.	Conditions to Confirmation	36
2.	Conditions to the Occurrence of the Effective Date	36
3.	Waiver of Conditions to the Occurrence of the Effective Date	37
4.	Effect of Non-Occurrence of Conditions to the Effective Date.....	37
O.	Retention of Jurisdiction	37
1.	Scope of Retained Jurisdiction.....	37
2.	Failure of the Bankruptcy Court to Exercise Jurisdiction.....	39
P.	Miscellaneous Plan Provisions	39
1.	Administrative Claims Bar Date.....	39
2.	Professional Fee Claims.....	40
3.	Payment of Statutory Fees	40
4.	Modifications and Amendments	40
5.	Severability of Plan Provisions.....	40
6.	Successors and Assigns.....	41

7.	Post-Effective Date Compromises and Settlements	41
8.	Binding Effect of Plan	41
9.	Non-Discharge of the Debtor; Injunction	41
10.	Releases and Related Matters	42
11.	Exculpation and Limitation of Liability	44
12.	Terms of Injunctions or Stays	44
13.	Revocation, Withdrawal, or Non-Consummation	44
14.	Computation of Time	45
15.	Headings	45
16.	Governing Law	45
17.	Preservation of Retained Causes of Action	45
18.	Bar Date Order	46
19.	Section 1146 Exemption	46
20.	Conflicts with the Plan	46
21.	No Stay of Confirmation Order	46
V.	RISK FACTORS	47
A.	Parties May Object to the Plan’s Classification of Claims and Interests	47
B.	The Debtor May Not Be Able to Obtain Confirmation of the Plan	47
C.	The Conditions Precedent to the Effective Date of the Plan May Not Occur	47
D.	The Allowed Amount of Claims May Differ From Current Estimates; General Unsecured Creditors May Recover Less Than Projected	48
VI.	CONFIRMATION OF THE PLAN	48
A.	The Confirmation Hearing	48
B.	Requirements for Confirmation of the Plan	48
C.	Best Interests of Creditors	50
D.	Feasibility	51
E.	Acceptance by Impaired Classes	52
F.	Confirmation Without Acceptance by All Impaired Classes	52

1.	No Unfair Discrimination	52
2.	Fair and Equitable Test	53
G.	Alternatives to Confirmation and Consummation of the Plan.....	53
VII.	CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN	53
A.	Certain Tax Consequences to Holders of Claims	55
B.	Certain Tax Consequences to the Debtor.....	57
VIII.	RECOMMENDATION	58

EXHIBITS

EXHIBIT A Chapter 11 Plan of Liquidation of Suitable Technologies, Inc.

EXHIBIT B Liquidation Analysis

I. INTRODUCTION

Suitable Technologies, Inc., the debtor and debtor-in-possession in the above-captioned chapter 11 case (the “**Chapter 11 Case**”), hereby submits the disclosure statement (the “**Disclosure Statement**”), pursuant to sections 1125 and 1126(b) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “**Bankruptcy Code**”), in connection with the solicitation of votes on the *Chapter 11 Plan of Liquidation of Suitable Technologies, Inc.*, dated April 2, 2021 (as amended, supplemented and modified from time to time pursuant to its terms, the “**Plan**”). A copy of the Plan is attached hereto as **Exhibit A**.²

The purpose of the Disclosure Statement is to enable Creditors whose Claims are Impaired under the Plan and who are entitled to vote on the Plan to make an informed decision in exercising their right to accept or reject the Plan. The Disclosure Statement sets forth certain information regarding the Debtor’s prepetition history, its reasons for seeking protection under chapter 11 of the Bankruptcy Code, and the course of the Chapter 11 Case. The Disclosure Statement also describes certain terms and provisions of the Plan, certain effects of Confirmation of the Plan, certain risk factors associated with the Plan, and the manner in which Distributions will be made under the Plan. In addition, the Disclosure Statement discusses the Confirmation process and the voting and election procedures that Holders of Claims entitled to vote under the Plan must follow for their votes to be counted.

A. **Overview of the Plan**

1. **General Structure of the Plan**

The Plan provides for the appointment of a Plan Administrator. The Plan Administrator, along with the Post-Effective Date Debtor, shall be empowered to, among other things, administer and liquidate all Assets and object to and settle Claims. The Plan provides for Distributions to Holders of Allowed Administrative Claims, Professional Fee Claims, Priority Tax Claims, Secured Claims, Priority Claims, and General Unsecured Claims. In addition, the Plan cancels all Interests in the Debtor, and provides for the dissolution and wind-up of the Debtor’s affairs.

The Plan also provides for and implements the Plan Settlement, set forth in Article XII of the Plan, by and between the Debtor and Scott Hassan, Magicheart Investments, LLC (“**Magicheart**”), Greenheart Investments, LLC (“**Greenheart**”), Landings Investments, LLC, and each of their Related Parties (collectively, 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) the Magicheart Parties waiving the right to any Distribution under the Plan on account of any

² Unless otherwise noted, all capitalized terms used but not defined herein shall have the meaning ascribed to them in the Plan. The summary of the Plan provided herein is qualified in its entirety by reference to the Plan. In the case of any inconsistency between the summary herein and the Plan, the Plan shall govern.

and all Claims held by such parties against the Debtor and the Estate, including, without limitation, the DIP Claim, the Prepetition Promissory Notes Claim, 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 DEBTOR BELIEVES THAT THE PLAN IS FAIR AND EQUITABLE, WILL MAXIMIZE RECOVERIES TO CREDITORS, AND IS IN THE BEST INTEREST OF THE DEBTOR AND INTERESTED PARTIES. FOR THESE REASONS, THE DEBTOR URGES HOLDERS OF GENERAL UNSECURED CLAIMS WHO ARE ENTITLED TO VOTE ON THE PLAN TO TIMELY RETURN THEIR BALLOTS VOTING TO ACCEPT THE PLAN.*****

2. Material Terms of the Plan

The following is an overview of certain material terms of the Plan:

- Allowed Administrative Claims (other than any such claims of the Magicheart Parties, including the Palo Alto Real Property Lease Administrative Claim), Professional Fee Claims, Priority Tax Claims, Secured Claims, and Priority Claims will be paid or otherwise satisfied in full as required by the Bankruptcy Code, unless otherwise agreed to by the Holders of such Claims and the Post-Effective Date Debtor.
- On, or as soon as reasonably practicable after, the Effective Date, Holders of Allowed General Unsecured Claims (other than any such claims of the Magicheart Parties, including the Prepetition Unsecured Promissory Notes Claim and the Palo Alto Real Property Lease General Unsecured Claim) shall receive from the Post-Effective Date Debtor, in full satisfaction of such Allowed General Unsecured Claim, (i) their Pro Rata share of the General Unsecured Claims Distribution Amount, or (ii) such other less favorable treatment that such Holders and the Post-Effective Date Debtor shall have agreed upon in writing.
- Holders of Subordinated Claims will not be entitled to any distribution or recovery on account of such Claims.
- As of the Effective Date, all Interests of any kind will be deemed void, cancelled, and of no further force and effect and the Holders thereof will not receive or retain any property or interest in property under the Plan on account of such Interests.
- Pursuant to the Plan Settlement:
 - (a) the Claims of the Magicheart Parties shall be Allowed as provided for in the Plan.
 - (b) 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, no portion of the General Unsecured Claims Distribution Amount shall be returnable to Magicheart.

(c) the Magicheart Parties shall not be entitled to and shall not receive any further property or interest in property on account of the Prepetition Promissory Notes Claims or on account of any pre- or post-petition amounts due under that certain *Month-to-Month Lease Agreement*, dated June 1, 2011, between Suitable and Landings Investment, LLC, an affiliate of Magicheart, for non-residential real property located at 921 East Charleston Road, Palo Alto, California 94303 and 850 San Antonio Road, Palo Alto, California 94303, which lease was rejected effective as of October 30, 2020 [D.I. 300]; provided, however, that any Liens and security interests securing the Allowed Claims of the Magicheart Parties 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.

(d) Any and all claims, causes of action and disputes between the Debtor and the Magicheart Parties shall be resolved, the Released Parties shall receive the releases set forth in Section 11.10 of the Plan, and the Chancery Court Action shall be dismissed, all on the terms set forth in Article XII of the Plan.

(e) Magicheart shall 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, 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.

- 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 and each of the compromises and settlements provided for therein, and the Bankruptcy Court's findings shall

constitute its determination that the Plan Settlement is in the best interests of the Debtor, the Estate, Holders of Claims and other parties in interest, and is fair, equitable and reasonable.

3. Summary of Treatment of Claims and Interests Under the Plan

The table below summarizes the classification and treatment of Claims and Interests under the Plan.

THE PROJECTED RECOVERIES FOR GENERAL UNSECURED CLAIMS SET FORTH IN THE TABLE BELOW ARE ESTIMATES ONLY, AND ACTUAL RECOVERIES MAY DIFFER. FOR A COMPLETE DESCRIPTION OF THE DEBTOR'S CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS, REFERENCE SHOULD BE MADE TO THE PLAN.

<u>Class</u>	<u>Claim or Equity Interest</u>	<u>Summary of Treatment</u>	<u>Estimated Allowed Amount of Claims</u>	<u>Projected Recovery Under Plan</u>
1	Secured Claims	Unimpaired <i>Deemed to Accept Plan</i>	\$20,787	100%
2	Priority Claims	Unimpaired <i>Deemed to Accept Plan</i>	\$7,265	100%
3	Prepetition Secured Promissory Notes Claim	Impaired <i>Entitled to Vote on Plan</i>	\$3,775,000	0% ³
4	General Unsecured Claims	Impaired <i>Entitled to Vote on Plan</i>	\$875,764	35% ⁴
5	Subordinated Claims	Impaired <i>Deemed to Reject Plan</i>	\$0	0%
6	Interests	Impaired <i>Deemed to Reject Plan</i>	\$0	0%

³ Pursuant to the Plan Settlement, the Prepetition Secured Promissory Notes Claim shall be Allowed in the amount of not less than \$3,775,000; however, Magicheart shall waive any and all rights to a Distribution on account of such claim.

⁴ This projected recovery is based on the Magicheart Parties waiving all rights to a Distribution on account of their General Unsecured Claims against the Debtor pursuant to the Plan Settlement, including, without limitation, the Prepetition Unsecured Promissory Notes Claim and the Palo Alto Real Property General Unsecured Lease Claim, which the Debtor believes are not less than \$88,476,083 in the aggregate. The foregoing significantly reduces the anticipated amount of Allowed General Unsecured Claims to approximately \$875,764.

*****THE DEBTOR BELIEVES THAT THE PLAN PROVIDES THE BEST RECOVERIES POSSIBLE FOR HOLDERS OF CLAIMS AGAINST THE DEBTOR, AND THUS STRONGLY RECOMMENDS THAT HOLDERS OF GENERAL UNSECURED CLAIMS ENTITLED TO VOTE ON THE PLAN VOTE TO ACCEPT THE PLAN.*****

B. Plan Voting Instructions and Procedures

1. Voting Rights

Under the Bankruptcy Code, only classes of claims or interests that are “impaired” and that are not deemed as a matter of law to have rejected a plan under section 1126 of the Bankruptcy Code are entitled to vote to accept or reject such plan. Any class that is “unimpaired” is not entitled to vote to accept or reject a plan, and is conclusively presumed to have accepted such plan. As set forth in section 1124 of the Bankruptcy Code, a class is “impaired” if the legal, equitable or contractual rights attaching to the claims or equity interests of that class are modified or altered. Holders of claims or interests within an impaired class are entitled to vote to accept or reject a plan if such claims or interests are “allowed” under section 502 of the Bankruptcy Code.

Under the Bankruptcy Code, acceptance of a plan by a class of claims is determined by calculating the number and the amount of allowed claims voting to accept such plan. Acceptance by a class of claims requires more than one-half of the number of total allowed claims voting in the class to vote in favor of the plan, and at least two-thirds in dollar amount of the total allowed claims voting in the class to vote in favor of the plan; only those holders that actually vote to accept or reject the plan are counted for purposes of determining whether these dollar and number thresholds are met.

