

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

In Re:)
)
ANGEL MEDICAL SYSTEMS, INC.,)
a Delaware corporation,)
)
Debtor.¹)
_____)

Chapter 11
Case No. 18-12903 ()

AMENDED PLAN OF REORGANIZATION OF ANGEL MEDICAL SYSTEMS, INC.

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Dated: December 26, 2018

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INTRODUCTION

Angel Medical Systems, Inc. (the “*Debtor*”) proposes this prepackaged plan of reorganization for the resolution of the outstanding Claims against and Interests in the Debtor. Reference is made to the Disclosure Statement, filed contemporaneously herewith, for a discussion of (a) certain information relating to the Debtor, (b) a summary and analysis of this Plan, and (c) certain matters related to the confirmation and the consummation of this Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, Angel Medical Systems, Inc. reserves the right to alter, amend, modify, revoke, or withdraw this Plan.

ARTICLE I

DEFINED TERMS AND RULES OF INTERPRETATION

Rules Of Interpretation And Computation Of Time. For purposes of this Plan, unless otherwise provided herein: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural; (b) unless otherwise provided in this Plan, any reference in this Plan to a contract, instrument, release, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions with any modifications; (c) any reference in this Plan to an existing document or schedule filed or to be filed means such document or schedule, as it may have been or may be amended, modified, or supplemented pursuant to this Plan; (d) any reference to an entity as a Holder of a Claim or Interest includes that entity's successors and assigns; (e) all references in this Plan to Sections and Articles are references to Sections and Articles of or to this Plan; (f) the words “herein,” “hereunder,” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this 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 this Plan; (h) subject to the provisions of any contract, certificates of incorporation, by-laws, instrument, release, or other agreement or document entered into in connection with this Plan, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and Bankruptcy Rules; (i) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (j) in computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply; (k) “including” means including without limitation;” and (l) with reference to any distribution under this Plan, “on” a date means on or as soon as reasonably practicable after that date.

Exhibits. All Exhibits are incorporated into and are a part of this Plan as if set forth in full herein, and, to the extent not annexed hereto, such Exhibits shall be filed with the Bankruptcy Court in the form of a Plan Supplement, no later than seven days prior to the Confirmation Hearing and shall be in form and substance satisfactory to the Debtor.

Defined Terms. As used herein, capitalized terms shall have the meanings set forth below. Any term that is not otherwise defined herein, but that is used in the Bankruptcy

Code or the Bankruptcy Rules, shall have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

1.1 **2012 Notes Claims** means Claims arising under the 2012 Notes.

1.2 **2012 Notes** means notes issued under that certain Note Purchase and Security Agreement, dated as of December 5, 2012 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof) by and among the Debtor, as the borrower, Bioinfo Accelerator Fund, LLC, as agent, and the noteholders party thereto.

1.3 **2014 Notes Claims** means Claims arising under the 2014 Notes.

1.4 **2014 Notes** mean notes issued under that certain Note Purchase and Security Agreement, dated as of November 25, 2014 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof) by and among the Debtor, as the borrower, Bioinfo Accelerator Fund, LLC, as agent, and the noteholders party thereto.

1.5 **2016 Notes Claims** means Claims arising under the 2016 Notes.

1.6 **2016 Notes** means notes issued under that certain Note Purchase and Security Agreement, dated as of September 20, 2016 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof) by and among the Debtor, as the borrower, Bioinfo Accelerator Fund, LLC, as agent, and the note holders party thereto.

1.7 **Administrative Claim** means a Claim for costs and expenses of administration of the Chapter 11 Case under sections 503(b) or 507(b) of the Bankruptcy Code.

1.8 **Allowed** means: (a) listed in the Schedules in an amount greater than zero and (i) not listed as disputed, contingent or unliquidated, as to which any objection or motion to estimate, equitably subordinate, reclassify, or otherwise limit the recovery thereon has been resolved, and (ii) as to which no proof of claim has been filed; (b) as to which a timely proof of claim has been filed in a sum certain, as to which any objection or motion to estimate, equitably subordinate, reclassify, or otherwise limit the recovery thereon has been resolved; (c) allowed in accordance with Section 502(h) of the Bankruptcy Code; or (d) allowed under this Plan or by Final Order of the Bankruptcy Court. A claim shall not be deemed Allowed until any period to object to such claim has expired.

1.9 **Amended and Restated Articles of Incorporation** means the Amended and Restated Articles of Incorporation of the Reorganized Debtor, in the form attached as Exhibit D.

1.10 **Assumed Contract** is defined in Section 7.1 hereof.

1.11 **Assumed Contract List** means the list, attached hereto as Exhibit B, of the Executory Contracts and Unexpired Leases to be assumed under Section 7.1 hereof.

1.12 **Avoidance Action** means any claim or cause of action of the Estate arising out of or maintainable pursuant to sections 506(c), 510, 542, 543, 544, 545, 547, 548, 549, 550, 551, 552(b) or 553 of the Bankruptcy Code or under any other similar applicable law, regardless of whether or not such action has been commenced prior to the Effective Date.

1.13 **Bankruptcy Code** means title 11 of the United States Code, as now in effect or hereafter amended to the extent such amendments apply to the Chapter 11 Case.

1.14 **Bankruptcy Court** means the United States Bankruptcy Court for the District of Delaware or any other court with jurisdiction over the Chapter 11 Case.

1.15 **Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure, as now in effect or hereafter amended to the extent such amendments apply to the Chapter 11 Case.

1.16 **Benefit Plans** is defined in Section 7.4 hereof.

1.17 **Business Day** means any day, other than a Saturday, Sunday, or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

1.18 **Cash** means legal tender of the United States of America, and equivalents thereof.

1.19 **Causes of Action** means any action, claim, cause of action, controversy, demand, right, action, lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, license, and franchise of any kind or character whatsoever, whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law, or in equity or pursuant to any other theory of law. For the avoidance of doubt. “Causes of Action” include: (a) any right of setoff, counterclaim, or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity, (b) the right to object to Claims or Interests, (c) any Claim pursuant to section 362 or chapter 5 of the Bankruptcy Code, (d) any claim or defense including fraud, mistake, duress and usury; and any other defenses set forth in section 558 of the Bankruptcy Code, (e) any state or foreign law fraudulent transfer or similar claim; and (f) any cause of action described on the Debtor’s Schedules or Statement of Financial Affairs.

1.20 **Chapter 11 Case** means the bankruptcy case of the Debtor under Chapter 11 of the Bankruptcy Code.

1.21 **Claim** means a “claim” as defined in section 101(5) of the Bankruptcy Code.

1.22 **Claims Objection Deadline** is defined in Section 6.5 hereof.

1.23 **Class** means a category of Claims or Interests, as described in Article III hereof.

1.24 **Confirmation** means the confirmation of this Plan by the Bankruptcy Court pursuant to section 1129 of the Bankruptcy Code.

1.25 **Confirmation Date** means the date on which the Confirmation Order is entered on the docket of the Bankruptcy Court.

1.26 **Confirmation Hearing** means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

1.27 **Confirmation Order** means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

1.28 **Convenience Claims** means Claims of a single Holder that would otherwise be included in the Class of General Unsecured Claims that are either (i) \$7,500 or less in the aggregate or (ii) by election of the Holder of the Claims(s) prior to the Effective Date to treat such Claim(s) as totaling less than \$7,500 in the aggregate.

1.29 **Creditors' Committee** means the statutory committee of unsecured creditors, if any, appointed in the Chapter 11 Case pursuant to section 1102 of the Bankruptcy Code.

1.30 **Cure** means the payment of cash or the distribution of other property (as the parties may agree or the Bankruptcy Court may order), as necessary to cure defaults under an executory contract or unexpired lease of the Debtor and to permit that Debtor to assume the contract or lease under Section 365(a) of the Bankruptcy Code.

1.31 **Debtor** means Angel Medical Systems, Inc., a Delaware corporation.

1.32 **DIP Facility** means any debtor-in-possession financing facility provided to the Debtor pursuant to an order of the Bankruptcy Court.

1.33 **DIP Facility Claims** means the obligations owed to the lender(s) under the DIP Facility.

1.34 **DIP Lender** means a Person identified as a lender under the DIP Facility in its capacity as such.

1.35 **Disclosure Statement** means that certain Disclosure Statement with respect to this Plan, as amended, supplemented, or modified from time to time.

1.36 **Disputed Claim** means (a) any Claim as to which an objection or request for estimation has been made in accordance with the Bankruptcy Code and the Bankruptcy Rules, or any claim otherwise disputed by the Debtor or the Reorganized Debtor, which objection has not been withdrawn or determined by a Final Order, (b) any Claim scheduled by the Debtor as contingent, unliquidated, or disputed, (c) any Claim which amends a Claim scheduled by the Debtor as contingent, unliquidated, or disputed, or (d) any Claim prior to it having become an Allowed Claim.

1.37 ***Distribution Reserve*** is defined in Section 8.6 hereof.

1.38 ***Effective Date*** means a Business Day on or after the Confirmation Date specified by the Debtor on which (a) no stay of the Confirmation Order is in effect and (b) the conditions to effectiveness set forth in Article IX hereof have been satisfied or waived.

1.39 ***Eligible Participants*** means each holder of 2012 Notes, 2014 Notes, 2016 Notes Rights and Old Equity Interests that is an “accredited investor” as defined in Rule 501(a) of Regulation D under the Securities Act of 1933.

1.40 ***Estate*** means the estate of the Debtor created under section 541 of the Bankruptcy Code.

1.41 ***Exculpated Parties*** means each of the following in their capacity as such (a) the Debtor, (b) the Reorganized Debtor, (c) the Creditors’ Committee, if any, (d) the members of the Creditors’ Committee in their capacity as such, if any, (e) any DIP Lender, (f) the Lead Investor, and (g) the respective Related Persons of each of the foregoing.

1.42 ***Executory Contracts and/or Unexpired Leases*** means all executory contracts and unexpired leases to which the Debtor is a party.

1.43 ***Exhibit*** means an exhibit annexed to the Disclosure Statement and Plan or contained in the Plan Supplement, as such exhibit may be amended, modified or supplemented from time to time.

1.44 ***Executory Contract Objection Deadline*** is defined in Section 7.1 hereof.

1.45 ***Final Order*** means an order or judgment, the operation or effect of which has not been reversed, stayed, modified, or amended, and as to which order or judgment (or any reversal, stay, modification, or amendment thereof) (a) the time to appeal, seek certiorari, or request reargument or further review or rehearing has expired and no appeal, petition for certiorari, or request for reargument or further review or rehearing has been timely filed, or (b) any appeal, that has been or may be taken or any petition for certiorari or request for reargument or further review or rehearing that has been or may be filed, has been resolved by the highest court to which the order or judgment was appealed, from which certiorari was sought, or to which the request was made, and no further appeal or petition for certiorari or request for reargument or further review or rehearing has been or can be taken for granted.