Pursuant to the Plan, Claims in Classes 3 and 4 are Impaired by, and entitled to receive a Distribution under, the Plan, and only the Holders of Claims in those Classes are entitled to vote to accept or reject the Plan. Only Holders of Claims in Classes 3 and 4 as of May 10, 2021 (the “Voting Record Date”) may vote to accept or reject the Plan.⁵ Since Magicheart is an insider of the Debtor as that term is defined in section 101(31) of the Bankruptcy Code, acceptance of the Plan by Class 3 will *not* satisfy the requirement that at least one Class of Impaired Claims must have accepted the Plan. Similarly, all votes of the Magicheart Parties in favor of the Plan on account of their Allowed General Unsecured Claims will *not* count towards acceptance of the Plan by Class 4. Thus, for the Plan to be confirmed, Class 4 General Unsecured Claims must accept the Plan *without* including any acceptance of the Plan by the Magicheart Parties on account of their Allowed General Unsecured Claims.

Pursuant to the Plan, Claims in Classes 1 and 2 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan, and are therefore not entitled to vote on the Plan.

⁵ As discussed above, pursuant to the Plan Settlement, the Prepetition Secured Promissory Notes Claim, the Prepetition Unsecured Promissory Notes Claim, and the Palo Alto Real Property General Unsecured Lease Claim shall be deemed Allowed consistent with the Plan Settlement. However, the Magicheart Parties shall not be entitled to and shall not receive any further property or interest in property on account of such Allowed Claims, as the Magicheart Parties are waiving their rights to a Distribution on account of such Allowed Claims.

Pursuant to the Plan, Claims and Interests in Classes 5 and 6 will not receive or retain any property under the Plan on account of such Claims or Interests, as applicable, and are, therefore, deemed to reject the Plan, and are not entitled to vote on the Plan.

2. Solicitation Materials

The Debtor, with the approval of the Bankruptcy Court, has engaged Donlin, Recano & Company, Inc. (the “**Voting Agent**”) to serve as the voting agent to process and tabulate Ballots and to generally oversee the voting process. The following materials constitute the solicitation package (the “**Solicitation Package**”):

- The Disclosure Statement, including the Plan and any other Exhibits annexed thereto;
- The Bankruptcy Court order approving the Disclosure Statement [D.I. 415] (the “**Disclosure Statement Order**”) (excluding exhibits);
- The notice of, among other things, (i) the date, time, and place of the hearing to consider Confirmation of the Plan and related matters, and (ii) the deadline for filing objections to Confirmation of the Plan (the “**Confirmation Hearing Notice**”);
- The applicable Ballot and voting instructions to be used in connection with voting to accept or to reject the Plan (the “**Voting Instructions**”); and
- Such other materials as the Bankruptcy Court may direct or approve.

The Debtor, through the Voting Agent, will distribute the Solicitation Package in accordance with the Disclosure Statement Order. The Disclosure Statement, the Disclosure Statement Order, the Confirmation Hearing Notice and the Plan will also be available at the Voting Agent’s website for the Debtor’s Chapter 11 Case at <https://www.donlinrecano.com/Clients/sti/PlanOfReorg>.

If you are the Holder of a Claim and believe that you are entitled to vote on the Plan, but you did not receive a Solicitation Package, or if you have any questions concerning voting procedures, you should contact the Voting Agent electronically by submitting an inquiry to DRCVote@donlinrecano.com or in writing to Suitable Technologies, Inc., c/o Donlin, Recano & Company, Inc., 6201 15th Avenue, Brooklyn, NY 11219, or by contacting the Voting Agent via telephone at (877) 322-4952 (domestic/toll free).

If you seek to challenge the allowance of your Claim for voting purposes in accordance with the voting procedures set forth in the Disclosure Statement Order, you must File a motion by June 4, 2021 at 4:00 p.m. (ET), pursuant to Bankruptcy Rule 3018, with the Bankruptcy Court for the temporary allowance of your Claim in a different amount or classification for Plan voting purposes.

THE DEBTOR AND THE POST-EFFECTIVE DATE DEBTOR, AS APPLICABLE, RESERVE THE RIGHT, THROUGH THE CLAIM OBJECTION

PROCESS OR OTHERWISE, TO OBJECT TO OR SEEK TO DISALLOW ANY CLAIM FOR PLAN DISTRIBUTION PURPOSES OR OTHERWISE.

3. Voting Instructions and Procedures

To ensure your vote on the Plan is counted you must: (a) complete the Ballot in accordance with the instructions set forth therein; (b) indicate your decision either to accept or reject the Plan in the boxes indicated in the Ballot; and (c) sign and submit the Ballot to the Voting Agent prior to the Voting Deadline (defined below) either in paper form at the address provided for therein, or through the Voting Agent's customized "E-Ballot" portal, which can be found on the Debtor's case administration website at <https://www.donlinrecano.com/Clients/sti/vote> (the "**Online Voting Platform**"). Instructions for electronic, online transmission of Ballots are set forth in the Voting Instructions. ANY BALLOTS SUBMITTED BY FAX OR ELECTRONIC TRANSMISSION (OTHER THAN THROUGH THE ONLINE VOTING PLATFORM) WILL NOT BE COUNTED, UNLESS APPROVED BY THE DEBTOR IN WRITING OR OTHERWISE ORDERED BY THE BANKRUPTCY COURT.

The Bankruptcy Court has fixed May 10, 2021 as the Voting Record Date for the determination of the Holders of Claims who are entitled to (a) receive a Solicitation Package and (b) vote to accept or reject the Plan.

After carefully reviewing the Plan, the Disclosure Statement, and the detailed Voting Instructions, you are asked to indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan in accordance with the Voting Instructions.

The deadline to vote on the Plan is June 8, 2021 at 5:00 p.m. (Eastern Time) (the "Voting Deadline"). In order for your vote to be counted, your Ballot must be properly completed in accordance with the Voting Instructions, and *actually received* no later than the Voting Deadline. It is not sufficient for your Ballot merely to be post-marked by the Voting Deadline.

Only the Holders of Claims in Classes 3 and 4 as of the Voting Record Date are entitled to vote to accept or reject the Plan. Each Holder of a Claim must vote its entire Claim either to accept or reject the Plan and may not split such vote. It is important to follow the specific Voting Instructions.

Unless otherwise provided in the Voting Instructions or the Disclosure Statement Order, the following Ballots will not be counted in determining whether the Plan has been accepted or rejected:

- Any Ballot that fails to clearly indicate an acceptance or rejection, or that indicates both an acceptance and a rejection, of the Plan;
- Any Ballot received after the Voting Deadline, except by order of the Bankruptcy Court or if the Debtor has granted an extension of the Voting Deadline in writing (which writing may be an email) with respect to such Ballot;

- Any Ballot containing a vote that the Bankruptcy Court determines was not solicited or procured in good faith or in accordance with the applicable provisions of the Bankruptcy Code;
- Any Ballot that is illegible or contains insufficient information to permit the identification of the Claim Holder;
- Any Ballot cast by a Person or Entity that does not hold a Claim in the Classes entitled to vote on the Plan; and
- Any unsigned Ballot or Ballot without an original signature; provided, however, a creditor's electronic signature submitted through the Online Voting Platform will be deemed an original signature and immediately legally valid and effective.

Except as otherwise provided in the Disclosure Statement Order: any party who has previously delivered a valid Ballot for the acceptance or rejection of the Plan may revoke such Ballot and change its vote by delivering to the Voting Agent prior to the Voting Deadline a subsequent properly completed Ballot for acceptance or rejection of the Plan; and any party who has delivered a valid Ballot for the acceptance or rejection of the Plan may withdraw such acceptance or rejection by delivering a written notice of withdrawal to the Voting Agent at any time prior to the Voting Deadline. In the case where multiple Ballots are received from the same Holder with respect to the same Claim prior to the Voting Deadline, the last timely received, properly executed Ballot will be deemed to reflect that voter's intent and will supersede and revoke any prior Ballot. To be valid, a notice of withdrawal must (i) contain the description of the Claim(s) to which it relates and the aggregate principal amount represented by such Claim(s), (ii) be signed by the withdrawing party in the same manner as the Ballot being withdrawn, (iii) contain a certification that the withdrawing party owns the Claim(s) and possesses the right to withdraw the vote sought to be withdrawn, and (iv) be actually received by the Voting Agent prior to the Voting Deadline. The Debtor's right to contest the validity of any such withdrawals of Ballots is expressly reserved.

ALL BALLOTS ARE ACCOMPANIED BY VOTING INSTRUCTIONS. IT IS IMPORTANT THAT THE HOLDER OF A CLAIM ENTITLED TO VOTE FOLLOW THE SPECIFIC INSTRUCTIONS PROVIDED WITH EACH BALLOT.

If you have any questions about (a) the procedure for voting your Claim, (b) the Solicitation Package that you have received, or (c) the amount of your Claim, or if you wish to obtain an additional copy of the Plan or the Disclosure Statement, please contact the Voting Agent at the address specified above. Copies of the Plan, Disclosure Statement and other documents Filed in these Chapter 11 Case may be obtained free of charge at the Voting Agent's website at <https://www.donlinrecano.com/Clients/sti/PlanOfReorg>.

The Voting Agent will process and tabulate Ballots received by the Voting Agent for the Classes entitled to vote to accept or reject the Plan, and will File a voting report (the "**Voting Report**"). The Voting Report will, among other things, describe Ballots that do not conform to the Voting Instructions or that contains any form of irregularity, including, but not limited to, those

Ballots that are late, illegible (in whole or in material part), unidentifiable, lacking signatures, lacking necessary information, or damaged.

*****THE DEBTOR URGES HOLDERS OF GENERAL UNSECURED CLAIMS WHO ARE ENTITLED TO VOTE ON THE PLAN TO TIMELY RETURN THEIR BALLOTS VOTING TO ACCEPT THE PLAN BY THE VOTING DEADLINE.*****

4. Confirmation Hearing and Deadline for Objections to Confirmation

Objections to Confirmation of the Plan must be filed in accordance with the Confirmation Hearing Notice by no later than **June 10, 2021 at 4:00 p.m. (Eastern Time)**, and served in accordance with the Local Rules (which service may be made by email) on: (i) Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Robert F. Poppiti, Jr., Esq. (rpoppiti@ycst.com) and Betsy L. Feldman, Esq. (bfeldman@ycst.com)); (ii) counsel for the Magicheart Parties, Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, Wilmington, Delaware 19801 (Attn: Curtis S. Miller, Esq. (cmiller@morrisnichols.com) and Paige N. Topper, Esq. (ptopper@morrisnichols.com)); and (iii) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Juliet M. Sarkessian, Esq. (Juliet.M.Sarkessian@usdoj.gov)). Unless objections to Confirmation of the Plan are timely served and Filed in compliance with the Disclosure Statement Order, they may not be considered by the Bankruptcy Court. For further information, refer to Section VI of the Disclosure Statement, “Confirmation of the Plan.”

II. GENERAL HISTORICAL INFORMATION ABOUT THE DEBTOR

A. Corporate Structure and Governance

The Debtor, Suitable Technologies, Inc., is a privately held Delaware corporation headquartered in Palo Alto, California. The Debtor was founded in 2011 by Scott Hassan, who served as the sole member of the company’s Board of Directors (the “**Board**”) until February 13, 2020, and as the Company’s Chief Executive Officer until February 18, 2020. Mr. Hassan owns and controls, directly and through affiliated entities, over 50% of the Debtor’s common stock.

Following Mr. Hassan’s resignation from the Board, Ronald Barliant, a former United States Bankruptcy Judge for the Northern District of Illinois, was appointed as the Company’s sole (independent) director (the “**Independent Director**”). Pursuant to an order of the Bankruptcy Court [D.I. 73], Charles C. Reardon is the Chief Restructuring Officer of the Debtor (the “**Chief Restructuring Officer**”) and the Debtor’s sole officer.