1.46 ***General Unsecured Claim*** means a Claim against the Debtor that is not an Administrative Claim, DIP Facility Claim, Priority Tax Claim, Non-Tax Priority Claim, 2012 Notes Claim, 2014 Notes Claim, 2016 Notes Claim, Other Secured Claim or Convenience Claim. For avoidance of doubt, General Unsecured Claims do not include any unsecured deficiency claims arising under the 2012 Notes, 2014 Notes, or 2016 Notes.

1.47 ***Holder*** means a holder of a Claim or Interest, as applicable.

1.48 **Impaired** means when used in reference to a Claim or Interest, a Claim or Interests that is in a Class that is impaired within the meaning of section 1124 of the Bankruptcy Code.

1.49 **Indemnification Obligation** is defined in Section 7.6 hereof.

1.50 **Interest** means the legal, equitable, contractual (including, without limitation, any contractual right to acquire equity in the Debtor contingent upon future events), and other rights of any Person with respect to any equity interest, including all common stock and preferred stock, or other ownership interest in the Debtor, whether or not transferable, and any option, warrant, or right to purchase, sell, or subscribe for an ownership interest or other equity security in the Debtor.

1.51 **Junior Noteholder Allocation of New Common Stock** means 5,970,949 shares of New Common Stock of the Reorganized Debtor representing 100% of the New Common Stock to be issued on the Effective Date, subject to dilution by the Management Incentive Plan.

1.52 **Lead Investor** means MCM Angel Partners, LLC.

1.53 **Lien** means any lien, security interest, pledge, title retention agreement, encumbrance, charge, mortgage or hypothecation, other than, in the case of securities and any other equity ownership interests, any restrictions imposed by applicable United States or foreign securities laws.

1.54 **Local Rules** means the local rules of the United States Bankruptcy Court for the District of Delaware, as now in effect or hereafter amended to the extent such amendments apply to the Chapter 11 Case.

1.55 **Management Incentive Plan** means a management incentive plan to be adopted by the board of the Reorganized Debtor under which an options pool allocation of New Common Stock will be created in the amount of 10% of the total available stock (based on issued New Common Stock plus issued New Series A Preferred Stock) (after taking into account the shares to be issued under the Management Incentive Plan).

1.56 **New Common Stock** means shares of common stock of the Reorganized Debtor with a par value of \$.001 to be issued by the Reorganized Debtor under the Amended and Restated Articles of Incorporation.

1.57 **New Equity Interests** means, collectively, the New Common Stock and the New Series A Preferred Stock.

1.58 **New Series A Preferred Stock** means the New Series A Preferred Stock, on the terms set forth on Exhibit A, to be issued by the Reorganized Debtor under the terms of this Plan and the New Series A Preferred Stock Purchase Documents on the Effective Date.

1.59 **New Series A Preferred Stock Purchase Documents** means, collectively, a (i) New Series A Stock Purchase Agreement, (ii) New Investors' Rights Agreement, (iii) New

Voting Agreement, and (iv) New Right of First Refusal and Co-Sale Agreement, each on the terms set forth on Exhibit A hereto and substantially in the form contained in Exhibits E through H in the Plan Supplement, pursuant to which the Reorganized Debtor will issue New Series A Preferred Stock.

1.60 **Non-Tax Priority Claim** means a Claim, other than an Administrative Claim or Priority Tax Claim, which is entitled to priority in payment pursuant to section 507(a) of the Bankruptcy Code.

1.61 **Old Equity Interests** means all Interests, whether or not evidenced by a security, in the Debtor issued and outstanding immediately before the Effective Date.

1.62 **Other Secured Claim** means a Secured Claim that is not a DIP Facility Claim, 2012 Notes Claims, 2014 Notes Claims or 2016 Notes Claims.

1.63 **Person** means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, corporation, general or limited partnership, limited liability company, joint venture, joint stock company, firm, trust, estate, unincorporated organization, association, government, governmental agency, or other entity, in each case whether acting in an individual, fiduciary or other capacity.

1.64 **Petition Date** means the date on which the Debtor filed its petition for relief commencing its Chapter 11 Case.

1.65 **Plan** means this chapter 11 plan of reorganization for the Debtor, including the Exhibits and all supplements, appendices, and schedules hereto, either in its current form or as the same may be amended, modified or supplemented from time to time.

1.66 **Plan Supplement** means the compilation of the exhibits to the Plan to be filed with the Bankruptcy Court.

1.67 **Priority Tax Claim** means a Claim of a governmental unit of the kind specified in sections 502(i), 507(a)(8), or 1129(a)(9)(D) of the Bankruptcy Code.

1.68 **Professional** means (a) any professional employed in the Chapter 11 Case pursuant to sections 327, 328, or 1103 of the Bankruptcy Code or otherwise and (b) any professional or other entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to section 503(b)(4) of the Bankruptcy Code.

1.69 **Professional Fee Claim** means an Administrative Claim of a Professional for compensation for services rendered or reimbursement of costs, expenses, or other charges incurred on or after the Petition Date and prior to and including the Effective Date.

1.70 **Rejected Contract** is defined in Section 7.1 hereof.

1.71 **Rejected Contract List** means the list, attached hereto as Exhibit C, of the Executory Contracts and Unexpired Leases to be rejected under Section 7.1 hereof.

1.72 **Reinstated** means (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim so as to leave the Class including such Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim to demand or receive accelerated payment of such Claim after the occurrence of a default, (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code, (ii) reinstating the maturity of such Claim as such maturity existed before such default, (iii) compensating the holder of a Claim for any damages incurred as a result of any reasonable reliance by such holder of a Claim on such contractual provision or such applicable law, and (iv) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim; provided, however, that any contractual right that does not pertain to the payment when due of principal and interest on the obligation on which such Claim is based, including, but not limited to, financial covenant ratios, negative pledge covenants, covenants or restrictions on merger or consolidation, and affirmative covenants regarding corporate existence, prohibiting certain transactions, change of control or actions contemplated by this Plan, or conditioning such transactions or actions on certain factors, shall not be required to be cured to achieve reinstatement.

1.73 **Related Persons** means, with respect to any Person, such Person's predecessors, successors, assigns and present and former affiliates (whether by operation of law or otherwise) and subsidiaries, and each of their respective current and former officers, directors, principals, employees, shareholders, members (including ex officio members), general partners, limited partners, agents, managers, managing members, financial advisors, attorneys, accountants, investment bankers, investment advisors, consultants, representatives, and other professionals, in each case acting in such capacity on or any time before or after the Petition Date, and any Person claiming by or through any of them.

1.74 **Released Parties** means each of the following in their capacity as such (a) the Debtor, (b) the Reorganized Debtor, (c) the Creditors' Committee, if any, (d) the members of the Creditors' Committee in their capacity as such, if any, (e) any DIP Lender, (f) the Lead Investor, and (g) the respective Related Persons of each of the foregoing.

1.75 **Releasing Party** means, each of, and in each case in its capacity as such: (a) the Debtor, (b) the Reorganized Debtor; (c) each DIP Lender, (d) the Lead Investor, (e) all Holders of Claims; (f) all Holders of Interests; and (g) each Related Party of each Person in clause (a) through (g). Notwithstanding the foregoing, a Person shall be neither a Releasing Party nor a Released Party if it: (x) does not vote to, and is not deemed to, accept the Plan; and (y) timely makes an election to opt out of the release provisions in the Plan by (i) indicating its election to opt out of releases on the ballot or notice provided to such Person that is timely delivered in accordance with the instruction set forth therein or (ii) filing with the Bankruptcy Court on the docket of the Chapter 11 Case an objection to the releases contained in the Article X of the Plan that is not resolved before Confirmation. Any such Person shall be identified by name as a "non-Releasing Party" in the Confirmation Order.

1.76 **Reorganized Debtor** means the Debtor on and after the Effective Date.

1.77 **Retained Actions** means all Causes of Action; provided, however, that Retained Actions shall not include those Causes of Action, whether in law or equity, whether known or unknown, released under Article X hereof.

1.78 **Rights Offering** means a rights offering of New Series A Preferred Stock to Eligible Participants.

1.79 **Schedules** means the schedules of assets and liabilities filed in the Bankruptcy Court by the Debtor, as may be amended from time to time.

1.80 **Secured Claim** means a Claim that is secured by a Lien on property in which the Debtor's Estate has an interest or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim Holder's interest in the applicable Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or, in the case of setoff, pursuant to section 553 of the Bankruptcy Code.

1.81 **Senior Noteholder Allocation of New Series A Preferred Stock** means 2,661,826 shares of New Series A Preferred Stock.

1.82 **SOFAs** means the Statement of Financial Affairs filed by the Debtor.

1.83 **Transaction Documents** means, collectively, the Amended and Restated Articles of Incorporation, the New Series A Preferred Stock Purchase Documents, the New Equity Interests, and any agreement, contract, instrument, and other agreement or document executed or delivered in connection with the foregoing.

1.84 **Unclassified Claims** means the Administrative Claims and Priority Tax Claims.

1.85 **Unimpaired** means a Claim or Interest that is not Impaired.

1.86 **UST Fees** is defined in Section 12.3.

ARTICLE II

TREATMENT OF UNCLASSIFIED CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims are not classified and are not entitled to vote on this Plan.

2.1 **Administrative Claims.** On, or as soon as reasonably practicable after, the latest of (a) the Effective Date, (b) the date on which an Administrative Claim becomes an Allowed Administrative Claim, or (c) the date on which an Allowed Administrative Claim becomes payable under any agreement relating thereto, each Holder of such Allowed Administrative Claim shall receive, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Administrative Claim, Cash equal to the unpaid portion of such Allowed Administrative Claim. Notwithstanding the foregoing, (y) any Allowed

Administrative Claim based on a liability incurred by a Debtor in the ordinary course of business during the Chapter 11 Case may be paid in the ordinary course of business in accordance with the terms and conditions of any agreement relating thereto and (z) any Allowed Administrative Claim may be paid on such other terms as may be agreed to between the Holder of such Claim and the Debtor or the Reorganized Debtor.

2.2 ***DIP Facility Claims.*** On the Effective Date, the DIP Lenders shall convert \$2,000,000 of their Allowed DIP Facility Claims into New Series A Preferred Stock under the New Series A Preferred Stock Purchase Documents. To the extent that Allowed DIP Facility Claims exceed \$2,000,000, the unconverted balance of Allowed DIP Facility Claims shall be paid in full in Cash by the Debtor to the DIP Lenders on the Effective Date. To the extent that Allowed DIP Facility Claims are less than \$2,000,000, the difference between \$2,000,000 and Allowed DIP Facility Claims, shall be paid in full in Cash by the DIP Lenders to the Reorganized Debtor on or before the Effective Date.

2.3 ***Priority Tax Claim.*** On, or as soon as reasonably practicable after, the later of (a) the Effective Date or (b) the date on which a Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim shall receive, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Priority Tax Claim, in the sole discretion of the Reorganized Debtor, (a) Cash equal to the unpaid portion of such Holder's Allowed Priority Tax Claim, (b) payment in accordance with the provisions of section 1129(a)(9)(C) of the Bankruptcy Code over a period not ending later than five years from the Petition Date, or (c) such other treatment as to which the Debtor, Reorganized Debtor and such Holder shall have agreed upon in writing.

2.4 ***Professional Fee Claims.*** Professional Fee Claims shall be paid in full in Cash on, or as soon as reasonably practicable after, the allowance of such claims by Final Order of the Bankruptcy Court. Each Professional requesting compensation pursuant to sections 330, 331 or 503(b) of the Bankruptcy Code for services rendered in connection with the Chapter 11 Case prior to the Effective Date shall file with the Bankruptcy Court an application for allowance of final compensation and reimbursement of expenses in the Chapter 11 Case on or before the 45th day following the Effective Date. Without limiting the foregoing, the Reorganized Debtor may pay the charges incurred by the Reorganized Debtor on and after the Effective Date for any Professional's fees, disbursements, expenses or related support services, without application to or approval by the Bankruptcy Court.

ARTICLE III

CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

3.1 *Introduction.*

Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of Classes of Claims against and Interests in the Debtor. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified, and the respective treatment of such Unclassified Claims is set forth in Article II of this Plan.

A Claim or Interest is placed in a particular Class only to the extent that the Claim or 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 this Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released, or otherwise settled prior to the Effective Date.

3.2 *Summary of Classes.*

<i>Class</i>	<i>Impaired/Unimpaired; Entitlement To Vote</i>
Class 1 - Non-Tax Priority Claims	Unimpaired - Deemed to have accepted this Plan and not entitled to vote
Class 2 – Other Secured Claims	Unimpaired - Deemed to have accepted this Plan and not entitled to vote
Class 3 – 2012 Notes Claims	Impaired – Entitled to vote
Class 4 – 2014 Notes Claims	Impaired – Entitled to vote
Class 5 – 2016 Notes Claims	Impaired – Entitled to vote
Class 6 – General Unsecured Claims	Impaired – Deemed to have rejected this Plan and not entitled to vote
Class 7 – Convenience Claims	Unimpaired – Deemed to have accepted this Plan and not entitled to vote
Class 8 - Old Equity Interests	Impaired – Deemed to have rejected this Plan and not entitled to vote

3.3 *Treatment of Classes.*

Class 1 – Non-Tax Priority Claims

Class 1 - All Non-Tax Priority Claims against the Debtor.

Treatment: Except to the extent that the Holder of an Allowed Non-Tax Priority Claim has agreed to a less favorable treatment of such Claim, on, or as soon as reasonably practicable after the latest of (a) the Effective Date, (b) the date on which such Non-Tax Priority Claim becomes an Allowed Non-Tax Priority Claim, (c) the date on which such Allowed Non-Tax Priority Claim is otherwise due and payable, and (d) such other date as mutually may be agreed to by and between the Reorganized Debtor and the Holder of such Non-Tax Priority Claim, each Holder of an Allowed Non-Tax Priority Claim shall receive, in full

and final satisfaction, release, and discharge of, and in exchange for, such Allowed Non-Tax Priority Claim, Cash equal to the unpaid portion of such Allowed Non-Tax Priority Claim.

Voting: Class 1 is Unimpaired and the Holders of Allowed Class 1 Non-Tax Priority Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Non-Tax Priority Claims are not entitled to vote to accept or reject this Plan.

Class 2 – Other Secured Claims

Class 2 - All Other Secured Claims against the Debtor. (Each Other Secured Claim shall constitute a separate Class numbered 2.1, 2.2, 2.3, etc.)

Treatment: On the Effective Date, or as soon thereafter as is reasonably practicable, each Holder of an Allowed Class 2 Other Secured Claim shall, at the option of the Reorganized Debtor in an exercise of its business judgment, and without need for further order of the Bankruptcy Court, be entitled to the treatment set forth below in option A, B, C, or D. The Reorganized Debtor specifically reserves the right to challenge the validity, nature and perfection of, and to avoid pursuant to the provisions of the Bankruptcy Code and other applicable law, any purported Liens relating to the Other Secured Claims.

Option A: Allowed Other Secured Claims with respect to which the Reorganized Debtor elects option A shall be Reinstated. The failure of the Debtor to file an objection, prior to the Effective Date, with respect to any Other Secured Claim that is Reinstated hereunder shall be without prejudice to the rights of the Reorganized Debtor to contest or otherwise defend against such Claim in an appropriate forum when and if such Claim is sought to be enforced. Any Cure amount that the Debtor may be required to pay pursuant to section 1124(2) of the Bankruptcy Code on account of any such Reinstated Other Secured Claim shall be paid on, or as soon as practicable after, the latest of (a) the Effective Date, (b) the date on which such Other Secured Claim becomes Allowed, or (c) such other date as mutually may be agreed to by and between such Holder and the Debtor or Reorganized Debtor.

Option B: Allowed Other Secured Claims with respect to which the Reorganized Debtor elects option B shall be paid in Cash, in full, including any amounts owed under section 506 of the Bankruptcy Code, on, or as soon as reasonably practicable after, the latest of (a) the Effective Date, (b) the date on which such Other Secured Claim becomes an Allowed Other Secured Claim, (c) the date on which such Other Secured Claim is otherwise due and payable and (d) such other date as mutually may be agreed to by and between such Holder and the Reorganized Debtor. The failure of the Debtor to file an objection, prior to the Effective Date, with respect to any Other Secured Claim that is Reinstated hereunder shall be without prejudice to the rights of the Reorganized Debtor to

contest or otherwise defend against such Claim in an appropriate forum when and if such Claim is sought to be enforced.

Option C: Allowed Other Secured Claims with respect to which the Reorganized Debtor elects option C shall be satisfied by the surrender to the Holder of the Claim of the collateral securing the applicable Other Secured Claim.

Option D: Allowed Other Secured Claims with respect to which the Reorganized Debtor elects option D shall be satisfied in accordance with such other terms and conditions as may be agreed upon by the Reorganized Debtor and the Holder of such Allowed Secured Claim.

The Reorganized Debtor shall be deemed to have elected Option A with respect to all Allowed Other Secured Claims except those with respect to which the Debtor elects another option in writing prior to the Effective Date.

Voting: Class 2 is Unimpaired and the Holders of Allowed Class 2 Other Secured Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 2 Other Secured Claims are not entitled to vote to accept or reject this Plan.

Class 3 – 2012 Notes Claims

Class 3 - All 2012 Notes Claims.

Treatment: On the Effective Date, each Holder of a 2012 Notes Claim will receive, in full and final satisfaction of its Allowed 2012 Notes Claim, its pro rata share of the Junior Noteholder Allocation of New Common Stock based on the principal amount of the 2012 Notes.

Voting: Class 3 is Impaired. Pursuant to section 1126 of the Bankruptcy Code, each Holder of an Allowed Class 3 2012 Notes Claim is entitled to vote to accept or reject this Plan.

Class 4 – 2014 Notes Claims

Class 4 - All 2014 Notes Claims.

Treatment: On the Effective Date, each Holder of a 2014 Notes Claim will receive, in full and final satisfaction of its Allowed 2014 Notes Claims, its pro rata share of the Junior Noteholder Allocation of New Common Stock based on the principal amount of the 2014 Notes.

Voting: Class 4 is Impaired. Pursuant to section 1126 of the Bankruptcy Code, each Holder of an Allowed Class 4 2014 Notes Claim is entitled to vote to accept or reject this Plan.

Class 5 – 2016 Notes Claims

Class 5- All 2016 Notes Claims.

Treatment: On the Effective Date, each Holder of a 2016 Notes Claim will receive, in full and final satisfaction of its Allowed 2016 Notes Claims, its pro rata share of the Senior Noteholder Allocation of Series A Preferred Stock based on the principal amount of the 2016 Notes.

Voting: Class 5 is Impaired. Pursuant to section 1126 of the Bankruptcy Code, each Holder of an Allowed Class 5 2016 Note Claim is entitled to vote to accept or reject this Plan.

Class 6 – General Unsecured Claims

Class 6 - All General Unsecured Claims.

Treatment: Each Holder of an Allowed General Unsecured Claim shall receive its pro rata share of \$500,000; provided, however, that no Holder of a General Unsecured Claim shall be entitled to receive more than the amount of its Allowed General Unsecured Claim.

Voting: Class 6 is Impaired and the Holders of Allowed General Unsecured Claims are conclusively deemed to have rejected this Plan. Therefore, the Holders of Class 6 General Unsecured Claim are not entitled to vote to accept or reject this Plan.

Class 7 – Convenience Claims

Class 7 - All Convenience Claims.

Treatment: Each Holder of an Allowed Convenience Claim shall be paid in full in Cash on the Effective Date up to \$7,500.

Voting: Class 7 is Unimpaired and the Holders of Allowed Class 7 Convenience Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 7 Convenience Claims are not entitled to vote to accept or reject this Plan.

Class 8 – Old Equity Interests

Class 8 - Old Equity Interests and all Claims arising from or related to Old Equity Interests that are subject to subordination under section 510(b) of the Bankruptcy Code.

Treatment: On the Effective Date, all Old Equity Interests shall be cancelled and Holders of Old Equity Interests and Claims arising from or related

to Old Equity Interests that are subject to subordination under section 510(b) of the Bankruptcy Code shall not receive or retain any property on account thereof.

Voting: Class 8 is Impaired, and the Holders of Allowed Class 8 Old Equity Interests are conclusively deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, the Holders of Class 8 Old Equity Interests are not entitled to vote to accept or reject this Plan.

3.4 ***Alternative Treatment.*** Notwithstanding any provision herein to the contrary, any Holder of an Allowed Claim or Interest may receive, instead of the distribution or treatment to which it is entitled hereunder, any other distribution or treatment to which it and the Reorganized Debtor agree.

3.5 ***Special Provision Regarding Unimpaired Classes of Claims.*** Except as otherwise provided in this Plan, nothing shall affect the Debtor's or the Reorganized Debtor's rights and defenses, both legal and equitable, with respect to any Claims in Unimpaired Classes, including, but not limited to, all rights with respect to legal and equitable defenses to setoffs against or recoupments of Claims in Unimpaired Classes.

ARTICLE IV

ACCEPTANCE OF THIS PLAN

4.1 ***Classes Entitled to Vote.*** Classes 3, 4 and 5 are entitled to vote to accept or reject this Plan. By operation of law, Classes 1, 2 and 7 are deemed to have accepted this Plan and are not entitled to vote. Classes 6 and 8 are deemed to have rejected this Plan and are not entitled to vote.

4.2 ***Acceptance by Impaired Classes.*** An Impaired Class of Claims shall have accepted this Plan if, not counting the vote of any holder designated under section 1126(e) of the Bankruptcy Code, (a) the Holders of at least two-thirds in amount of the Allowed Claims actually voting in the Class have voted to accept this Plan and (b) the Holders of more than one-half in number of the Allowed Claims actually voting in the Class have voted to accept this Plan.