B. Business Overview

The Debtor historically developed, manufactured and sold a telepresence system and technology platforms in both domestic and international markets. Prior to the Blue Ocean Sale and the Magicheart Sale, which sales are defined and discussed further below, the Debtor also maintained an intellectual property portfolio, which included a number of different patents associated with, among other things, wireless connectivity, as well as trademarks in the United States and other foreign jurisdictions. The Debtor’s primary product was called “Beam,” a telepresence device designed to promote remote collaboration, provide individuals with the ability

to communicate remotely with others on both a visual and audio basis, and move freely through a workplace using the Debtor's manufactured devices and companion software. In connection with the wind down of its operations and affairs that began in December 2018, Suitable terminated all remaining employees. Several key employees, however, did enter into agreements with the Debtor, pursuant to which they continued to provide critical services to the Debtor as independent contractors.

C. Prepetition Debt Structure

Since the Debtor's formation in 2011 through the Petition Date, Mr. Hassan, through certain entities owned and controlled by him, including Magicheart and Greenheart, provided approximately \$96 million to Suitable pursuant to documented promissory notes. Of this amount, approximately \$6 million was through secured notes with Magicheart (i.e., the Prepetition Secured Promissory Notes), and the remainder was through unsecured notes with Magicheart and Greenheart (i.e., the Prepetition Unsecured Promissory Notes).

The Debtor's debt structure as of the Petition Date is generally described below:

1. Secured Claims

As set forth above, the balance of the Prepetition Secured Promissory Notes was approximately \$6 million as of the Petition Date.

In addition, certain other third parties, including state and local taxing authorities, may possess statutory liens in certain of the Debtor's property in accordance with applicable law.

2. Unsecured Debt

The Debtor has estimated the General Unsecured Claims against the Debtor based on the Debtor's Schedules of Assets and Liabilities, Filed proofs of claim, and the Plan Settlement. As part of this analysis, the Debtor has also eliminated duplicate and superseded proofs of claim, and accounted for any reductions or eliminations of General Unsecured Claims in connection with the claims resolution process, including the orders entered by the Bankruptcy Court on the Debtor's first and second omnibus claims objections [D.I. 264 and 265]. The Debtor estimates that the General Unsecured Claims total approximately \$89,351,847. Without including the General Unsecured Claims of the Magicheart Parties (which the Debtor believes are not less than \$88,476,083 in the aggregate), the Debtor estimates that the Allowed General Unsecured Claims total approximately \$875,764.

The General Unsecured Claims estimate, however, does not account for: (i) any additional General Unsecured Claims against the Debtor that will be Filed as a result of the rejection of executory contracts and unexpired leases pursuant to the Plan; and (ii) any additional reductions or eliminations of General Unsecured Claims as part of the claims resolution process. Thus, the total amount of Allowed General Unsecured Claims may be materially more or less than the estimate set forth herein.

D. Circumstances Leading to the Chapter 11 Case

Due to, among other things, lower-than-anticipated demand for a telepresence system, the Debtor has not been profitable since its formation, and has historically relied on Mr. Hassan to fund its operations and affairs. As a result of significant and continued losses, the Debtor determined to wind down its operations and find a third party buyer for substantially all of its Assets prior to the Petition Date.

In furtherance of this, between December 2018 and May 2019, the Debtor initiated numerous discussions with over a dozen prospective purchasers that the Debtor believed maintained the capacity and industry wherewithal to, among other things, maintain the Debtor's subscription service model and the Beam's operating servers. In August 2019, at the conclusion of those efforts, the Debtor entered into an asset purchase agreement with Blue Ocean Robotics ApS and one of its affiliates (collectively, "**Blue Ocean**") for the sale of substantially all of the Debtor's Assets (the "**Prepetition Sale**").

In November 2019, Mr. Hassan's spouse, in her alleged capacity as a minority shareholder of the Debtor, commenced a civil action in the Court of Chancery of the State of Delaware (the "**Chancery Court**"), derivatively on behalf of Suitable, styled *Huynh v. Hassan et al.*, Civil Action No. 2019-0893-JTL (the "**Chancery Court Action**"), seeking, among other things, a preliminary injunction (the "**Preliminary Injunction Request**") to enjoin the Prepetition Sale. On December 13, 2019, in an oral ruling, Vice Chancellor J. Travis Laster denied the Preliminary Injunction Request. In doing so, however, the Vice Chancellor expressed reservations about whether an appropriate sale process—one not constrained in timing and scope or by personal requirements for bidding, such as maintaining the Debtor's business and supporting its existing customers (however laudable those requirements may be), and one in which the Debtor retains professional advisors, such as an investment banker—had been undertaken to benefit all interested parties.

While the Debtor and Mr. Hassan did not agree with the reservations expressed by the Chancery Court in connection with the ruling on the Preliminary Injunction Request, the Debtor and Mr. Hassan determined to turn control of the Company over to the Independent Director, the Chief Restructuring Officer, and restructuring professionals beginning in January 2020, to lead a transparent, orderly and efficient process to maximize the value of the Debtor's Assets for the benefit of all stakeholders, pursuant to section 363 of the Bankruptcy Code (the "**Post-Petition Sale Process**"). In February 2020, the Debtor retained Stout Risius Ross Advisors, LLC to act as its investment banker to evaluate financial and strategic alternatives in connection with the Post-Petition Sale Process.

Additional information regarding the Debtor's business, debt structure, and the circumstances leading to the commencement of the Chapter 11 Case is set forth in the *Declaration of Charles C. Reardon In Support of Chapter 11 Petition and First Day Pleadings* [D.I. 7].

III. THE CHAPTER 11 CASE

On February 26, 2020, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. An immediate effect of commencement of the Chapter 11 Case was the imposition of the automatic

stay under the Bankruptcy Code which, with limited exceptions, enjoined the commencement or continuation of all collection efforts by Creditors, the enforcement of liens against property of the Debtor, and the continuation of litigation against the Debtor during the pendency of the Chapter 11 Case. The automatic stay under section 362 of the Bankruptcy Code has stayed the Chancery Court Action.

A. First Day Orders

On or about the Petition Date, the Debtor Filed certain “first day” motions and applications with the Bankruptcy Court seeking certain immediate relief to aid in the efficient administration of the Chapter 11 Case, and to facilitate the Debtor’s transition to debtor-in-possession status. The Bankruptcy Court held hearings on these first-day motions and applications, and entered a series of customary “First Day” and “Second Day” orders.

B. Post-Petition Financing and Cash Collateral

On the Petition Date, the Debtor Filed a motion [D.I. 6] (the “**DIP Financing Motion**”) seeking authorization from the Bankruptcy Court to obtain post-petition financing, use cash collateral, and provide certain adequate protection in connection therewith. Pursuant to the DIP Financing Motion, the Debtor sought approval of senior secured post-petition financing pursuant to the terms and conditions of that certain *Debtor-In-Possession Credit and Security Agreement* dated as of February 26, 2020, between the Debtor and Magicheart. The DIP Credit Agreement provides for, among other things, a secured line of credit, secured by a lien on substantially all of the Debtor’s assets (the “**DIP Facility**”). Prior to the DIP Credit Agreement being amended in connection with the Plan Settlement as discussed below, the amount of the DIP Facility was approximately \$5.956 million, with approximately \$3.801 million of this amount consisting of new money loans. The DIP Financing Motion was granted by the Bankruptcy Court on an interim basis [D.I. 23] and then on a final basis [D.I. 74]. The DIP Order afforded interested parties the opportunity to object to or challenge the amount, validity, perfection, enforceability, priority or extent of the Prepetition Secured Promissory Notes Claim and the related liens; however, no Challenge Proceeding (as defined in the DIP Order) was commenced.

In connection with the Plan Settlement, on April 2, 2021, the Debtor and Magicheart entered into a fourth amendment to the DIP Credit Agreement, which increased the amount of the DIP Facility to \$6,446,415 (with \$4,291,415 million of this amount consisting of new money loans), and extended the outside termination date to July 3, 2021 to facilitate confirmation of the Plan. On April 14, 2021, the Bankruptcy Court entered an order approving this amendment [D.I. 387].

As of the Effective Date, the aggregate amount outstanding to Magicheart under the DIP Credit Agreement and the DIP Order (i.e., the DIP Claim) is expected to be not less than approximately \$6,500,000 (which does not include the Wind-Down Budget Amount). Pursuant to the Plan Settlement, Magicheart is waiving the right to any Distribution under the Plan on account of the DIP Claim, provided that any amounts funded to the Debtor or the Post-Effective Date Debtor, as applicable, under the Wind-Down Budget and any remnant Assets not otherwise distributed under the Plan, 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). However, no portion of the General Unsecured Claims Distribution Amount shall be returnable to Magicheart.

C. Additional Orders

On and after the Petition Date, the Debtor Filed a number of motions and applications to retain professionals and to streamline the administration of the Chapter 11 Case. The Bankruptcy Court entered the following orders granting the foregoing motions and applications:

- Order Authorizing the Retention and Employment of Young Conaway Stargatt & Taylor, LLP as Counsel for the Debtor, Effective as of the Petition Date [D.I. 62];
- Order Authorizing the Employment and Retention of Donlin, Recano & Company, Inc. as Administrative Agent to the Debtor, Effective as of the Petition Date [D.I. No. 63];
- Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals [D.I. 64];
- 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];
- Order Authorizing (I) the Employment and Retention of Asgaard Capital LLC to Provide the Debtor a Chief Restructuring Officer and Certain Additional Personnel and (II) the Designation of Charles Reardon as Chief Restructuring Officer of the Debtor, Effective as of the Petition Date [D.I. 73];
- Order Authorizing the Retention and Employment of Stout Risius Ross Advisors, LLC, as Financial Advisor and Investment Banker for the Debtor, Effective as of the Petition Date [D.I. 83];
- Order (I) Scheduling a Hearing on the Approval of the Sale of All of Substantially All of the Debtor's Assets, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Approving Certain Bidding Procedures and Assumption and Assignment Procedures, and the Form and Manner of Notice Thereof, (III) Authorizing the Debtor to Agree to (But Not Approving) Certain Bid Protections for any Stalking Horse Purchaser and (IV) Granting Related Relief [D.I. 110] (the "**Bidding Procedures Order**");
- Order Establishing Deadlines for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof [D.I. 125] (the "**Bar Date Order**"); and

- Order, Pursuant to Sections 105(a), 365(a) and 554(a) of the Bankruptcy Code, Authorizing the Debtor to Reject Certain Executory Contracts and Unexpired Leases, and to Abandon Certain Personal Property in Connection Therewith, Effective as of the Rejection Effective Date, and Granting Related Relief [D.I. 300].

D. Sale Transactions

As part of the Debtor's overall strategy for the Chapter 11 Case, and for the reasons set forth above, on April 1, 2020, the Debtor filed a motion [D.I. 91] (the "**Sale Motion**") seeking authority to proceed with a bidding and auction process in order to consummate one or more sales of the Debtor's assets. On April 20, 2020, the Bankruptcy Court entered the Bidding Procedures Order, approving certain bidding procedures with respect to the sale of such Assets.

In accordance with the Bidding Procedures Order, Stout, with input from the Debtor and its restructuring professionals, marketed the assets to nearly 230 purchasers in the healthcare, technology, telecommunications and defense industries, among others, as well as so-called "patent trolls." Over the course of the Post-Petition Sale Process, 25 potential purchasers signed a non-disclosure agreement (a "**NDA**"). Shortly after executing a NDA, each potential purchaser received a comprehensive confidential information memorandum (the "**CIM**") with respect to the assets and access to a confidential data room prepared by Stout with the assistance of the Debtor and its other professional advisors. The CIM included, among other things, descriptions of the Debtor's history and background, end-user markets, product offerings, and intellectual property portfolio.

The Debtor and Stout also solicited interest in the assets from several well-known and experienced liquidators, but these liquidators all declined to submit an equity bid for the assets. After careful consideration, the Debtor and its restructuring advisors determined that a bid for substantially all of the assets represented the best value maximizing strategy, and not a piece-meal liquidation.

After conducting a thorough marketing process and an auction for the Assets in accordance with the Bidding Procedures Order, for the reasons set forth in the *Declaration of Charles Reardon in Support of Sale* [D.I. 217], the *Declaration of Luis Pillich in Support of Sale* [D.I. 218], and on the record of the hearing to consider the sales, the Debtor sought approval pursuant to the Sale Motion of the sale of (i) substantially all of its assets to Blue Ocean (the "**Blue Ocean Sale**") and (ii) certain intellectual property assets to Magicheart (the "**Magicheart Sale**"), in accordance with the terms of each respective asset purchase agreement.

The Bankruptcy Court entered orders approving the Blue Ocean Sale [D.I. 225] and the Magicheart Sale [D.I. 226] (collectively, the "**Sale Orders**") on August 20, 2020, and the respective sales (the "**Prior Asset Sales**") closed on August 21, 2020 [D.I. 228].

E. Settlement with Magicheart

Subsequent to the closing of the Prior Asset Sales, and following arm's length and good faith negotiations, in exchange for the releases and other 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, the Debtor and the Magicheart Parties agreed to the Plan Settlement, which is provided for in Article XII of the Plan. The Plan Settlement provides as follows:

(a) the Magicheart Parties shall vote to accept the Plan and accept the treatment provided for therein in full and final satisfaction and resolution of all Claims of the Magicheart Parties;

(b) the DIP Claim shall be Allowed in the amount of not less than approximately \$6,500,000, plus the Wind-Down Budget Amount; the Prepetition Secured Promissory Notes Claim shall be Allowed in the amount of not less than \$3,775,000; the Prepetition Unsecured Promissory Notes Claim shall be Allowed in the amount of not less than \$85,057,221; the Palo Alto Real Property Lease Administrative Claim shall be Allowed in the amount of not less than \$244,183; and the Palo Alto Real Property Lease General Unsecured Claim shall be Allowed in the amount of not less than \$3,418,862;

(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. As a result of this additional borrowing, the DIP Commitment (as defined in the DIP Credit Agreement) will exceed the

amount provided for in the DIP Credit Agreement and the DIP Order. To the extent necessary, the Plan, taken together with the Disclosure Statement, shall serve as a motion to increase the DIP Commitment by the Wind-Down Budget Amount, and the Confirmation Order shall constitute the Bankruptcy Court's approval of such increase;

(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. The Plan Settlement resolves any and all claims, causes of action and disputes between the Debtor and the Magicheart Parties; and

(g) the Chancery Court Action shall be dismissed as soon as reasonably practicable after the Effective Date.

The Debtor believes, in its business judgment, that 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, including the agreed-upon treatment of the DIP Claim, the Prepetition Promissory Notes Claims, and the Palo Alto Real Property Lease Claims, 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.

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, 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. In light of this, the Plan Settlement is necessary and integral to the development and implementation of the Plan.

Absent the Additional Borrowing Amount and the consideration provided to the Debtor under the Plan Settlement, the Debtor would not be able to confirm a chapter 11 plan. As of the filing of the Disclosure Statement, other than the claims, causes of action and disputes resolved under the Plan, including in connection with the Plan Settlement, the Debtor has no remaining significant assets to liquidate, and all Assets, including any proceeds from the liquidation thereof, other than any claims and causes of action of the Debtor under chapter 5 of the Bankruptcy Code, which are not Postpetition Collateral (as defined in the DIP Credit Agreement), are subject to the liens and superpriority claims (as applicable) of Magicheart on account of the DIP Claim and the Prepetition Secured Promissory Notes Claim, which are expected to be not less than approximately \$6,500,000 (which does not include the Wind-Down Budget Amount) and \$3,775,000,

respectively, as of the Effective Date. The DIP Claim and the Prepetition Secured Promissory Notes Claim are receiving no distribution under the Plan as a result of the Plan Settlement.

In addition, without the Plan Settlement, the Prepetition Unsecured Promissory Notes Claim and the Palo Alto Real Property General Unsecured Claim, which are not less than \$85,057,221 and \$3,418,862, respectively, would share in any potential recoveries available to Holders of Allowed General Unsecured Claims, thereby significantly diluting any such recoveries available to such Holders. Furthermore, without the Plan Settlement, no distributions would be available for Holders of Allowed Secured Claims, Allowed Priority Tax Claims, Allowed Priority Claims, and Allowed General Unsecured Claims.

After carefully considering the Plan Settlement and the theoretical alternatives to the Plan, including formulation of an alternative plan of liquidation, or conversion of the Chapter 11 Case to chapter 7 of the Bankruptcy Code, the Debtor believes that the Plan is a superior alternative. The Plan will result in Allowed Administrative Claims, Professional Fee Claims, Asgaard Capital Fee Claims, Priority Tax Claims, Secured Claims and Priority Claims being paid in full, and Holders of Allowed General Unsecured Claims receiving a Distribution on account of their Allowed General Unsecured Claims, neither of which is likely, let alone guaranteed, to occur in any theoretical alternatives to the Plan. The Debtor has carefully considered the releases to be provided by the Debtor and its estate under the Plan Settlement and the contemplated dismissal of the Chancery Court Action, and believes, in its business judgment, that such releases and dismissal are necessary and appropriate under the circumstances of the Chapter 11 Case and the Plan Settlement and given in exchange for appropriate consideration.

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 in the Confirmation Order 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 and is fair, equitable and reasonable.

F. United States Trustee

The U.S. Trustee has appointed Juliet Sarkessian as the trial attorney for the U.S. Trustee in connection with the Chapter 11 Case.

G. No Appointment of Committee

On March 24, 2020, the U.S. Trustee filed a Statement [D.I. 76] indicating that a committee of unsecured creditors had not been appointed in the Chapter 11 Case.

H. Meeting of Creditors

The meeting of creditors under section 341(a) of the Bankruptcy Code was held on April 6, 2020, and continued on May 7, 2020 [D.I. 84 and 116].

I. Schedules, Statements of Financial Affairs, and Certain Claims Bar Dates

The Debtor Filed its Schedules and Statement of Financial Affairs on April 24, 2020 [D.I. 120 and 121].

On April 28, 2020, the Bankruptcy Court entered the Bar Date Order establishing the following dates by which proofs of claim are required to be filed in the manner provided in the Bar Date Order:

<u>BAR DATES</u>	
General Bar Date	July 6, 2020, at 5:00 p.m. (Eastern Time)
Government Bar Date	August 24, 2020, at 5:00 p.m. (Eastern Time)
Rejection Bar Date (other than those rejected pursuant to the Plan and the Confirmation Order)	The later of (i) the General Bar Date or (ii) 5:00 p.m. (Eastern Time) on the date that is thirty-five (35) days following the entry of the order approving the rejection of the executory contract or unexpired lease pursuant to which the Person or Entity asserting the Claim is a party.

IV. SUMMARY OF THE CHAPTER 11 PLAN

This section provides a summary of the structure and means for implementation of the Plan and the classification and treatment of Claims and Interests under the Plan, and is qualified in its entirety by reference to the Plan (as well as the Exhibits thereto and definitions therein).

The statements contained in the Disclosure Statement do not purport to be precise or complete statements of all the terms and provisions of the Plan or documents referred to therein, and reference is made to the Plan and to such documents for the full and complete statement of such terms and provisions.

The Plan itself and the documents referred to therein control the actual treatment of Claims against and Interests in the Debtor under the Plan and will, upon the occurrence of the Effective Date, be binding upon all Holders of Claims against and Interests in the Debtor, the Debtor's Estate, all parties receiving property under the Plan, and other parties in interest. To the extent of any conflict, inconsistency, or discrepancy between the Disclosure Statement and the Plan, the Confirmation Order or any other operative document, including, without limitation, the Plan Administrator Agreement, the terms of the Plan, Confirmation Order and/or such other operative document, as applicable, shall govern and control over the Disclosure Statement; provided that, in any event, the terms of (1) the Confirmation Order and then (2) the Plan, in that order, shall govern and control over all other related documents.

A. Purpose and Effect of the Plan

Chapter 11 is the chapter of the Bankruptcy Code primarily used for business reorganization. Under chapter 11, a debtor is authorized to reorganize its business for the benefit of its stakeholders. Chapter 11 also allows a debtor to formulate and consummate a plan of liquidation. A plan of liquidation sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan of liquidation by a bankruptcy court makes the plan binding upon the debtor and any creditor of or interest holder in the debtor, whether or not such creditor or interest holder (i) is impaired under or has accepted the plan or (ii) receives or retains any property under the plan.

The Plan is a plan of liquidation. It provides for the payment or other satisfaction in full, as required by the Bankruptcy Code, of Allowed Administrative Claims, Professional Fee Claims, Priority Tax Claims, Secured Claims, and Priority Claims, for the distribution of the General Unsecured Claims Distribution Amount to the Holders of Allowed General Unsecured Claims, and for the wind-up of the Debtor's corporate affairs. The Plan also provides for the appointment of a Plan Administrator that will, among other things, make distributions under the Plan and administer and liquidate or otherwise resolve all Assets of the Debtor.

Under the Plan, Claims against, and Interests in, the Debtor are divided into Classes according to their relative seniority and other criteria. If the Plan is confirmed by the Bankruptcy Court and consummated, the Claims and Interests of the various Classes will be treated in accordance with the provisions in the Plan for each such Class, and the Plan Administrator will make Distributions as provided in the Plan. A general description of the Classes of Claims and Interests created under the Plan, the treatment of those Classes under the Plan, and the property to be distributed under the Plan are described in the Disclosure Statement.

B. Plan Administrator

1. Appointment, Resignation and Termination

(a) Appointment. Charles C. Reardon will initially serve as the Plan Administrator. Mr. Reardon is currently the Debtor's Chief Restructuring Officer.

(b) 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.

(c) 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 Administrator'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.

2. 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. The Plan Administrator Agreement will be filed with the Plan Supplement.

3. 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 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.

(d) Administrative, Priority and Secured Claims Reserve. On the Effective Date, the Magicheart Parties shall fund the Administrative, Priority and Secured Claims Reserve 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.

(e) Professional Fee Reserve. On the Effective Date, the Magicheart Parties shall fund the Professional Fee Reserve. The Plan Administrator shall pay the Professional Fee Claims and the Asgaard Capital Fee Claims in accordance with Section 11.2 of the Plan.

4. 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. 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.

6. 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's Related Parties, 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's Related Parties 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.

7. 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.

C. 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.

D. 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.

E. 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.

F. Estimated Recoveries for Holders of General Unsecured Claims

As described in more detail in Section II of the Disclosure Statement, after making certain adjustments, the Debtor estimates that the General Unsecured Claims total approximately \$89,351,847, subject to certain noted potential further adjustments. Without including the General Unsecured Claims of the Magicheart Parties (which the Debtor believes are not less than \$88,476,083 in the aggregate), the Debtor estimates that the Allowed General Unsecured Claims total approximately \$875,764.

Based on the foregoing, the Debtor estimates that Holders of Allowed General Unsecured Claims in the Chapter 11 Case should recover approximately 35% of the total amount of their Allowed General Unsecured Claims assuming that: (i) the total amount of Allowed General Unsecured Claims is not significantly different from the current estimated amount of General Unsecured Claims as set forth immediately above; and (ii) there are no significant increases or reductions in Allowed General Unsecured Claims based on the rejection of executory contracts and unexpired leases of the Debtor pursuant to the Plan and the Confirmation Order. The Debtor has calculated this projected recovery for Holders of General Unsecured Claims taking into account two variables: (i) the total estimated amount of General Unsecured Claims; and (ii) the total estimated amount of Cash available for Distributions to Holders of Allowed General Unsecured Claims, which is \$306,517.40 (i.e., the General Unsecured Claims Distribution Amount).

G. Treatment of Unclassified Claims

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims, and Priority Tax Claims have not been classified and the respective treatment of such unclassified Claims is set forth in Section 3.1 of the Plan.

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.

2. Administrative Claims

Except as otherwise provided for in the Plan, 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. Professional Fee Claims and Asgaard Capital 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. 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 fourteen (14) 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).

(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 any 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 the Effective Date.

4. Priority Tax Claims

In full satisfaction, settlement, and release of and in exchange for such Claims, Allowed Priority Tax Claims shall be paid by the Post-Effective Date Debtor, at the Post-Effective Date Debtor's discretion, as follows: (a) 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, (b) 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 (c) 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.