4.3 ***Elimination of Classes.*** To the extent applicable, any Class that does not contain any Allowed Claims or any Claims temporarily allowed for voting purposes under Bankruptcy Rule 3018, as of the date of the commencement of the Confirmation Hearing, shall be deemed to have been deleted from this Plan for purposes of (a) voting to accept or reject this Plan and (b) determining whether it has accepted or rejected this Plan under section 1129(a)(8) of the Bankruptcy Code.

4.4 ***Cramdown.*** To the extent necessary, the Debtor shall request Confirmation of this Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code. The Debtor reserves the right to modify this Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification.

ARTICLE V

MEANS FOR IMPLEMENTATION OF THIS PLAN

5.1 ***Continued Legal Existence and Revesting of Assets.*** On the Effective Date, the Reorganized Debtor shall be deemed to have adopted the Amended and Restated Articles of Incorporation and the Debtor will continue to exist after the Effective Date as a Delaware corporation. The Amended and Restated Articles of Incorporation shall include a provision to prohibit the Reorganized Debtor from issuing non-voting equity securities to the extent necessary to comply with section 1123(a) of the Bankruptcy Code. Except as otherwise explicitly provided in this Plan, on the Effective Date, all property comprising the Estate shall revert in the Reorganized Debtor.

5.2 ***Sources of Cash for Distribution.*** All Cash necessary for the Reorganized Debtor to make payments required by this Plan shall be obtained from (a) existing Cash balances, (b) the DIP Facility, and (c) sale and issuance of New Series A Preferred Stock under the New Series A Preferred Stock Purchase Documents.

5.3 ***Issuance of New Equity Interests.*** On the Effective Date, upon the terms and subject to the conditions set forth in this Plan and the Amended and Restated Articles of Incorporation, the Reorganized Debtor shall issue, sell and deliver the New Common Stock to holders of 2012 New Note Claims and 2014 Note Claims. On the Effective Date, upon the terms and subject to the conditions set forth in this Plan and the Amended and Restated Articles of Incorporation, the Reorganized Debtor shall issue, sell and deliver the Senior Noteholder Allocation of Series A Preferred Stock to the holders of the 2016 Note Claims. On the Effective Date, upon the terms and subject to the conditions set forth in this Plan, the Amended and Restated Articles of Incorporation, and the New Series A Preferred Stock Purchase Documents, the Reorganized Debtor shall issue, sell and deliver the Series A Preferred Stock to the investors party to the New Series A Preferred Stock Purchase Documents. The New Equity Interest issued under this Plan shall be subject to dilution by the Management Incentive Plan. All shares of New Equity Interests issued under this Plan shall be, upon issuance, fully paid and non-assessable, and the holders thereof shall have no preemptive or other rights to subscribe for additional shares, except for awards issued under the Management Incentive Plan.

5.4 ***Rights Offering.*** Eligible Participants will be eligible to participate in the Rights Offering of New Series A Preferred Stock to be issued under the New Series A Preferred Stock Purchase Documents.

5.5 ***Section 1145 Exemption.*** Pursuant to section 1145 of the Bankruptcy Code, the issuance of shares of the New Equity Interests to the holders of 2012 Notes Claims, 2014 Notes Claims, and 2016 Notes Claims pursuant to the Plan shall be exempt from registration under the Securities Act of 1933 and any state or local law requiring registration for offer or sale of a security.

5.6 ***Company Action.*** Each of the matters provided for under this Plan or the Transaction Documents involving the company structure of the Debtor or Reorganized Debtor or any company action to be taken by, or required of, the Debtor or Reorganized Debtor shall be

deemed to have occurred and be effective as provided herein, and shall be authorized, approved and, to the extent taken prior to the Effective Date, ratified in all respects without any requirement of further action by directors, officers or shareholders of the Debtor or the Reorganized Debtor.

5.7 ***Preservation of Causes of Action.*** In accordance with section 1123(b)(3) of the Bankruptcy Code, the Reorganized Debtor will retain and may (but is not required to) enforce all Retained Actions. After the Effective Date, the Reorganized Debtor, in its sole and absolute discretion, shall have the right to bring, settle, release, compromise, or enforce such Retained Actions (or decline to do any of the foregoing), without further approval of the Bankruptcy Court. The Reorganized Debtor or any successors, in the exercise of its sole discretion, may pursue such Retained Actions so long as it is determined in the exercise of the Reorganized Debtor or any successors holding such rights of action to be in its best interest. The failure of the Debtor to specifically list any claim, right of action, suit, proceeding, or other Retained Action in this Plan or the Disclosure Statement does not, and will not be deemed to, constitute a waiver or release by the Debtor or the Reorganized Debtor of such claim, right of action, suit, proceeding or other Retained Action, and the Reorganized Debtor will retain the right to pursue such claims, rights of action, suits, proceedings, and other Retained Actions in its sole discretion and, therefore, no preclusion doctrine, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches will apply to such claim, right of action, suit, proceeding, or other Retained Action upon or after the Confirmation or consummation of this Plan.

5.8 ***Effectuating Documents; Further Transactions.*** The Debtor and Reorganized Debtor, and their respective officers and designees, are authorized to execute, deliver, file, or record the Transaction Documents and such other contracts, instruments, releases, indentures, and other agreements or documents, and take such actions, as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan, or to otherwise comply with applicable law.

5.9 ***Exemption from Certain Transfer Taxes and Recording Fees.*** Pursuant to section 1146(a) of the Bankruptcy Code, any transfers from the Debtor to the Reorganized Debtor or to any other Person or entity pursuant to this Plan, or any agreement regarding the transfer of title to or ownership of any of the Debtor's real or personal property, will not be subject to any document recording tax, stamp tax, conveyance fee, sales tax, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, and the Confirmation Order will direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

5.10 ***Further Authorization.*** The Reorganized Debtor shall be entitled to seek such orders, judgments, injunctions, and rulings as it deems necessary to carry out the intentions and purposes, and to give full effect to the provisions, of this Plan.

5.11 ***Dissolution of Creditors' Committee.*** The Creditors' Committee, if any, shall continue in existence until the Effective Date to exercise those powers and perform those

duties specified in section 1103 of the Bankruptcy Code. On the Effective Date, the Creditors' Committee, shall be dissolved and the Creditors' Committees members, in their capacity as such, shall be deemed released of all their duties, responsibilities, and obligations in connection with the Chapter 11 Case or this Plan and its implementation, and the retention or employment of the Creditors' Committee's attorneys, accountants, professionals, and other agents shall terminate, except with respect to (i) all Professional Fee Claims and (ii) any appeals of the Confirmation Order.

5.12 ***Cancellation of Existing Securities and Agreements.*** Except as provided in this Plan or in the Confirmation Order or for the purpose of evidencing a right to distribution hereunder on the Effective Date, all notes, stock, instruments, certificates, agreements, side letters, fee letters and other documents evidencing or giving rise to Claims and Interests in the Debtor shall be canceled, and the obligations of the Debtor thereunder or in any way related thereto shall be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote, or other approval or authorization by any Person. The Holders of or parties to such notes, stock, instruments, certificates, agreements, side letters, fee letters, and other documents shall have no rights arising from or relating to such notes, stock, instruments, certificates, agreements, side letters, fee letters, and other documents or the cancellation thereof, except the rights provided pursuant to this Plan and the Confirmation Order.

5.13 ***Officers and Directors of Reorganized Debtor.*** On the Effective Date, each of the members of the existing board of directors of the Debtor shall be deemed to have resigned in such capacity, and the members of the existing board of directors shall return all property of the Debtor in their possession to the Debtor or Reorganized Debtor on or before such date. On the Effective Date under the Amended and Restated Articles of Incorporation, the Board will consist of five (5) individuals. The holders of New Series A Preferred Stock, voting as a separate class, will be entitled to appoint two (2) members of the board as designated by the holders of a majority in interest of the New Series A Preferred, who would initially be Victor Whitman and another to be named individual. The holders of the New Common Stock and the New Series A Preferred Stock, voting as a single class on an as converted to shares of the New Common Stock basis, would be entitled to elect the remaining three (3) members of the Board, (i) one (1) of whom would be the Company's CEO, (ii) one (1) of whom would be mutually acceptable to the other members of the board who would initially be Andrew Taylor and (iii) one of (1) of whom is designated by a the holders of the New Common Stock and the New Series A Preferred Stock, voting as a single class on an as converted to shares of the New Common Stock basis. Such composition of the board would be prescribed by the New Voting Agreement entered into by and among the Reorganized Debtor and the holders of the Debtor's capital stock. The Reorganized Debtor shall pay all reasonable expenses of the board members, including costs relating to service on a board committee. The Plan Supplement will include the biographical information of the directors to be appointed on the Effective Date. It is anticipated that the Debtor's businesses will continue to be managed, as of the Effective Date, by existing management, subject to replacement by the new board of directors after the Effective Date. On the Effective Date, the officers and directors of the Reorganized Debtor will be appointed automatically without any requirement of further action by the shareholders, officers or directors of the Debtor or the Reorganized Debtor.

ARTICLE VI

ALLOWANCE AND RESOLUTION OF CLAIMS

6.1 ***Allowed Claims and Interests.*** Notwithstanding any provision herein to the contrary, the Reorganized Debtor shall make distributions only to Holders of Allowed Claims. A Holder of a Disputed Claim shall only receive a distribution on account thereof when and to the extent that such Holder's Disputed Claim becomes an Allowed Claim. The Reorganized Debtor shall withhold distributions otherwise due hereunder to the holder of a Claim for a reasonable period of time to enable the Reorganized Debtor to determine whether to object to the Claim. The presence of a Disputed Claim in any class will not be a cause to delay distribution to Allowed Claims in that Class or in other Classes. A holder of a Convenience Claim that becomes an Allowed Claim after the Effective Date will receive its distribution as soon as practicable after Allowance.

6.2 ***Full Satisfaction.*** The Reorganized Debtor shall make, and each holder of an Allowed Claim shall receive, the distributions provided for in the Plan in full satisfaction and discharge of the Claim.

6.3 ***Interest and Penalties on Claims.*** Unless otherwise specifically provided for in this Plan or the Confirmation Order, required by applicable bankruptcy law, or necessary to render a Claim Unimpaired, postpetition interest and penalties shall not accrue or be paid on any Claims, including Priority Tax Claims, Non-Tax Priority Claims, and Convenience Claims, and no Holder of a Claim shall be entitled to interest and penalties accruing on or after the Petition Date through the date such Claim is satisfied in accordance with the terms of this Plan.

6.4 ***Post Confirmation Claim and Asset Resolution.*** After the Effective Date, the Reorganized Debtor may defend, pursue or settle, without Bankruptcy Court approval, any Disputed Claim or Claim or Cause of Action of the Estate.

6.5 ***Deadline to Object to Claims.*** No later than 150 days after the Effective Date (the "***Claims Objection Deadline***") (unless extended by an order of the Bankruptcy Court upon motion of the Reorganized Debtor), the Reorganized Debtor may file objections to Claims with the Bankruptcy Court and serve such objections upon the holders of each of the Claims to which objections are made. Nothing contained herein, however, shall limit the Reorganized Debtor's right to object to Claims, if any, filed or amended after the Claims Objection Deadline and unless subsequently ordered for good cause the Reorganized Debtor shall continue to have the right to amend any objections and to file and prosecute supplemental objections and counterclaims to a Disputed Claim until such Disputed Claim is Allowed. Further, nothing herein shall require approval of the Bankruptcy Court for the settlement of any Claims.

ARTICLE VII

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

7.1 *Assumption/Rejection of Executory Contracts and Unexpired Leases.*

On the Effective Date, the Reorganized Debtor shall (a) assume the Executory Contracts and Leases on the Assumed Contract List and (b) reject the Executory Contracts and Leases on the Rejected Contract List. The Debtor reserves the right to amend the Assumed Contract List and Rejected Contract List at any time prior to the Effective Date. Any Executory Contract and Unexpired Lease not listed on either the Assumed Contract List or Rejected Contract List shall be deemed automatically assumed in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code as of the Effective Date, unless such Executory Contract or Unexpired Lease:

(i) has been previously assumed or rejected by the Debtor by Final Order of the Bankruptcy Court;

(ii) has been assumed or rejected by the Debtor by order of the Bankruptcy Court in effect as of the Effective Date (which order may be the Confirmation Order); or

(iii) is the subject of a motion to assume or reject filed by the Debtor under section 365 of the Bankruptcy Code pending as of the Effective Date.

An Executory Contract or Unexpired Lease that is assumed pursuant to the foregoing sentence shall be referred to as an ***“Assumed Contract.”*** An Executory Contract or Unexpired Lease that is rejected as described above shall be referred to as a ***“Rejected Contract.”*** Each non-debtor party to an Assumed Contract or Rejected Contract shall receive at least twenty-one days’ notice of the deadline to object to assumption or rejection, as the case may be, of the identified Executory Contract or Unexpired Lease, which date will be the deadline set by the Bankruptcy Court to object to Confirmation of the Plan (the ***“Executory Contract Objection Deadline”***). If the Assumed Contract List or Rejected Contract List is modified less than twenty-one days prior to the Executory Contract Objection Deadline, the affected party will be provided at least twenty-one days’ notice of the time to object to assumption or rejection of the identified Assumed Contract or Rejected Contract

Entry of the Confirmation Order by the Bankruptcy Court shall constitute findings by the Bankruptcy Court that (a) the Reorganized Debtor has properly provided for adequate assurance of payment of the cure of any defaults that might have existed consistent with the requirements of section 365(b)(1) of the Bankruptcy Code, (b) each assumption (or rejection, as the case may be) is in the best interest of the Debtor and its Estate and that each Assumed Contract is assumed as of the Effective Date and each Rejected Contract rejected as of the Effective Date or such other date identified in the Rejected Contract List, and (c) the requirements for assumption, or rejection, as the case may be, of any Executory Contract or Unexpired Lease to be assumed or rejected, as the case may be, have been satisfied. No provision of any agreement or other document that permits a person to terminate or modify an

agreement or to otherwise modify the rights of the Debtor based on the filing of the Chapter 11 Case or the financial condition of the Debtor or which would restrict the assumption of any Assumed Contract under a “change in control” prohibition or similar restriction shall be enforceable.

7.2 Rejection Damages Claim Deadline. Unless otherwise provided by an order of the Bankruptcy Court, any asserted Claims arising from the rejection of an Executory Contract or Unexpired Lease must be filed by Holders of such Claims with the Bankruptcy Court and served on the parties entitled to notice under this Plan no later than sixty (60) days after the later of (a) the Effective Date or (b) the effective date of such rejection, subject to the Reorganized Debtor’s right to object thereto.

7.3 Cure Amounts. Any monetary amounts by which any Executory Contract and Unexpired Lease to be assumed under the Plan is in default shall be satisfied, under Section 365(b)(1) of the Bankruptcy Code, by Cure. If the Assumed Contract List indicates a specific Cure amount for a contract or lease, the payment of the amount so specified shall be conclusively deemed to constitute Cure with respect to that contract or lease, and no other payment or performance on account of a prepetition default thereunder shall be required. If the amount so specified is zero, no payment shall be required. Notwithstanding the foregoing, if the other party to a contract or lease on the Assumed Contract List files, no later than the Executory Contract Objection Deadline, an objection disputing the Cure amount so specified with respect to its contract or lease, or otherwise raising an objection as to the nature or amount of any Cure, (a) except as provided in Section 7.1, any other matter relating to assumption, Cure shall occur following the entry of a Final Order by the Bankruptcy Court resolving the dispute and approving the assumption; if an objection to Cure is sustained by the Bankruptcy Court, the Reorganized Debtor, in its sole option, may elect to reject such Executory Contract or Unexpired Lease in lieu of assuming it.

7.4 Compensation and Benefit Programs. All of the Debtor’s existing programs, plans, agreements, and arrangements relating to employee compensation and benefits (other than as set forth in or related to any Rejected Contract), including, without limitation, all medical, dental, pharmacy, vision, dental, and disability plans entered into before the Petition Date, as amended from time to time and to the extent and as in effect immediately prior to the Effective Date (“**Benefit Plans**”), will be deemed to be, and will be treated as executory contracts that are assumed under Section 7.1 of this Plan, and the Debtor’s and Reorganized Debtor’s obligations and rights under such programs, plans, agreements, and arrangements will survive Confirmation of this Plan, subject to the terms and conditions of such Benefit Plans. The Debtor does not have any retiree plans (as defined in Section 1114 of the Bankruptcy Code). Nothing contained herein shall be deemed to modify the existing terms of the Benefit Plans, including, without limitation, the Debtor’s and the Reorganized Debtor’s rights of termination and amendment thereunder.

7.5 Employment Contracts. Unless included in the Assumed Contract List, all employment and management consulting agreements with the Debtor, whether in writing or not, shall be deemed rejected as of the Effective Date. Subject to approval by the board of directors of the Reorganized Debtor without need for Bankruptcy Court approval, the Reorganized Debtor shall enter into new employment and / or consulting agreements with

members of existing management that remain with the Reorganized Debtor after the Effective Date.

7.6 **Indemnification.** The Debtor's obligation to indemnify any former director or officer under its Articles of Incorporation, bylaws, employee indemnification policy, or any other agreement ("**Indemnification Obligation**") shall be deemed assumed as of the Effective Date.

7.7 **Right of First Refusal.** On the Effective Date, that certain Right of Refusal Agreement between St. Jude Medical, Inc. and the Debtor shall be rejected. If the Bankruptcy Court Allows rejection damage claims with respect to such rejection, the Reorganized Debtor, in its sole option, may elect to assume such Executory Contract or Unexpired Lease in lieu of rejecting it.

ARTICLE VIII

PROVISIONS GOVERNING DISTRIBUTIONS

8.1 **Fractional Shares.** No fractional shares of New Common Stock or New Series A Preferred Stock will be issued or distributed under this Plan. The actual distribution of shares of New Common Stock or New Series A Preferred will be rounded to the next higher or lower whole number as follows: (a) fractions less than one-half (1/2) shall be rounded to the next lower whole number and (b) fractions equal to or greater than one-half (1/2) shall be rounded to the next higher whole number. The total number of shares of New Common Stock or New Series A Preferred Stock to be distributed herein will be adjusted as necessary to account for such rounding. No consideration will be provided to holders of Claims in lieu of fractional shares that are rounded down.

8.2 **Delivery of Distributions.** Distributions shall be made by the Reorganized Debtor to each holder of an Allowed Claim (a) at the address shown on the list of creditors filed with the petitions commencing the Chapter 11 Case, (b) at the address listed in the Schedules if different from the address shown on the list creditors filed with the petitions commencing the Chapter 11 Case, or (c) if a proof of claim is filed, and the address is different from that listed in the Schedules, at the address set forth in the proof of claim.

8.3 **Distributions Relating to Allowed Insured Claims.** If any Claim otherwise payable under the Plan is covered by an insurance policy held by the Debtor or Reorganized Debtor, the Claim may be satisfied, in whole or in part, with the proceeds of the policy, if any.

8.4 **Defenses; Setoff.** Any defenses, counterclaims, rights of set off or recoupment of the Debtor with respect to a claim shall vest in and inure to the benefit of the Reorganized Debtor. To the extent permitted by law, the Reorganized Debtor may, but shall not be required to, set off against any claim, the payments or other distributions to be made in respect thereof, and claims of any nature whatsoever that the Debtor or Reorganized Debtor may have against the Claim's holder, but neither the failure to do so nor the allowance of any Claim

hereunder shall constitute a waiver or release of a claim or Cause of Action of the Reorganized Debtor.

8.5 ***Distributions for Claims Allowed as of the Effective Date.*** Except as otherwise provided herein or as ordered by the Bankruptcy Court, distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made by the Reorganized Debtor on the Effective Date or as soon thereafter as is practicable. Any distribution to be made on the Effective Date pursuant to this Plan shall be deemed as having been made on the Effective Date if such distribution is made on the Effective Date or as soon thereafter as is practicable. Any payment or distribution required to be made under this Plan on a day other than a Business Day shall be made on the next succeeding Business Day. New Equity Interests shall not be certificated. Equity Interests shall be evidenced by the official registry maintained by the Reorganized Debtor under the Amended and Restated Articles of Incorporation.

8.6 ***Distribution Reserve*** On the Effective Date, the Reorganized Debtor shall establish a distribution reserve (“***Distribution Reserve***”) on account of Disputed General Unsecured Claims. The Distribution Reserve shall initially include Cash sufficient to distribute to each holder of a Disputed Claim the full amount that it would receive hereunder if its Claim is ultimately Allowed in its full face amount. Any surplus remaining from the disallowance of all or part of a Disputed Claim shall be distributed to Holders of Allowed General Unsecured Claims under the terms of the Plan until all such Claims are paid in full. In the event that all such Claims are paid in full, any amounts remaining after the satisfaction of all Allowed General Unsecured Claims shall revert to the Reorganized Debtor.

8.7 ***Means of Cash Payment.*** Payments of Cash made pursuant to this Plan shall be made, at the option and in the sole discretion of the applicable Reorganized Debtor by checks drawn on, or wire transfer from, a domestic bank selected by the Reorganized Debtor, Cash payments to foreign creditors may be made, at the option of the applicable Reorganized Debtor, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

8.8 ***Withholding and Reporting Requirements.*** In connection with this Plan and all distributions hereunder, the Reorganized Debtor shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions hereunder shall be subject to any such withholding and reporting requirements. The Reorganized Debtor shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements.