H. Classification and Treatment of Claims and Interests

Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of Classes of Claims and Interests. A Claim or Interest is placed in a particular Class only to the extent that the Claim or Equity Interest falls within the description of that Class, and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim is also placed in a particular Class for the purpose of receiving Distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that

Class and such Claim has not been paid, released, withdrawn or otherwise settled prior to the Effective Date.

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; (iii) such Claim reinstated pursuant to sections 1124(1) or 1124(2) of the Bankruptcy Code; or (iv) 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.***

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. 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.***

4. 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 full 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.***

5. 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.***

6. 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 or other consideration in property 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.***

7. Special Provisions Regarding Insurance

Notwithstanding anything to the contrary in the Disclosure Statement, the Plan, the Confirmation Order, any bar date notice or claim objection, any other document related to any of the foregoing, or any Order of the Bankruptcy Court (including, without limitation, any provision that purports to be preemptory or supervening, grants an injunction or release, requires any party to opt out of any releases or confers Bankruptcy Court jurisdiction):

(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 Section 3.5 of the Plan 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 Section 3.5 of the Plan 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 Debtor's 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.

8. 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 designate any Claim as a Disputed Claim and not Allowed at any time from and after the Effective Date until the Claim Objection Deadline.

I. Acceptance or Rejection of the Plan

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.

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, Classes 3 and 4, respectively, 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 Allowed Claims in Classes 3 and 4, respectively, that have timely and properly voted to accept or reject the Plan.

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. Impaired Classes Deemed to Reject Plan

Holders of Subordinated Claims and Interests in Class 5 and Class 6, respectively, 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.*

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 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.

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.

J. Implementation of the Plan

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 under the Plan Settlement, in accordance with the Plan and 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.

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

(a) Debtor's Current Director and Officer

On the Effective Date, Ronald Barliant and Charles C. Reardon shall be terminated automatically as Independent 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.

(b) 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.

(c) 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. 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.

K. Executory Contracts and Unexpired Leases; D&O Indemnification Obligations

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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2. 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 the Plan or the Confirmation Order to the contrary, the 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.

3. Rejection Claims

Any Rejection Claims that are not timely Filed pursuant to Section 6.1 of the Plan shall be forever disallowed and barred. If one or more Rejection Claims is 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.

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.

L. Provisions Governing Distributions

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.

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 Plan Administrator shall make all Distributions required to be made to such Holders of Allowed Claims pursuant to the Plan 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.

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.

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.

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.

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. 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. 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. 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.

8. Setoffs

The Post-Effective Date Debtor may, but shall not be required to, set off against any Allowed Claim, Retained Causes of Action 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 such 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 Section 7.8 of the Plan, 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.

9. No Distribution in Excess of Allowed Amounts

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

10. 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.

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), 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.

M. Procedures for Resolving Disputed, Contingent, and Unliquidated Claims and Distributions with Respect Thereto

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.

2. Claim Objections

All objections to Claims (other than (i) Administrative Claims and (ii) 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.

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.

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. All of the Claims objection, estimation and resolution procedures in this Article VIII are cumulative and are not necessarily exclusive of one another.

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. Any Claims filed after the applicable deadlines in the Bar Date Order or the Plan shall be automatically deemed disallowed in full without further action.

N. Conditions Precedent to the Occurrence of the Effective Date

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.

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.

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 from the Bankruptcy Court.

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 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.

O. Retention of Jurisdiction

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 (other than personal injury or wrongful death Claims, unless agreed by the Holder), 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 limitations, 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 Assets 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 in the Plan, recover all Assets of the Debtor and property of the Estate, 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, or not inconsistent with, 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.

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 Article X of the Plan 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.

P. Miscellaneous Plan Provisions

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 the Post-Effective Date Debtor, 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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2. Professional Fee Claims

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

3. Payment of Statutory Fees

All U.S. Trustee Fees payable pursuant to section 1930 of title 28 of the United States Code 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 in the ordinary course. The Post-Effective Date Debtor and the Plan Administrator shall have the obligation to pay U.S. Trustee Fees until the Chapter 11 Case is closed, dismissed or converted. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim or requests for payment of Administrative Claims with respect to U.S. Trustee Fees.

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.

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.

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.

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.

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.

9. Non-Discharge of the Debtor; Injunction

In accordance with section 1141(d)(3) of the Bankruptcy Code, the Plan does not discharge the Debtor. Section 1141(c) of the Bankruptcy Code nevertheless provides, among other things, that the property dealt with by the Plan is free and clear of all Claims and Interests. As such, 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:

(a) 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;

(b) 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;

(c) 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;

(d) 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

(e) 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 asserted in a timely filed proof of claim.

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.

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).

(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 Section 11.10 of the Plan 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 (i) the Bankruptcy Court's approval of the releases set forth in Section 11.10 of the Plan; and (ii) the Bankruptcy Court's findings that, among other things, such releases are (1) in the best interests of the Debtor and the Estate, (2) fair, equitable and reasonable, (3) given and made after due notice and opportunity for objection and hearing, (4) consensual, (5) supported by good and valuable consideration, and (6) a bar against any released claims being asserted against any of the Released Parties.

(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 and all pleadings necessary to cause such dismissal.

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, none of the Exculpated Parties shall have or incur any liability to any Person or Entity, including, without limitation, to any Holder of a Claim or an Interest, for any act or omission 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 Section 11.11 of the Plan 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 have been exculpated pursuant to Section 11.11 of the Plan.

12. Terms of Injunctions or Stays

Unless otherwise provided in the Plan 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.

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; (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 Retained 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.

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.

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.

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 in the Plan, 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.

17. Preservation of Retained Causes of Action

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 in the Plan, 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

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, 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, the Plan, or the 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.

18. Bar Date Order

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

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.

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, any Order in the Chapter 11 Case (other than the Confirmation Order), 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.

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.

V. RISK FACTORS

A. Parties May Object to the Plan's Classification of Claims and Interests

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class. The Debtor believes that the classification of the Claims and Interests under the Plan complies with this requirement. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

B. The Debtor May Not Be Able to Obtain Confirmation of the Plan

With regard to any proposed plan in the Chapter 11 Case, the Debtor may not receive the requisite acceptances to confirm such plan. In the event that votes with respect to Holders of General Unsecured Claims entitled to vote on the Plan are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtor intends to seek Confirmation of the Plan by the Bankruptcy Court. If the requisite acceptances are not received, the Debtor may not be able to obtain Confirmation of the Plan. Even if the requisite acceptances of a proposed plan are received, the Bankruptcy Court might not confirm the Plan as proposed if the Bankruptcy Court finds that any of the statutory requirements for confirmation under section 1129 of the Bankruptcy Code has not been met.

If the Plan is not confirmed by the Bankruptcy Court, there can be no assurance that any alternative plan of liquidation would be on terms as favorable to Holders of Claims as the terms of the Plan. In addition, there can be no assurance that the Debtor will be able to successfully develop, prosecute, confirm and consummate an alternative plan that is acceptable to the Bankruptcy Court and the Debtor's creditors, because as of the filing of the Disclosure Statement, other than the claims, causes of action and disputes resolved under the Plan, including in connection with the Plan Settlement, the Debtor has no remaining significant assets to liquidate, and all of the Assets, including any proceeds thereof, other than any claims and causes of action of the Debtor under chapter 5 of the Bankruptcy Code, which are not Postpetition Collateral (as defined in the DIP Credit Agreement), are subject to the liens and superpriority claims (as applicable) of Magicheart on account of the DIP Claim and the Prepetition Secured Promissory Notes Claim, which are not less than approximately \$6,500,000 (which does not include the Wind-Down Budget Amount) and \$3,775,000, respectively, as of the Effective Date. The DIP Claim and the Prepetition Secured Promissory Notes Claim are receiving no distribution under the Plan as a result of the Plan Settlement.

Also, absent the Plan Settlement, the Prepetition Unsecured Promissory Notes Claim and the Palo Alto Real Property Lease General Unsecured Claim, which are not less than \$85,057,221 and \$3,418,862, respectively, would share in any recoveries available to Holders of Allowed General Unsecured Claims, thereby significantly diluting any potential recoveries available to such Holders.

C. The Conditions Precedent to the Effective Date of the Plan May Not Occur

As more fully set forth in the Plan, the Effective Date is subject to a number of conditions precedent. If such conditions precedent are not met or waived, the Effective Date will not occur.

D. The Allowed Amount of Claims May Differ From Current Estimates; General Unsecured Creditors May Recover Less Than Projected

There can be no assurance that the estimated Claim amounts set forth herein are correct, and the actual amount of Allowed Claims may differ from the estimates. The estimated amounts are subject to certain risks, uncertainties, and assumptions. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, the actual amount of Allowed Claims may vary from those estimated in the Disclosure Statement. Furthermore, a number of additional claims may be filed, including on account of rejection damages for executory contracts and unexpired leases rejected pursuant to the Plan. Any such claims may result in a greater amount of Allowed General Unsecured Claims than estimated in the Disclosure Statement. To the extent that there is a greater amount of Allowed General Unsecured Claims than estimated in the Disclosure Statement, then Holders of Allowed General Unsecured Claims may recover less than projected herein.

VI. CONFIRMATION OF THE PLAN

A. The Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on Confirmation of the Plan. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to Confirmation of the Plan.

The Bankruptcy Court has scheduled the Confirmation Hearing to commence on June 18, 2021 at 10:00 a.m. (Eastern Time), before the Honorable Craig T. Goldblatt, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Courtroom No. 7, Wilmington, Delaware 19801. The Confirmation Hearing Notice, which sets forth the time, date, and place of the Confirmation Hearing, has been included along with the Disclosure Statement. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court or the Debtor without further notice to parties other than noting the adjournment in the hearing agenda for the noticed Confirmation Hearing or a filing on the docket of the Chapter 11 Case in addition to any announcement that may be made in Court at the Confirmation Hearing or any adjourned Confirmation Hearing.

Objections to Confirmation of the Plan must be Filed by no later than June 10, 2021 at 4:00 p.m. (Eastern Time) and served in accordance with the Local Rules, which service may be made by email. Unless objections to Confirmation of the Plan are timely served and Filed in compliance with the Disclosure Statement Order, they may not be considered by the Bankruptcy Court.

B. Requirements for Confirmation of the Plan

Among the requirements for the Confirmation of the Plan is that the Plan (i) is accepted by all Impaired Classes of Claims, or, if rejected by an Impaired Class of Claims, that the Plan “does not discriminate unfairly” and is “fair and equitable” as to such Impaired Class of Claims; (ii) is feasible; and (iii) is in the “best interests” of Holders of Claims.

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies the requirements of section 1129 of the Bankruptcy Code. The Debtor believes that: (i) the Plan satisfies or will satisfy all of the necessary statutory requirements of chapter 11 of the Bankruptcy Code; (ii) the Debtor has complied or will have complied with all of the necessary requirements of chapter 11 of the Bankruptcy Code; and (iii) the Plan has been proposed in good faith. Specifically, the Debtor believes that the Plan satisfies or will satisfy the following applicable Confirmation requirements of section 1129 of the Bankruptcy Code:

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Debtor has complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or promised under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Case, or in connection with the Plan and incident to the Chapter 11 Case, has been disclosed to the Bankruptcy Court, and any such payment: (1) made before the Confirmation of the Plan is reasonable; or (2) is subject to the approval of the Bankruptcy Court as reasonable, if it is to be fixed after Confirmation of the Plan.
- Either each Holder of a Claim in an Impaired Class of Claims has accepted the Plan, or will receive or retain under the Plan on account of such Claim property of a value, as of the Effective Date, that is not less than the amount that such Holder would receive or retain if the Debtor was liquidated on the Effective Date under chapter 7 of the Bankruptcy Code.
- The Classes of Claims that are entitled to vote on the Plan will have accepted the Plan.
- Except to the extent a different treatment is agreed to, the Plan generally provides that all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Claims and Allowed Priority Claims will be paid in full 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 such Claim becomes an Allowed Claim. Allowed 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.
- At least one Class of Impaired Claims will have accepted the Plan, determined *without* including any acceptance of the Plan by any insider holding a Claim in that Class. Since Magicheart is an insider of the Debtor as that term is defined in section 101(31) of the Bankruptcy Code, acceptance of the Plan by the Class 3 Prepetition Secured Promissory Notes Claim will *not* satisfy the requirement that at least one Class of Impaired Claims must have accepted the Plan. Similarly, all votes of the Magicheart Parties in favor of the Plan on account of their Allowed General Unsecured Claims will *not* count towards acceptance of the Plan by Class 4 General Unsecured Claims. Thus, for the Plan to be confirmed, Class 4 General Unsecured

Claims must accept the Plan *without* including any acceptance of the Plan by the Magicheart Parties on account of their Allowed General Unsecured Claims.