ARTICLE IX

CONFIRMATION AND CONSUMMATION OF THIS PLAN

9.1 ***Condition To Entry of the Confirmation Order.*** The following are conditions precedent to the entry of the Confirmation Order, each of which must be satisfied or waived by the Debtor in accordance with the terms hereof:

(a) The Plan and all schedules, documents, supplements and exhibits relating to this Plan shall have been filed in form and substance acceptable to the Debtor; and

(b) The proposed Confirmation Order shall be in form and substance acceptable to the Debtor.

9.2 ***Conditions To Effective Date.*** The Debtor shall request that the Confirmation Order include a finding by the Bankruptcy Court that, notwithstanding Bankruptcy Rule 3020(e), the Confirmation Order shall take effect immediately upon its entry. The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived by the Debtor in accordance with the terms hereof:

(a) The Confirmation Order, in form and substance satisfactory to the Debtor shall have been entered by the Bankruptcy Court and be in full force and effect and not subject to any stay and shall, among other things, provide that the Debtor and Reorganized Debtor are authorized without further board or member approval or consent to take all actions necessary to enter into the Transaction Documents and other agreements or documents created in connection with this Plan. Without limiting the foregoing, the board of directors, chief executive officer, or other appropriate officer of the Debtor shall be authorized to execute, deliver, file or record such contracts, instruments, releases, indentures and other agreements or documents, and take such actions, as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan and the Transaction Documents;

(b) All Transaction Documents shall have been executed and delivered, and all conditions precedent thereto shall have been satisfied (other than the occurrence of the Effective Date).

(c) All authorizations, consents, and regulatory approvals required, if any, in connection with the consummation of this Plan shall have been obtained;

(d) All other actions, documents, and agreements necessary to implement this Plan shall have been effected or executed; and

(e) The Debtor shall have sufficient Cash, whether on hand or from funds received under the New Series A Preferred Stock Purchase Documents to make all required payments to be made on the Effective Date.

9.3 ***Waiver of Conditions.*** The Debtor may waive, in its sole discretion, in whole or in part, the conditions to the occurrence of the Effective Date, without any notice to parties in interest or the Bankruptcy Court and without a hearing. The failure to satisfy or waive any condition to the Effective Date shall preclude the occurrence of the Effective Date, regardless of the circumstances giving rise to the failure of such condition to be satisfied. The waiver of a condition to the occurrence of the Effective Date shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right that may be asserted at any time.

9.4 ***Notice of Effective Date.*** The Reorganized Debtor will file with the Bankruptcy Court a notice of the occurrence of Effective Date on the date thereof or as soon

thereafter or is practicable, and such notice shall be served upon all known Holders of Claims and Interests.

ARTICLE X

EFFECT OF PLAN CONFIRMATION

10.1 ***Binding Effect.*** This Plan shall be binding upon and inure to the benefit of the Debtor, its Estate, all current and former Holders of Claims and Interests, and their respective successors and assigns, including, but not limited to, the Reorganized Debtor.

10.2 ***Revesting of Assets.*** Except as otherwise explicitly provided in this Plan, on the Effective Date, all property comprising the Estate (including Retained Actions) shall revest in the Reorganized Debtor, free and clear of all Claims, Liens, charges, encumbrances, rights, and Interests of creditors and equity security holders. As of the Effective Date, the Reorganized Debtor may operate its businesses and use, acquire, and dispose of property and settle and compromise Claims or Interests without supervision of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by this Plan or the Confirmation Order.

10.3 ***Releases.***

(a) **Releases by the Debtor.** Pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, the adequacy of which is hereby confirmed, on and after the Effective Date, each Released Party is, and is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged by the Debtor, the Reorganized Debtor, and its Estate, from any and all Causes of Action, including any derivative claims asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise, that the Debtor, Reorganized Debtor, or its Estate would have been legally entitled to assert in its own right or on behalf of the Holder of any Claim against, or Interest in, a Debtor or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Debtor's capital structure, the assertion or enforcement of rights and remedies against the Debtor, the Debtor's in- or out-of-court restructuring efforts, the Chapter 11 Case, the formulation, preparation, dissemination, negotiation, or filing of the Plan, the Disclosure Statement, the Plan, the Plan Supplement or any Transaction Documents, contract, instrument, release, or other agreement or document created or entered into before or during the Chapter 11 Case, any preference, fraudulent transfer, or other Avoidance Action arising pursuant to chapter 5 of the Bankruptcy Code or other applicable law, the filing of the Chapter 11 Case, the pursuit of Confirmation, the pursuit of consummation, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related or relating to any of the foregoing. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Effective Date obligations of any party or Person under the Plan, any Transaction

Documents, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

(b) **Releases by Holders of Claims and Interests.** Except as otherwise expressly set forth in this Plan or the Confirmation Order, on and after the Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is, and is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged by the Debtor, the Reorganized Debtor, the Debtor's Estate and each Releasing Party from any and all Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising in law, equity, contract, tort, or otherwise, including any derivative claims asserted on behalf of the Debtor, that such Person would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Debtor's in- or out-of-court restructuring efforts, the Chapter 11 Case, the formulation, preparation, dissemination, negotiation, or filing of the Disclosure Statement, the Plan, the Plan Supplement or any Transaction Documents, contract, instrument, release, or other agreement or document relating to any of the foregoing, created or entered into before or during the Chapter 11 Case, any preference, fraudulent transfer, or other Avoidance Action arising pursuant to chapter 5 of the Bankruptcy Code or other applicable law, the filing of the Chapter 11 Case, the pursuit of Confirmation, the pursuit of consummation, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related or relating to any of the foregoing. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Effective Date obligations of any party or Person under the Plan, any Transaction Documents, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, or any Claim or obligation arising under the Plan. For the avoidance of doubt, nothing in this Plan shall be deemed to be, or construed as, a release, waiver, or discharge of any Indemnification Obligation.

10.4 *Discharge of the Debtor.*

(a) Other than Claims arising from or related to the Transaction Documents and except as otherwise provided herein or in the Confirmation Order, all consideration distributed under this Plan shall be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims of any nature whatsoever against the Debtor or Estate and, regardless of whether any property shall have been abandoned by order of the Bankruptcy Court, retained, or distributed pursuant to this Plan on account of such Claims, upon the Effective Date, the Debtor, the Estate, and Reorganized Debtor shall be deemed discharged and released under section 1141(d)(1)(A) of the Bankruptcy Code from any and all Claims, including, but not limited to, demands and liabilities that arose before the Effective Date, and all debts of the kind specified in section 502 of the Bankruptcy Code, whether or not (i) a proof of claim based upon such debt is filed or deemed filed under section 501 of the Bankruptcy Code, (ii) a Claim based

upon such debt is Allowed under section 502 of the Bankruptcy Code, (iii) a Claim based upon such debt is or has been disallowed by order of the Bankruptcy Court, or (iv) the holder of a Claim based upon such debt accepted this Plan.

(b) As of the Effective Date, other than Claims arising from or related to the Transaction Documents and except as provided in this Plan or the Confirmation Order, all Persons shall be precluded from asserting against the Debtor or the Reorganized Debtor, any other or further Claims, debts, rights, causes of action, claims for relief, or liabilities relating to the Debtor or any Interest in the Debtor based upon any act, omission, transaction, occurrence, or other activity of any nature that occurred prior to the Effective Date. In accordance with the foregoing, other than with respect to Claims arising from or related to the Transaction Documents and except as provided in this Plan or the Confirmation Order, the Confirmation Order shall be a judicial determination of discharge of all such Claims and other debts and liabilities against the Debtor, and the termination of all such Interests, pursuant to sections 524 and 1141 of the Bankruptcy Code, and such discharge shall void any judgment obtained against the Debtor at any time, to the extent that such judgment relates to a discharged Claim or a terminated Interest.

10.5 *Injunction.*

(a) *General.* Except as provided in this Plan or the Confirmation Order, from and after the Effective Date, all Persons that have held, currently hold, may hold, or allege that they hold, a Claim, Interest, obligation, suit, judgment, damage, demand, debt, right, cause of action, or liability that is released, terminated, exculpated, or discharged under this Article X, along with their respective current and former employees, agents, officers, directors, managers, principals, affiliates, shareholders, and members are permanently enjoined from taking any of the following actions against the Debtor, the Reorganized Debtor, the Released Parties and the Exculpated Parties, and their respective agents, officers, directors, managers, employees, representatives, advisors, attorneys, affiliates, shareholders, or members, or any of their successors or assigns or any of their respective property on account of any such released, terminated or discharged Claim, obligation, suit, judgment, damage, demand, debt, right, cause of action, liability or Interest: (a) commencing or continuing, in any manner or in any place, any action or other proceeding; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order; (c) creating, perfecting, or enforcing any Lien or encumbrance; (d) asserting a setoff, right of subrogation, or recoupment of any kind against any debt, liability, or obligation due to any released Person; or (e) commencing or continuing any action, in each such case in any manner, in any place, or against any Person that does not comply with or is inconsistent with the provisions of this Plan or the Confirmation Order.

10.6 *Exculpation and Limitation of Liability.* None of the Exculpated Parties shall have or incur any liability to any Person for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Case, Disclosure Statement and Plan, the transactions contemplated by or described in the Transaction Documents, the formulation, negotiation, or implementation of this Plan or the Transaction Documents, the pursuit of Confirmation of this Plan, the operation of the Debtor during the Chapter 11 Case, the

Confirmation of this Plan, the consummation of this Plan or the Transaction Documents, or the administration of Chapter 11 Case or this Plan or the property to be distributed under this Plan, except for acts or omissions that are the result of fraud, willful misconduct, or gross negligence; provided, however, that the foregoing exculpation and limitation of liability shall not apply to and shall not operate to waive, release, or exculpate any Claims or causes of action arising from or related to the rights and obligations under this Plan, the Transaction Documents, and the contracts, instruments, releases, and other agreements or documents delivered hereunder or contemplated hereby and thereby. Without limiting the generality of the foregoing, Exculpated Parties shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under this Plan.

10.7 *Term of Bankruptcy Injunction 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 (excluding any injunctions or stays contained in this Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date.

10.8 *Post-Effective Date Retention of Professionals.* Upon the Effective Date, other than filing final applications for compensation in connection with work done prior to the Effective Date, any requirement that Professionals comply with sections 327 through 331 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date will terminate and the Reorganized Debtor may employ and pay professionals in the ordinary course of business.