- All accrued and unpaid fees of the type described in 28 U.S.C. § 1930, including the fees of the U.S. Trustee, will be paid as of the Effective Date.

C. Best Interests of Creditors

Often called the “best interests of creditors” test, section 1129(a)(7) of the Bankruptcy Code requires that a Bankruptcy Court find, as a condition to confirmation of a chapter 11 plan, that the plan provides, with respect to each impaired class, that each holder of a claim or an interest in such class either (i) has accepted the plan or (ii) will receive or retain under the plan property of a value that is not less than the amount that such holder would receive or retain if the debtor liquidated under chapter 7 on the Effective Date.

Here, the costs of liquidation under chapter 7 of the Bankruptcy Code would include, among other things, the statutory fees payable to a chapter 7 trustee, and the fees that would be payable to additional attorneys and other professionals that such a trustee may engage, which amounts would have to be paid before anything is paid to Holders of Allowed General Unsecured Claims.

Conversion to chapter 7 of the Bankruptcy Code would also mean the establishment of a new claims bar date, which could result in new Claims being asserted against the Debtor, thereby diluting the recoveries of, among others, other Holders of Allowed General Unsecured Claims.

As a result of the Plan Settlement, the Debtor will be able to satisfy all Allowed Administrative Claims, Allowed Professional Fee Claims, Allowed Priority Tax Claims, Allowed Secured Claims and Allowed Priority Claims as required by the Bankruptcy Code, and to provide a recovery to Holders of Allowed General Unsecured Claims through the General Unsecured Claims Distribution Amount (i.e., \$306,517.40), in accordance with the Plan. In a chapter 7 liquidation, it is unknown whether the Magicheart Parties would agree to this settlement and what additional costs would be incurred.

After considering the effects that a chapter 7 liquidation would have on the funds available for distribution to Holders of Allowed Claims, and given that all Assets are subject to the liens and superpriority claims (as applicable) of Magicheart on account of the DIP Claim and the Prepetition Secured Promissory Notes Claim, other than any claims and causes of action of the Debtor under chapter 5 of the Bankruptcy Code, which are not Postpetition Collateral (as defined in the DIP Credit Agreement), Holders of Allowed Claims will receive under the Plan not less than such Holders would receive if the Chapter 11 Case was converted to a chapter 7 case. Attached hereto as **Exhibit B** is hypothetical liquidation analysis for the Debtor (the “**Liquidation Analysis**”).⁶

⁶ The Liquidation Analysis was prepared by the Debtor in consultation with its professional advisors. Underlying the Liquidation Analysis are a number of estimates and assumptions that, although carefully developed and considered reasonable by the Debtor and its professional advisors, are inherently subject to significant economic uncertainties beyond such parties’ control.

Although the Liquidation Analysis does not ascribe a value to any claims and causes of action of the Debtor under chapter 5 of the Bankruptcy Code that might be pursued by a chapter 7 trustee if the Chapter 11 Case were converted to a chapter 7 case, after taking into account the costs and risks associated with prosecuting any such claims and causes of action, including, without limitation, the various defenses that could be asserted thereto, the Debtor believes that a chapter 7 trustee would be unlikely to recover significant value for the Estate from any such claims and causes of action.⁷

Furthermore, as discussed above, the DIP Claim and the Prepetition Secured Promissory Notes Claim are expected to be not less than approximately \$6,500,000 (which does not include the Wind-Down Budget Amount) and \$3,775,000, respectively, as of the Effective Date; and the Prepetition Unsecured Promissory Notes Claim and the Palo Alto Real Property General Unsecured Claim are not less than \$85,057,221 and \$3,418,862, respectively. As set forth in the Plan and discussed throughout this Disclosure Statement, none of these Allowed Claims of the Magicheart Parties are receiving a distribution under the Plan as a result of the Plan Settlement. But without the Plan Settlement, which the Debtor does not believe would be available in a chapter 7 case, these Allowed Claims of the Magicheart Parties would share in any potential recoveries available from any claims and causes of action of the Debtor under chapter 5 of the Bankruptcy Code pursued by a chapter 7 trustee, thereby significantly diluting any such recoveries available to Holders of Allowed Claims other than the Magicheart Parties. As a result, the Debtor believes that the Plan is a superior alternative than converting the Chapter 11 Case to chapter 7 of the Bankruptcy Code. In light of the foregoing, and as the Liquidation Analysis demonstrates, the Debtor believes that confirmation of the Plan will clearly provide each Holder of an Allowed General Unsecured Claim with a greater recovery than such Holder would receive pursuant to the liquidation of the Debtor under chapter 7 of the Bankruptcy Code.

D. Feasibility

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of a plan is not likely to be followed by the liquidation, or the need for further financial reorganization of the Debtor, or any successor to the Debtor (unless such liquidation or reorganization is proposed in the plan). This requirement is satisfied as the Plan proposes a liquidation, and the Debtor believes that as a result of the Plan Settlement, including the consideration received by the Debtor thereunder, the Post-Effective Date Debtor will be able to make all payments required to be made under the Plan.

⁷ Part 3 of the Debtor's Statement of Financial Affairs [D.I. 121] identifies certain payments made by the Debtor in the 90 days before the Petition Date.

E. Acceptance by Impaired Classes

The Bankruptcy Code requires, as a condition to confirmation, that, except as described in the following section, each class of claims or interests that is impaired under a plan accept the plan. A class that is not “impaired” under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required.

A class is “impaired” unless a plan: (i) leaves unaltered the legal, equitable and contractual rights to which the claim or the interest entitles the holder of such claim or interest; or (ii) cures any default, reinstates the original terms of such obligation, compensates the holder for certain damages or losses, as applicable, and does not otherwise alter the legal, equitable or contractual rights to which such claim or interest entitles the holder of such claim or interest.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of allowed claims in that class, counting only those claims that actually voted to accept or reject the plan. Thus, a Class of Impaired Claims will have voted to accept the Plan only if two-thirds in dollar amount and a majority in number actually voting cast their Ballots in favor of acceptance.

F. Confirmation Without Acceptance by All Impaired Classes

Section 1129(b) of the Bankruptcy Code allows a Bankruptcy Court to confirm a plan even if all impaired classes have not accepted it, if the plan has been accepted by at least one impaired class of claims, determined without including the acceptance of the plan by any insider. Notwithstanding an impaired class’s rejection or deemed rejection of the plan, such plan will be confirmed, at the plan proponent’s request, in a procedure commonly known as “cramdown,” so long as the plan does not “discriminate unfairly” and is “fair and equitable” with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

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 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.

1. No Unfair Discrimination

The “unfair discrimination” test applies to classes of claims or interests that reject or are deemed to have rejected a plan and that are of equal priority with another class of claims or interests that is receiving different treatment under such plan. The test does not require that the treatment of such classes of claims or interests be the same or equivalent, but that such treatment be “fair.” In general, bankruptcy courts consider whether a plan discriminates unfairly in its treatment of classes of claims of equal rank (*e.g.*, classes of the same legal character). Bankruptcy courts will take into account a number of factors in determining whether a plan discriminates unfairly, and, accordingly, a plan could treat two classes of unsecured creditors differently without unfairly discriminating against either class. The Debtor submits that the Plan does not “discriminate unfairly” against any rejecting Class.

2. Fair and Equitable Test

The “fair and equitable” test applies to classes that reject or are deemed to have rejected a plan and are of different priority and status vis-à-vis another class (*e.g.*, secured versus unsecured claims, or unsecured claims versus equity interests), and includes the general requirement that no class of claims receive more than 100% of the amount of the allowed claims in such class, including interest. As to the rejecting class, the test sets different standards depending upon the type of claims or interests in such rejecting class. The Debtor submits that the Plan meets the “fair and equitable” test.

G. Alternatives to Confirmation and Consummation of the Plan

The Debtor believes that the Plan affords Holders of Allowed General Unsecured Claims a greater recovery on the Debtor’s Assets than a chapter 7 liquidation, and, therefore, is in the best interests of such Holders. If, however, the requisite acceptances from Holders of Allowed General Unsecured Claims entitled to vote on the Plan are not received, or no Plan is confirmed and consummated, theoretical alternatives to the Plan include (i) formulation of an alternative plan or plans of liquidation, or (ii) liquidation of the Debtor under chapter 7 of the Bankruptcy Code.

The Debtor believes that the Plan enables Holders of Allowed Claims to realize the greatest possible recovery under the circumstances, and, as compared to any alternative plan of liquidation, has the greatest chance of being confirmed and consummated.

The Chapter 11 Case may also be converted to a case under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be elected or appointed to complete the liquidation of the Debtor’s Assets for distribution to Creditors in accordance with the priorities established by the Bankruptcy Code, subject to the liens of Magicheart on all of the Assets on account of the DIP Claim and the Prepetition Secured Promissory Notes Claim, other than any claims and causes of action of the Debtor under chapter 5 of the Bankruptcy Code, which are not Postpetition Collateral (as defined in the DIP Credit Agreement). As described above, the Debtor believes that the Plan will provide each Holder of an Allowed Claim with a greater recovery than it would receive under a liquidation of the Debtor under chapter 7 of the Bankruptcy Code.

VII. CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. ALL HOLDERS OF CLAIMS AGAINST THE DEBTOR SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL, OR FOREIGN TAX LAWS AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

This discussion is provided for information purposes only, and is based on provisions of the Internal Revenue Code of 1986, as amended (the “IRC”), Treasury Regulations promulgated thereunder, judicial authorities, and current administrative rulings and practice, all as in effect on the date hereof. Legislative, judicial, or administrative changes or interpretations enacted or promulgated after the date hereof could alter or modify the analyses set forth below with respect

to the United States federal income tax consequences of the Plan. Any such changes or interpretations may be retroactive and could significantly, and adversely, affect the United States federal income tax consequences of the Plan.

The following summary does not address the United States federal income tax consequences to Holders of Claims not entitled to vote to accept or reject the Plan. In addition, to the extent that the following discussion relates to the consequences to Holders of Claims entitled to vote to accept or reject the Plan, it is limited to Holders that are United States persons within the meaning of the IRC. For purposes of the following discussion, a “**United States person**” is any of the following:

- An individual who is a citizen or resident of the United States;
- A corporation created or organized under the laws of the United States or any state or political subdivision thereof;
- An estate, the income of which is subject to federal income taxation regardless of its source; or
- A trust that (a) is subject to the primary supervision of a United States court and which has one or more United States fiduciaries who have the authority to control all substantial decisions of the trust or (b) has a valid election in effect under applicable Treasury Regulations to be treated as a United States person.

This discussion does not address all aspects of United States federal income taxation that may be relevant to a particular Holder in light of such Holder’s particular facts and circumstances, or to certain types of Holders subject to special treatment under the IRC. Examples of Holders subject to special treatment under the IRC are governmental entities and entities exercising governmental authority, foreign companies, persons who are not citizens or residents of the United States, banks and certain other financial institutions, broker-dealers, insurance companies, tax-exempt organizations, real estate investment trusts, small business investment companies, regulated investment companies, persons that have a functional currency other than the United States dollar, and persons holding Claims that are a hedge against, or that are hedged against, currency risk or that are part of a straddle, constructive sale, or conversion transaction. This discussion does not address the state, local, or foreign tax consequences of the Plan.