ARTICLE XI

RETENTION OF JURISDICTION

11.1 *Retention of Jurisdiction.* Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction (unless otherwise indicated) over all matters arising out of, and related to, the Chapter 11 Case and this Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

(a) resolve any matters related to the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease with respect to which any Debtor or Reorganized Debtor may be liable, and to hear, determine, and, if necessary, liquidate any Claims arising therefrom;

(b) decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications, involving the Debtor that may be pending on the Effective Date;

(c) enter such orders as may be necessary or appropriate to implement or consummate the provisions of this Plan and all contracts, instruments, releases, and other agreements or documents created in connection with this Plan, the Disclosure Statement, or the Confirmation Order;

(d) resolve any cases, controversies, suits, or disputes that may arise in connection with the consummation, interpretation, or enforcement of this Plan or any contract, instrument, release, or other agreement or document that is executed or created pursuant to this Plan, or any entity's rights arising from, or obligations incurred in connection with, this Plan or such documents (other than a dispute arising after the Effective Date under, or directly with respect to, the Transaction Documents, which such disputes shall be adjudicated in accordance with the terms of the Transaction Documents);

(e) modify this Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code or modify the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with this Plan, the Disclosure Statement, or the Confirmation Order, or remedy any defect or omission, or reconcile any inconsistency, in any Bankruptcy Court order, this Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with this Plan, the Disclosure Statement, or the Confirmation Order, in such manner as may be necessary or appropriate to consummate this Plan;

(f) hear and determine all applications for compensation and reimbursement of expenses of Professionals under this Plan or under sections 330, 331, 503(b) and 1129(a)(4) of the Bankruptcy Code; *provided, however*, that from and after the Effective Date any fees and expenses of the Reorganized Debtor, including professional fees arising after the Effective Date, shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court;

(g) issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation, or enforcement of this Plan or the Confirmation Order;

(h) adjudicate controversies arising out of the administration of the Estate or the implementation of this Plan;

(i) recover all assets of the Debtor and property of the Estates, wherever located;

(j) hear and determine causes of action by or on behalf of the Debtor, the Reorganized Debtor;

(k) enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason, or in any respect, modified, stayed, reversed, revoked, or vacated, or distributions pursuant to this Plan are enjoined or stayed;

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

(m) determine any other matters that may arise in connection with, or relate to, this Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with this Plan, the

Disclosure Statement, or the Confirmation Order (other than a dispute arising after the Effective Date under, or directly with respect to, the Transaction Documents, which such disputes shall be adjudicated in accordance with the terms of the Transaction Documents);

(n) enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Case;

(o) hear and determine such other matters related hereto that are not inconsistent with the Bankruptcy Code or title 28 of the United States Code; and

(p) enter an order closing the Chapter 11 Case.

11.2 ***Failure of 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, including the matters set for in Section 11.1 of the Plan, the provisions of this Article XI shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1 ***Effectuating Documents and Further Transactions.*** The Debtor and the Reorganized Debtor are authorized to execute, deliver, file, or record the Transaction Documents and such contracts, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of this Plan.

12.2 ***Company Action.*** Prior to, on, or after the Effective Date (as appropriate), all matters expressly provided for under this Plan or the Transaction Documents that would otherwise require approval of the shareholders or directors of the Debtor or the Reorganized Debtor shall be deemed to have occurred and shall be in effect prior to, on, or after the Effective Date (as appropriate) without any requirement of further action by the shareholders or directors of the Debtor or the Reorganized Debtor.

12.3 ***Payment of Statutory Fees.*** All fees payable pursuant to section 1930 of title 28 of the United States Code ("***UST Fees***"), as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on the Effective Date. The Reorganized Debtor shall pay any UST fees that become payable after the Effective Date.

12.4 ***Amendment or Modification of This Plan.*** Subject to section 1127 of the Bankruptcy Code and, to the extent applicable, sections 1122, 1123, and 1125 of the Bankruptcy Code, Debtor reserves the right to alter, amend, or modify this Plan at any time prior to or after the Confirmation Date. A Holder of a Claim that has accepted this Plan shall be deemed to have accepted this Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such Holder.

12.5 **Severability of Plan Provisions.** If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power, upon the request of the Debtor to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, 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 this 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 that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

12.6 **Successors and Assigns.** This Plan shall be binding upon and inure to the benefit of the Debtor, and its successors and assigns, including, without limitation, the Reorganized Debtor. The rights, benefits, and obligations of any entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such entity.

12.7 **Revocation, Withdrawal, or Non-Consummation.**

The Debtor reserves the right to revoke or withdraw this Plan at any time prior to the Confirmation Date and to file a different plan of reorganization. If the Debtor revokes or withdraw this Plan, or if Confirmation or consummation of this Plan does not occur, then (a) this Plan shall be null and void in all respects, (b) any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount any Claim or Class of Claims or any release contemplated hereby), assumption or rejection of executory contracts or leases effected by this Plan, and any document or agreement executed pursuant to this Plan shall be deemed null and void, and (c) nothing contained in this Plan, and no acts taken in preparation for consummation of this Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Interests in, the Debtor or any other Person, (ii) prejudice in any manner the rights of the Debtor or any Person in any further proceedings involving the Debtor, or (iii) constitute an admission of any sort by the Debtor or any other Person.

12.8 **Notice.** All notices, requests, and demands to or upon the Reorganized Debtor to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

If to the Debtor, to:

David R. Fischell
Angel Medical Systems, Inc.
40 Christopher Way
Suite 201
Eatontown, NJ 07724

With a copy to:

Joseph R. Sgroi, Esq.
Glenn S. Walter, Esq.
Honigman Miller Schwartz and Cohn LLP
2290 First National Building
660 Woodward Avenue
Detroit, MI 48226

- and -

Morris James LLP
Jeffrey R. Waxman, Esq.
500 Delaware Avenue
Suite 1500
Wilmington, DE 19801-1494
Telephone: (302) 888-5842
Facsimile: (302) 504-3942
Email: jwaxman@morrisjames.com

12.9 ***Governing Law.*** Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware without giving effect to the principles of conflicts of law of such jurisdiction.

12.10 ***Tax Reporting and Compliance.*** The Reorganized Debtor is hereby authorized, on behalf of each of the Debtor, to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor for all taxable periods ending after the Petition Date through, and including, the Effective Date.

12.11 ***Conflicts.*** In the event that provisions of the Disclosure Statement and provisions of this Plan conflict, the terms of this Plan shall govern.

December 26, 2018

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EXHIBIT A

**SUMMARY OF TERMS FOR THE SERIES A PREFERRED FINANCING
OF
ANGEL MEDICAL SYSTEMS, INC.**

This Summary of Terms (this “*Summary of Terms*”) sets forth the principal terms for the sale and issuance of the Series A Convertible Preferred Stock of **Angel Medical Systems, Inc.**, a Delaware corporation.

GENERAL:

- Issuer:*** Angel Medical Systems, Inc., a Delaware corporation (the “*Company*”), following confirmation of the Company’s plan of reorganization by the United States Bankruptcy Court for the District of Delaware (the “*Bankruptcy Court*”).
- Types of Security:*** Series A Convertible Preferred Stock, \$0.001 par value per share (the “*Series A Preferred*”).
- Amount of Investment in the Series A Preferred:*** A minimum of \$10,000,000 in commitments (including the amount of the DIP Notes) (the “*Minimum Amount*”) and a maximum of \$15,000,000 (including the amount of the DIP Notes) (the “*Maximum Amount*”).
- Price Per Share:*** The original price per share for the Series A Preferred (the “*Original Purchase Price*”) would be no higher than \$1.00 per share. The capitalization of the Company immediately before the Initial Closing and after the Initial Closing, assuming the sale by the Company of the Maximum Amount at the Initial Closing, is set forth on Exhibit A attached hereto.
- Investors:*** Investors who are reasonably acceptable to the Company and who qualify as “accredited investors” under Regulation D of the Securities Act of 1933, as amended (each, an “*Investor*” and collectively, the “*Investors*”).
- Option Pool:*** The Company would adopt an equity incentive plan (the “*Option Plan*”) and reserve a pool of 10% on a fully diluted basis shares of common stock of the Company (the “*Common Stock*”) thereunder prior to the Initial Closing, as set forth on Exhibit A attached hereto.
- Closings:*** The closing of the sale and issuance of the Series A Preferred

would occur as soon as practicable following the Company's receipt of confirmation of the Company's plan of reorganization by the Bankruptcy Court (the "**Initial Closing**"). For a period of sixty (60) days following the Initial Closing, the Company could hold one or more additional closings with Investors for the purchase of additional shares of the Series A Preferred, up to the Maximum Amount.

DIP Funding:

In connection with the filing of the Company's Chapter 11 case with the United States Bankruptcy Court for the District of Delaware, the Company will issue to certain investors promissory notes in the aggregate amount of up to \$2,500,000 (the "**DIP Notes**"). At the Initial Closing, \$2,000,000 of the outstanding principal on the DIP Notes (excluding any accrued and unpaid interest on the DIP Notes) will automatically convert into shares of the Series A Preferred at a price per share equal to 78% of the Original Purchase Price (i.e. no higher than \$0.78 per share)..

TERMS OF THE SERIES A PREFERRED:

Liquidation Preference:

Upon the occurrence of any (i) liquidation, dissolution or winding up of the Company, (ii) merger or consolidation (other than one in which shareholders of the Company own a majority by voting power of the outstanding shares of the surviving or acquiring corporation), or (iii) sale, lease, transfer or other disposition of all or substantially all of the assets of the Company (the events described in the foregoing clauses (ii) and (iii) are each referred to herein as a "**Deemed Liquidation Event**"), the holders of the Series A Preferred would receive an amount per share of the Series A Preferred, in preference to the holders of the Common Stock, equal to one times (1x) the Original Purchase Price, plus accrued but unpaid dividends on each share of the Series A Preferred (the "**Series A Liquidation Preference**").

After payment of the liquidation preference of the Series A Preferred above, the balance of any proceeds shall be distributed to the holders of the Common Stock.

Notwithstanding the foregoing, if the holders of any of the Series A Preferred would receive more in the aggregate in any distribution if their shares were treated on a fully as-converted basis (i.e., no preferential distribution under (ii) above), then such shares of the Series A Preferred shall be treated as

though they had converted into Common Stock immediately prior to the distribution at issue.

Dividends:

The Series A Preferred will accrue from the applicable closing an annual 8% cumulative dividend (based upon the Original Purchase Price), compounded annually, which shall be payable (i) upon liquidation, dissolution, winding up or a Deemed Liquidation Event or (ii) in shares of Common Stock at the then-prevailing conversion price (which shall in no event be higher than \$1.00 per share) upon the conversion of the Series A Preferred to Common Stock. After payment of any dividends on the Series A Preferred, the holders of the Series A Preferred also would be entitled to participate pro rata in any dividends paid on the Common Stock on an as-if-converted basis.

Optional Conversion:

The Series A Preferred would initially convert on a one-for-one basis into the Common Stock at any time at an Investor's option, subject to adjustments for stock distributions, splits, combinations and similar events and as described below under the caption "***Anti-dilution Provisions.***"

Mandatory Conversion:

The Series A Preferred would automatically be converted into the Common Stock at the then applicable conversion rate (which shall in no event be lower than a 1:1 Series A Preferred to Common Stock ration) (i) in the event of a closing of a firmly underwritten public offering of shares of the Common Stock at a price of not less than three times (3x) the Original Purchase Price (subject to adjustments for stock distributions, splits, combinations and similar events) and net proceeds to the Company of not less than \$25,000,000 (a "***QPO***") or (ii) with the consent of the holders of at least a majority of the outstanding Series A Preferred (the "***Requisite Investors***").