The tax treatment of Holders of Claims and the character, amount, and timing of income, gain, or loss recognized as a consequence of the Plan and the Distributions provided for by the Plan may vary depending upon several factors, including, without limitation: (i) whether the Claim or portion thereof constitutes a Claim for principal or interest; (ii) the type of consideration, if any, received by the Holder in exchange for the Claim, and whether the Holder receives Distributions under the Plan in more than one taxable year; (iii) whether the Holder is a citizen or resident of the United States for tax purposes, is otherwise subject to United States federal income tax on a net basis, or falls into any special class of taxpayers, such as those that are excluded from this discussion as noted above; (iv) the manner in which the Holder acquired the Claim; (v) the length of time that the Claim has been held; (vi) whether the Claim was acquired at a discount; (vii) whether the Holder has taken a bad debt deduction or a worthless securities deduction with respect

to the Claim or any portion thereof in the current or prior taxable years; (viii) whether the Holder has previously included in gross income accrued but unpaid interest with respect to the Claim; (ix) the method of tax accounting of the Holder; (x) whether the Claim is an installment obligation for United States federal income tax purposes; and (xi) whether the “market discount” rules apply to the Holder. Therefore, each Holder should consult such Holder’s own tax advisor for tax advice with respect to that Holder’s particular situation and circumstances, and the particular tax consequences to such Holder of the transactions contemplated by the Plan.

A significant amount of time may elapse between the date of the Disclosure Statement and the receipt of a Distribution under the Plan. Events occurring after the date of the Disclosure Statement, such as new or additional tax legislation, court decisions, or administrative changes, could affect the United States federal income tax consequences of the Plan and the transactions contemplated thereunder. No ruling has been or will be sought from the IRS with respect to any of the tax aspects of the Plan, and no opinion of counsel has been or will be obtained by the Debtor with respect thereto. No representations are being made regarding the particular tax consequences of confirmation or implementation of the Plan as to any Holder of a Claim. This discussion is not binding upon the IRS or other taxing authorities. The IRS or another taxing authority could assert, and a court could sustain, a different position from any discussed herein, and no assurance can be given as to whether such a different position will or will not be asserted or sustained.

THE FOLLOWING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN, AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE FOLLOWING DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER’S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, EACH HOLDER IS STRONGLY URGED TO CONSULT SUCH HOLDER’S TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN INCOME TAX CONSEQUENCES OF THE PLAN.

A. Certain Tax Consequences to Holders of Claims

A Holder of an Allowed Claim will generally recognize gain or loss equal to the difference between the Holder’s adjusted basis in its Allowed Claim and the amount realized by the Holder in respect of its Allowed Claim. Over time and on a cumulative basis, the amount realized generally will equal the aggregate amount of the Cash (and the fair market value of property, if any) distributed to the Holder by the Plan Administrator, less the amount, if any, attributable to accrued but unpaid interest. A Holder of an Allowed Claim will generally recognize ordinary income to the extent that the amount of Cash or property received (or deemed received) under the Plan is attributable to interest that accrued on a Allowed Claim but was not previously paid by the Debtor or included in income by the Holder of the Allowed Claim.

The character of any gain or loss recognized by a Holder will depend on a number of factors, including the status of the Holder, the nature of the Allowed Claim in the Holder’s hands, whether the Allowed Claim was purchased at a discount, whether and to what extent the Holder has previously claimed a bad debt deduction with respect to the Allowed Claim, and the Holder’s

holding period of the Allowed Claim. If the Allowed Claim in the Holder's hands is a capital asset, the gain or loss realized will generally be characterized as a capital gain or loss. Such gain or loss will constitute long-term capital gain or loss if the Holder held such Allowed Claim for longer than one year or short-term capital gain or loss if the Holder held such Allowed Claim for one year or less. Any capital loss realized generally may be used by a corporate Holder only to offset capital gains and by an individual Holder only to the extent of capital gains plus a certain limited statutorily proscribed amount of ordinary income in any single taxable year, currently \$3,000.

A Holder of an Allowed Claim who receives, in respect of the Holder's Allowed Claim, an amount that is less than that Holder's tax basis in such Allowed Claim may be entitled to a bad debt deduction under IRC Section 166(a). The rules governing the character, timing, and amount of a bad debt deduction place considerable emphasis on the facts and circumstances of the Holder, the obligor and the instrument with respect to which a deduction is claimed. Holders of Allowed Claims, therefore, are urged to consult their tax advisors with respect to the ability to take a bad debt deduction. A Holder that has previously recognized a loss or deduction in respect of that Holder's Allowed Claim may be required to include in gross income (as ordinary income) any amounts received under the Plan to the extent such amounts exceed the Holder's adjusted basis in such Allowed Claim.

Holders of Allowed Claims who were not previously required to include any accrued but unpaid interest with respect to an Allowed Claim may be treated as receiving taxable interest income to the extent any consideration they receive under the Plan is allocable to such interest. A Holder previously required to include in gross income any accrued but unpaid interest with respect to an Allowed Claim may be entitled to recognize a deductible loss to the extent such interest is not satisfied under the Plan.

A Holder of an Allowed Claim constituting an installment obligation for tax purposes may be required to currently recognize any gain remaining with respect to such obligation if, pursuant to the Plan, the obligation is considered to be satisfied at other than face value or distributed, transmitted, sold, or otherwise disposed of within the meaning of IRC Section 453B.

Under backup withholding rules, a Holder of an Allowed Claim may be subject to backup withholding with respect to payments made pursuant to the Plan unless such Holder: (i) is a corporation or is otherwise exempt from backup withholding and, when required, demonstrates this fact; or (ii) provides a correct taxpayer identification and certifies under penalty of perjury that (a) the taxpayer identification number is correct and (b) the Holder is not subject to backup withholding because of failure to report all dividend and interest income. Any amount withheld under such rules will be credited against the Holder's federal income tax liability.

Holders of Subordinated Claims and Claims that are not Allowed ("**Disallowed Claims**") will not receive any Distribution under the Plan. Accordingly, because such a Holder may receive an amount that is less than that Holder's tax basis in such Claim, such Holder may be entitled to a bad debt deduction under IRC Section 166(a). The rules governing the character, timing, and amount of a bad debt deduction place considerable emphasis on the facts and circumstances of the Holder, the obligor, and the instrument with respect to which a bad debt deduction is claimed.

Holders of Subordinated Claims and Disallowed Claims, therefore, are urged to consult their tax advisors with respect to the ability to take a bad debt deduction.

B. Certain Tax Consequences to the Debtor

Under the IRC, a taxpayer generally must include in gross income the amount of any cancellation of indebtedness income (“**COD Income**”) realized during the taxable year. Section 108 of the IRC provides an exception to this general rule, however, if the cancellation occurs in a case under the Bankruptcy Code, but only if the taxpayer is under the jurisdiction of the bankruptcy court and the cancellation is granted by the court or is pursuant to a plan approved by the court.

Section 108 of the IRC requires the amount of COD Income so excluded from gross income to be applied to reduce certain tax attributes of the taxpayer. The tax attributes that may be subject to reduction include the taxpayer’s net operating losses and net operating loss carryovers (collectively, “**NOLs**”), certain tax credits and tax credit carryovers, capital losses and capital loss carryovers, tax bases in assets, and passive activity loss carryovers. Attribute reduction is calculated only after the tax for the year in which the discharge occurs has been determined. Section 108 of the IRC further provides that a taxpayer does not realize COD Income from cancellation of indebtedness to the extent that payment of such indebtedness would have given rise to a deduction.

Under the Plan, Holders of certain Allowed Claims are expected to receive less than full payment on their Claims, and Holders of Disallowed Claims and Subordinated Claims are expected to receive no payment. The Debtor’s liability to the Holders of such Claims in excess of the amount satisfied by Distributions under the Plan will be canceled, and therefore will result in COD Income to the Debtor. The Debtor should not realize any COD Income, however, to the extent that payment of such Claims would have given rise to a deduction to the Debtor had such amounts been paid. In addition, any COD Income that the Debtor realizes should be excluded from the Debtor’s gross income pursuant to the bankruptcy exception to section 108 of the IRC described above, because the cancellation will occur in a case under the Bankruptcy Code, while the taxpayer is under the jurisdiction of the bankruptcy court, and the cancellation is granted by the court or is pursuant to a plan approved by the court. The exclusion of the COD Income, however, will result in a reduction of certain tax attributes of the Debtor, such as the NOLs, as described above. Because attribute reduction is calculated only after the tax for the year in which the discharge occurs has been determined, the COD Income realized by the Debtor under the Plan should not diminish the NOLs and other tax attributes that may be available to offset any income and gains recognized by the Debtor in the taxable year that includes the Effective Date.

VIII. RECOMMENDATION

IN THE OPINION OF THE DEBTOR, THE PLAN IS SUPERIOR AND PREFERABLE TO ANY ALTERNATIVE.

ACCORDINGLY, THE DEBTOR RECOMMENDS THAT HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN VOTE TO ACCEPT THE PLAN AND SUPPORT CONFIRMATION OF THE PLAN.

Dated: April 2, 2021

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

EXHIBIT A TO DISCLOSURE STATEMENT

Chapter 11 Plan of Liquidation of Suitable Technologies, Inc.

**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: April 2, 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) 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.****

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINED TERMS AND RULES OF INTERPRETATION	1
ARTICLE II CLASSIFICATION OF CLAIMS AND INTERESTS.....	12
2.1 Unclassified Claims	12
2.2 Unimpaired Classes of Claims.....	12
2.3 Impaired/Voting Class of Claims.....	12
2.4 Impaired/Non-Voting Classes of Claims and Interests.....	12
ARTICLE III TREATMENT OF CLAIMS AND INTERESTS	12
3.1 Unclassified Claims	12
3.1.1 DIP Claim	12
3.1.2 Administrative Claims	13
3.1.3 Professional Fee Claims and Asgaard Capital Fee Claims	13
3.1.4 Priority Tax Claims.....	13
3.2 Unimpaired Classes of Claims.....	14
3.2.1 Class 1: Secured Claims.....	14
3.2.2 Class 2: Priority Claims	14
3.3 Impaired/Voting Classes of Claims	14
3.3.1 Class 3: Prepetition Secured Promissory Notes Claim	14
3.3.2 Class 4: General Unsecured Claims.....	14
3.4 Impaired/Non-Voting Classes of Claims and Interests.....	14
3.4.1 Class 5: Subordinated Claims	14
3.4.2 Class 6: Interests	15
3.5 Special Provisions Regarding Insurance.....	15
3.6 Provision Governing Allowance and Defenses to Claims	15

ARTICLE IV ACCEPTANCE OR REJECTION OF THE PLAN	16
4.1 Impaired Class of Claims Entitled to Vote	16
4.2 Acceptance by an Impaired Class	16
4.3 Presumed Acceptances by Unimpaired Classes	16
4.4 Impaired Classes Deemed to Reject Plan	16
4.5 Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code	16
4.6 Elimination of Vacant Classes	16
ARTICLE V IMPLEMENTATION OF THE PLAN AND THE PLAN ADMINISTRATOR	16
5.1 Implementation of the Plan	16
5.2 The Debtor's Post-Effective Date Corporate Affairs.....	17
5.2.1 Debtor's Current Director and Officer.....	17
5.2.2 Post-Effective Date Debtor's Director and Officer	17
5.3 Dissolution of the Debtor.....	17
5.4 Plan Administrator	17
5.4.1 Appointment	17
5.4.2 Resignation of Plan Administrator.....	17
5.4.3 Termination of Plan Administrator Role	18
5.4.4 Plan Administrator Agreement	18
5.4.5 Powers and Duties of Plan Administrator.....	18
5.4.6 Compensation of the Plan Administrator.....	19
5.4.7 Indemnification of the Plan Administrator and Related Parties	19
5.4.8 Insurance	20
5.4.9 Preservation of Retained Causes of Action	20
5.5 Funding of Administrative, Priority and Secured Claims Reserve.....	20

5.6	Funding of Professional Fee Reserve	20
5.7	Funding of General Unsecured Claims Distribution Amount	20
ARTICLE VI EXECUTORY CONTRACTS AND UNEXPIRED LEASES; D&O INDEMNIFICATION OBLIGATIONS.....		21
6.1	Executory Contracts and Unexpired Leases	21
6.2	Rejection Claims	21
6.3	D&O Policy	21
6.4	D&O Indemnification Obligations	21
ARTICLE VII CERTAIN PROVISIONS GOVERNING DISTRIBUTIONS		22
7.1	Interest on Claims	22
7.2	Distributions by Post-Effective Date Debtor	22
7.3	Means of Cash Payment.....	22
7.4	Fractional Distributions	23
7.5	De Minimis Distributions	23
7.6	Delivery of Distributions	23
7.7	Withholding, Payment and Reporting Requirements with Respect to Distributions.....	23
7.8	Setoffs	24
7.9	No Distribution in Excess of Allowed Amounts	24
7.10	Allocation of Distributions	24
7.11	Forfeiture of Distributions	24
ARTICLE VIII PROCEDURES FOR RESOLVING DISPUTED, CONTINGENT AND UNLIQUIDATED CLAIMS AND DISTRIBUTIONS WITH RESPECT THERETO.....		25
8.1	Claims Administration Responsibility	25
8.2	Claim Objections	25
8.3	No Distributions Pending Allowance	25

8.4	Estimation of Contingent or Unliquidated Claims.....	26
8.5	Amendments to Claims.....	26
ARTICLE IX CONDITIONS PRECEDENT TO THE OCCURRENCE OF THE EFFECTIVE DATE.....		26
9.1	Conditions to Confirmation	26
9.2	Conditions to the Occurrence of the Effective Date	26
9.3	Waiver of Conditions to the Occurrence of the Effective Date	27
9.4	Effect of Non-Occurrence of Conditions to the Effective Date	27
ARTICLE X RETENTION OF JURISDICTION		27
10.1	Scope of Retained Jurisdiction.....	27
10.2	Failure of the Bankruptcy Court to Exercise Jurisdiction.....	29
ARTICLE XI MISCELLANEOUS PROVISIONS.....		29
11.1	Administrative Claims Bar Date.....	29
11.2	Professional Fee Claims.....	30
11.3	Payment of Statutory Fees	30
11.4	Modifications and Amendments	31
11.5	Severability of Plan Provisions.....	31
11.6	Successors and Assigns.....	31
11.7	Post-Effective Date Compromises and Settlements	31
11.8	Binding Effect of Plan	32
11.9	Non-Discharge of the Debtor; Injunction	32
11.10	Releases and Related Matters	33
11.11	Exculpation and Limitation of Liability	34
11.12	Term of Injunctions or Stays.....	35
11.13	Revocation, Withdrawal or Non-Consummation	35

11.14	Computation of Time	35
11.15	Headings	35
11.16	Governing Law	35
11.17	Preservation of Retained Causes of Action	36
11.17.1	Vesting of Causes of Action	36
11.17.2	Reservation of Causes of Action.....	36
11.18	Bar Date Order.....	36
11.19	Section 1146 Exemption	36
11.20	Conflicts with the Plan.....	37
11.21	No Stay of Confirmation Order	37
ARTICLE XII THE PLAN SETTLEMENT		37
12.1	The Plan Settlement	37
ARTICLE XIII REQUEST FOR CONFIRMATION		38
13.1	Request for Confirmation	38

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 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 allowed by a Final Order; (c) 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 (d) 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 Asgard Capital: Asgard Capital LLC.

1.8 Asgard Capital Fee Claim: A Claim of Asgard 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 Asgard Capital Parties: Charles C. Reardon, Asgard Capital, its Related Parties, and any other Persons and Entities that have provided services to the Debtor on behalf of Asgard 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, 328, 1103 or 1104 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: (i) included in a proof of claim as to which an objection or request for estimation has been filed, 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; or (ii) that is otherwise disputed by the Debtor or the Post-Effective Date Debtor, as applicable, in accordance with applicable law 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.

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; and (v) the Professionals retained by the Debtor pursuant to an Order of the Bankruptcy Court pursuant to sections 327, 328, 1103 or 1104 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, 328, 1103 or 1104 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 April 2, 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.

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, 328, 1103 or 1104 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)(3) or 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.

1.1 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.

1.111 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.

1.112 **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 (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; (iii) such Claim reinstated pursuant to sections 1124(1) or 1124(2) of the Bankruptcy Code; or (iv) 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 full 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 designate any Claim as 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. 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.

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's Related Parties, 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's Related Parties 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. 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. 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. 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), 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 (i) Administrative Claims and (ii) 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. 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. Any Claims filed after the applicable deadlines in the Bar Date Order or the Plan shall be automatically deemed disallowed in full without 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, or not inconsistent with, 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	<u>Counsel to the Magicheart Parties:</u> Morris, Nichols, Arsht & Tunnell LLP 1201 North Market Street, Suite 1600
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Wilmington, DE 19801 Attention: Robert F. Poppiti, Jr. and Betsy L. Feldman	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 fourteen (14) 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).

(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.

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 in the ordinary course. The Post-Effective Date Debtor and the Plan Administrator shall have the obligation to pay U.S. Trustee Fees until the Chapter 11 Case is closed, dismissed or converted. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file

any proofs of claim or requests for payment of Administrative Claim with respect to U.S. Trustee Fees.

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. In accordance with section 1141(d)(3) of the Bankruptcy Code, the Plan does not discharge the Debtor. Section 1141(c) of the Bankruptcy Code nevertheless provides, among other things, that the property dealt with by the Plan is free and clear of all Claims and Interests. As such, 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:

(a) 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;

(b) 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;

(c) 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;

(d) 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

(e) 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 asserted in a timely filed proof of claim.

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).

(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 (i) the Bankruptcy Court’s approval of the releases set forth in this Section 11.10; and (ii) the Bankruptcy Court’s findings that, among other things, such releases are (1) in the best interests of the Debtor and the Estate, (2) fair, equitable and reasonable, (3) given and made after due notice and opportunity for objection and hearing, (4) consensual, (5) supported by good and valuable consideration, and (6) a bar against any released claims being asserted against any of the Released Parties.

(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, none of the Exculpated Parties shall have or incur any liability to any Person or Entity, including, without limitation, to any Holder of a Claim or an Interest, for any act or omission 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.

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; (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, any Order in the Chapter 11 Case (other than the Confirmation Order), 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.

2021. IN WITNESS WHEREOF, the Debtor has executed the Plan this 2nd day of April,

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 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 TO DISCLOSURE STATEMENT

Liquidation Analysis

Suitable Technologies, Inc. Liquidation Analysis
estimated Effective Date of 6/30/2021

Estimated Sources of Effective Date Cash: (1)

Cash on hand as of Effective Date (2)
Funding of Wind-Down Budget pursuant to the Plan Settlement (3)
Funding of Allowed Secured, Administrative, Priority Tax, and Priority Claims from the Additional Borrowing
Funding of General Unsecured Claims Distribution Amount pursuant to the Plan Settlement (4)

Total Estimated Cash

Chapter 11

Chapter 7

\$0	\$0
\$409,350	\$0
\$28,052	\$0
\$306,517	\$0
\$743,919	\$0

Estimated Uses of Effective Date Cash: (5) (6)

CRO and Additional Personnel
Restructuring Professional Fees
Chapter 7 Trustee Professional Fees
Independent Contractors
Other Miscellaneous Expenses
US Trustee Fees (7)
Chapter 7 Trustee Fees (8)

Total Estimated Wind-Down Costs

\$266,650	\$0
\$120,000	\$0
\$0	\$90,000
\$11,100	\$11,100
\$5,100	\$5,100
\$6,500	\$0
\$0	\$5,750
\$409,350	\$111,950

Magicheart DIP Claim (9)

\$6,500,000

\$6,500,000

Magicheart Prepetition Secured Promissory Notes Claim (9)

\$3,775,000

\$3,775,000

Cash available for Allowed Secured, Administrative, Priority Tax, Priority, and Professional Fee

\$28,052

\$0

Cash available for Allowed General Unsecured Claims (11)

\$306,517

\$0

NOTES:

1	Other than the claims, causes of action and disputes resolved in connection with the Plan Settlement, the Debtor has no remaining significant assets to liquidate, and all of the Assets, including any proceeds thereof, other than any claims and causes of action of the Debtor under chapter 5 of the Bankruptcy Code, which are not Postpetition Collateral (as defined in the DIP Credit Agreement), are subject to the liens and superpriority claims (as applicable) of Magicheart on account of the DIP Claim and the Prepetition Secured Promissory Notes Claim. As a result, on the Effective Date, the Debtors' only Assets will be the Cash funded to the Debtor, under the Plan Settlement, for the Wind-Down Budget and the General Unsecured Claims Distribution Amount.
2	Estimated Cash in the Debtor's bank account on the Effective Date is based on the budget attached to the Fourth Amendment to the DIP Credit Agreement. In a Chapter 11 Case, Cash on hand is \$0 because all fees and expenses accrued prior to the Effective Date are assumed to have been previously paid from proceeds under the DIP Credit Agreement. In a Chapter 7 Case, Cash on hand would also be \$0 because even if there is any Cash on hand as of the Effective Date, it would be subject to the liens and superpriority claims (as applicable) of Magicheart on account of the DIP Claim and the Prepetition Secured Promissory Notes Claim. Any remaining unapplied professional retainers would first be subject to unpaid bills and potential indemnification claims of certain professionals, and to the extent any amounts were returned to the estate, then to the liens and superpriority claims (as applicable) of Magicheart on account of the DIP Claim and the Prepetition Secured Promissory Notes Claim.
3	The Plan Settlement contemplates Magicheart funding the Wind-Down Budget in the amount of \$409,350. The Debtor does not believe that the Wind-Down Budget Amount would be available in a Chapter 7 Case.
4	The Plan Settlement contemplates Magicheart funding the General Unsecured Claims Distribution Amount, which would be distributed on a pro rata basis to the Holders of Allowed General Unsecured Claims. The Debtor does not believe that the General Unsecured Claims Distribution Amount would be available in a Chapter 7 Case.
5	In a Chapter 11 Case, the estimated uses of Effective Date Cash (other than the General Unsecured Claims Distribution Amount) are per the Wind-Down Budget. The General Unsecured Claims Distribution Amount is required to be distributed pro rata to Holders of Allowed General Unsecured Claims under the Plan Settlement and is not available for wind-down costs or distributions to any other creditors.
6	The Chapter 7 Case assumes a hypothetical conversion of the Chapter 11 Case to a Chapter 7 Case on 6/30/2021. Professional fees are assumed to be 25% lower in a Chapter 7 Case because, among other things, there would not be any plan distributions to be processed and reporting requirements would be simplified.
7	There are no UST Fees in a Chapter 7 case.
8	Chapter 7 Trustee Fees are based on the fee schedule in section 326 of the Bankruptcy Code, assuming \$50,000 Cash is turned over by the Chapter 7 trustee to Magicheart.
9	As of the Effective Date, Magicheart's DIP Claim is expected to be not less than approximately \$6,500,000 (not including the Wind-Down Budget Amount) and its Prepetition Secured Promissory Notes Claim is not less than \$3,775,000. All of the Assets, including any proceeds from the sale thereof, other than any claims and causes of action of the Debtor under chapter 5 of the Bankruptcy Code, which are not Postpetition Collateral (as defined in the DIP Credit Agreement), are subject to the liens and superpriority claims (as applicable) of Magicheart on account of the DIP Claim and the Prepetition Secured Promissory Notes Claim, which are receiving no distribution under the Plan as a result of the Plan Settlement.
10	Allowed Secured, Administrative, Priority Tax and Priority Claims are estimated to be \$28,052 in the aggregate and pursuant to the Plan Settlement will be satisfied in full. Professional Fee Claims are estimated to be \$0 because such amounts will have been previously funded to the Professional Fee Escrow in accordance with the DIP Order and pursuant to the Plan Settlement will be satisfied in full.
11	Excluding Magicheart's aggregate General Unsecured Claims of not less than \$88,476,083, Allowed General Unsecured Claims are estimated to be approximately \$875,764; pursuant to the Plan Settlement, such Allowed Claims would share pro rata in the General Unsecured Claims Distribution Amount.