Anti-dilution Provisions:

Unless waived by the Requisite Investors, in the event that the Company issues additional equity securities at a purchase price less than the current Series A Preferred conversion price (which shall in no event be higher than \$1.00 per share), such conversion price would be adjusted on a broad-based, weighted average basis, provided that no such adjustment would occur with respect to: (i) securities issuable upon conversion of any of the Series A Preferred, or as a dividend or distribution on the Series A Preferred; (ii) securities issued upon the conversion of any debenture, warrant, option or other convertible security outstanding as of the date of the

applicable closing; (iii) shares of the Common Stock issuable upon a stock split, stock dividend or any subdivision of shares of the Common Stock; (iv) shares of the Common Stock issued or issuable to employees or directors of, or consultants to, the Company pursuant to any plan approved by the Company's Board of Directors (the "**Board**"), including at least one Series A Director (as defined below); (v) shares of the Common Stock issued or issuable to banks, equipment lessors pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board, including at least one Series A Director; (vi) shares of the Common Stock issued or issuable for consideration, other than cash pursuant to a technology license, business combination, strategic partnership or joint venture transaction approved by the Board, including at least one Series A Director; (vii) shares of the Common Stock; and (viii) shares of the Common Stock issued in connection with a QPO (collectively, "**Excluded Issuances**").

Registration Rights:

Registrable Securities: All shares of the Common Stock issuable upon conversion of the Series A Preferred and any other shares of the Common Stock held by the holders of the Series A Preferred would be "**Registrable Securities**".

Demand Registration: Upon the earlier of (i) three (3) years after the Initial Closing or (ii) six (6) months following an initial public offering of the Company's shares of the Common Stock ("**IPO**"), persons holding not less than an aggregate of fifty percent (50%) of Registrable Securities may demand not more than two registrations by the Company of their shares, but only if the aggregate offering price is at least \$10,000,000. A registration would count for this purpose only if (A) not less than seventy-five percent (75%) of all Registrable Securities requested to be registered are included in the registration, or (B) it is closed or withdrawn at the request of the demanding holders (other than as a result of a material adverse change to the Company). Holders of the Registrable Securities would have priority in all registrations over all other shares except for in registrations initiated by the Company, in which case the shares being sold by the Company for its own account would have priority.

3: *Registration on Form S-* The holders of not less than twenty percent (20%) of the Registrable Securities would have the right to require the Company to register on Form S-3, if available for use by the Company, Registrable Securities for an aggregate offering

price of at least \$1,000,000. There would be no limit on the aggregate number of such Form S-3 registrations, provided that there are no more than two (2) per year. Form S-3 registration rights would be subject to customary limitations, including provisions giving the Company the right under certain circumstances to defer a registration.

Piggyback Registration: The holders of Registrable Securities would be entitled to **“piggyback”** registration rights on all registration statements of the Company, subject to the right, however, of the Company and its underwriters to reduce the number of shares proposed to be registered to a minimum of thirty percent (30%) on a pro rata basis and to complete reduction on an IPO at the underwriter’s discretion. In all events, the shares to be registered by holders of Registrable Securities would be reduced only after all other stockholders’ shares are reduced.

Expenses: The registration expenses (exclusive of stock transfer taxes, underwriting discounts and commissions) would be borne by the Company. The Company would also pay the reasonable fees and expenses, not to exceed \$25,000, of one special counsel to represent all the participating holders of Registrable Securities.

Lock-up: The Investors would agree in connection with the IPO, if requested by the managing underwriter, not to sell or transfer any shares of the Common Stock of the Company for a period of up to one hundred-eight (180) days following the IPO provided all directors and officers of the Company agree to the same restriction, subject to hardship exemptions agreed to by the underwriters.

Termination of Registration Rights: Registration rights would terminate upon the earlier of: (i) a Deemed Liquidation Event or (ii) when all Registrable Securities of an Investor are eligible to be sold without restriction under Rule 144 within any ninety (90)-day period.

GOVERNANCE:

Voting Rights: The Series A Preferred would vote together with the Common Stock on an as-converted to Common Stock basis and not as a separate class, except (i) with respect to election of directors as described below, (ii) as provided under the caption **“Protective Provisions”** below or (iii) as required by law.

Protective Provisions: The Company would not, without the written consent of the

holders of at least a majority of the Series A Preferred, either directly or by amendment, merger, consolidation or otherwise: (i) liquidate, dissolve or wind-up the affairs of the Company, or effect any Deemed Liquidation Event; (ii) amend, alter, or repeal any provision of the Certificate of Incorporation or Bylaws in a manner adverse to the Series A Preferred; or (iii) create or authorize the creation of or issue any other security convertible into or exercisable for any equity security having rights, preferences or privileges senior to, or on parity with, the Series A Preferred, or increase the authorized number of shares of the Series A Preferred.

The Company would not, without the approval of the Board, including the approval of at least one Series A Director (as defined below), either directly or by amendment, merger, consolidation or otherwise: (i) adopt an annual operating budget (the “**Budget**”); (ii) create or authorize the creation of any debt in excess of \$100,000 individually or \$200,000 in the aggregate; (iii) make any capital expenditure in excess of \$200,000 individually or \$500,000 in the aggregate that was not contemplated by the then-approved Budget; (iv) hire or terminate any senior executive; (v) purchase or redeem or pay any dividend on any capital stock prior to the Series A Preferred, other than stock repurchased from former employees or consultants in connection with the cessation of their employment/services or other than as approved by the Board; (vi) increase or decrease the size of the Board; (vii) make any loan or advance to any person, including any employee or director, except advances and similar expenditures in the ordinary course of business or under the terms of an employee stock or option plan approved by the Board; or (viii) guarantee any indebtedness except for trade accounts of the Company.

Board of Directors:

After the Initial Closing, the Board would consist of five (5) individuals. The holders of the Series A Preferred, voting as a separate class, would be entitled to appoint two (2) members of the Board as designated by the holders of a majority in interest of the Series A Preferred (each a “***Series A Director***”), who would initially be Victor Whitman and another to be named individual. The holders of the Common Stock and the Series A Preferred, voting as a single class on an as converted to shares of the Common Stock basis, would be entitled to elect the remaining three (3) members of the Board, (i) one (1) of whom would be the Company’s CEO, (ii) one (1) of whom would be mutually acceptable to the

other members of the Board who would initially be Andrew Taylor and (iii) one of (1) of whom is designated by a the holders of the Common Stock and the Series A Preferred, voting as a single class on an as converted to shares of the Common Stock basis. Such composition of the Board would be prescribed by a voting agreement entered into by and among the Company and the holders of the Company's capital stock. The Company shall pay all reasonable expenses of the Board members, including costs relating to service on a Board committee.

ADDITIONAL RIGHTS:

Information Rights:

The Company would deliver to the Investors (unless waived by the holders of at least a majority of the Series A Preferred): (a) within thirty (30) days after the end of each calendar quarter, management-prepared and certified financial statements; and (b) at least thirty (30) days prior to the end of each fiscal year, a comprehensive operating budget forecasting the Company's revenues, expenses and cash position on a month-to-month basis for the upcoming fiscal year, which would be subject to Board approval, including at least one Series A Director.

Right to Participate Pro Rata in Future Financings:

The Investors would have a pro rata right, based on their respective percentage equity ownership in the Company (assuming the conversion of all outstanding shares of the Series A Preferred into shares of the Common Stock and the exercise of all warrants and options outstanding under any stock plan of the Company), to participate in subsequent issuances of equity securities of the Company (other than Excluded Issuances and issuances in connection with acquisitions by the Company).

Rights of Refusal/Co-Sale:

The Company first and the Investors second would have a right of first refusal with respect to any shares of capital stock of the Company proposed to be sold by any holder of the Common Stock or any other management employee holding Common Stock or rights to acquire Common Stock for more than five percent (5%) of the fully diluted equity of the Company (collectively, the "***Key Holders***"). Before any Key Holder could sell such capital stock, such Key Holder would give the Investors an opportunity to participate in such sale on a basis proportionate to the number of shares of capital stock held by such Key Holder and those held by the Investors.

Drag-Along Right:

Each holder of shares of capital stock of the Company (including without limitation the Series A Preferred) would be required to enter into an agreement that provides that such holders will vote their capital stock in favor of any sale of the Company (whether structured as a merger, reorganization, asset sale, stock sale, licensing transaction or otherwise), that is approved by a majority of the Board and holders of at least a majority of the Series A Preferred and the Common Stock, voting together as a single class on an as if converted to Common Stock basis.

OTHER:

Vesting of Stock Awards:

Unless otherwise approved by the Board, stock awards under the equity incentive plan would vest as follows: twenty five percent (25%) after one (1) year, with the remainder vesting in equal quarterly installments over the following three (3) years.

Documentation:

The transaction would be documented by counsel to the Company with documents containing the provisions described above and consisting of the following:

- Amended and Restated Certificate of Incorporation;
- Series A Preferred Stock Purchase Agreement;
- Investor Rights Agreement;
- Right of First Refusal and Co-Sale Agreement; and
- Voting Agreement.

Conditions to Closing:

The Initial Closing would be subject to satisfaction or waiver of the following conditions, among others: (i) satisfactory completion of intellectual property, financial, regulatory and legal due diligence of the Company by the Investors; (ii) qualification of the sale of the Series A Preferred under applicable Blue Sky laws; (iii) filing of the Amended and Restated Certificate of Incorporation establishing the rights and preferences of the Series A Preferred; and (iv) the Company's receipt of confirmation of the Company's plan of reorganization by the Bankruptcy Court.

Expenses:

Each party shall bear its own costs and expenses incurred in connection with transactions contemplated hereby except that the Company shall at the Initial Closing reimburse one counsel to the Investors for the reasonable fees and expenses (including, without limitation, legal fees and disbursements) incurred by the Investors in connection with the transactions contemplated hereby (up to the aggregate amount of \$40,000).

Exhibit A**PRO-FORMA CAPITALIZATION***

	PRE-CLOSING**		POST-CLOSING	
	# of Shares	% Fully Diluted	# of Shares	% Fully Diluted
Series A Preferred from Senior Notes	2,661,826*	30.8%	2,661,826	12..5%
Common Stock Outstanding from Junior Notes	5,970,949**	69.2%	5,970,949	28%
Series A Preferred Outstanding (DIP Notes)	0		2,564,103	12.%
Series A Preferred Outstanding (New Money)	0		8,000,000	37.5%
Unallocated Stock Pool	0		2,132,986	10%
TOTAL:	<u>8,632,775</u>	<u>100.00%</u>	<u>21,329,864</u>	<u>100.00%</u>

*These figures represent the conversion of \$2,000,000 in principal of the outstanding DIP Notes (excluding interest) and the sale of the Minimum Amount of \$10,000,000 (including the DIP Amount) in new money in value of the Series A Preferred.

**Following Conversion of 2012, 2014 and 2016 notes to common/Series A preferred, but before conversion DIP Notes to Series A and before closing of Series A for New Money.