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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

-----X	:	
In re	:	Chapter 11
	:	
INSYS THERAPEUTICS, INC., <i>et al.</i> ,	:	Case No. 19-11292 (KG)
	:	
Debtors. ¹	:	Jointly Administered
	:	
-----X		

**DISCLOSURE STATEMENT
FOR JOINT CHAPTER 11 PLAN OF LIQUIDATION
PROPOSED BY INSYS THERAPEUTICS, INC. AND ITS AFFILIATED DEBTORS.**

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¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are: Insys Therapeutics, Inc. (7886); IC Operations, LLC (9659); Insys Development Company, Inc. (3020); Insys Manufacturing, LLC (0789); Insys Pharma, Inc. (9410); IPSC, LLC (6577); and IPT 355, LLC (0155). The Debtors' mailing address is 410 S. Benson Lane, Chandler, Arizona 85224.

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DISCLAIMER

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT (THE “**DISCLOSURE STATEMENT**”) IS INCLUDED HEREIN FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE DEBTORS’ *JOINT CHAPTER 11 PLAN OF LIQUIDATION OF INSYS THERAPEUTICS, INC. AND ITS AFFILIATED DEBTORS*, DATED AS OF [•], 2019, (INCLUDING ALL EXHIBITS AND SCHEDULES THERETO AND AS MAY BE AMENDED, MODIFIED, OR SUPPLEMENTED FROM TIME TO TIME, THE “**PLAN**”) AND MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN.² A COPY OF THE PLAN IS ATTACHED HERETO AS **EXHIBIT A**. NO SOLICITATION OF VOTES TO ACCEPT THE PLAN MAY BE MADE EXCEPT PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE.

ALL CREDITORS ARE ADVISED AND ENCOURAGED TO READ THE DISCLOSURE STATEMENT AND THE PLAN **IN THEIR ENTIRETY** BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. ALL HOLDERS OF CLAIMS SHOULD CAREFULLY READ AND CONSIDER FULLY THE RISK FACTORS SET FORTH IN SECTION VIII (CERTAIN RISK FACTORS TO BE CONSIDERED) OF THIS DISCLOSURE STATEMENT BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. THE PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN AND THE EXHIBITS ATTACHED TO THE PLAN AND THIS DISCLOSURE STATEMENT. **IN THE EVENT OF ANY CONFLICT BETWEEN THE DESCRIPTIONS SET FORTH IN THIS DISCLOSURE STATEMENT AND THE TERMS OF THE PLAN, THE TERMS OF THE PLAN WILL GOVERN.**

THE DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3016(b) AND NOT NECESSARILY IN ACCORDANCE WITH OTHER NON-BANKRUPTCY LAW.

CERTAIN STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT, INCLUDING WITH RESPECT TO PROJECTED CREDITOR RECOVERIES AND OTHER FORWARD-LOOKING STATEMENTS, ARE BASED ON ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL BE REFLECTIVE OF ACTUAL OUTCOMES. FORWARD-LOOKING STATEMENTS ARE PROVIDED IN THIS DISCLOSURE STATEMENT PURSUANT TO THE SAFE HARBOR ESTABLISHED UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995 AND SHOULD BE EVALUATED IN THE CONTEXT OF THE ESTIMATES, ASSUMPTIONS, UNCERTAINTIES, AND RISKS DESCRIBED HEREIN.

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT WILL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR

² Unless otherwise expressly set forth herein, capitalized terms used but not otherwise defined herein shall have the same meanings ascribed to such terms in the Plan. The exhibits to this Disclosure Statement are incorporated as if fully set forth herein and are a part of this Disclosure Statement.

LIABILITY, STIPULATION OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THIS DISCLOSURE STATEMENT WILL NOT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES, OR OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS AGAINST, OR INTERESTS IN, THE DEBTORS AND DEBTORS IN POSSESSION IN THESE CHAPTER 11 CASES.

THE PLAN, THE PLAN SETTLEMENT, THE PLAN DOCUMENTS AND THE CONFIRMATION ORDER CONSTITUTE A GOOD FAITH COMPROMISE AND SETTLEMENT OF CLAIMS AND CONTROVERSIES BASED UPON THE UNIQUE CIRCUMSTANCES OF THESE CHAPTER 11 CASES AND NONE OF THE FOREGOING DOCUMENTS, NOR ANY MATERIALS USED IN FURTHERANCE OF SUCH DOCUMENTS (INCLUDING, BUT NOT LIMITED TO, THE DISCLOSURE STATEMENT, NOTES AND DRAFTS), MAY BE OFFERED INTO EVIDENCE, DEEMED AN ADMISSION, USED AS PRECEDENT, OR USED IN ANY CONTEXT WHATSOEVER BEYOND THE PURPOSES OF THE PLAN, IN ANY OTHER LITIGATION OR PROCEEDING EXCEPT AS NECESSARY TO ENFORCE THEIR TERMS BEFORE THE BANKRUPTCY COURT OR ANY OTHER COURT OF COMPETENT JURISDICTION. THE PLAN, THE PLAN SETTLEMENT, THE PLAN DOCUMENTS AND THE CONFIRMATION ORDER WILL BE BINDING AS TO THE MATTERS AND ISSUES DESCRIBED THEREIN, BUT WILL NOT BE BINDING WITH RESPECT TO SIMILAR MATTERS OR ISSUES THAT MIGHT ARISE IN ANY OTHER LITIGATION OR PROCEEDING IN WHICH THE DEBTORS ARE NOT A PARTY. ANY PERSON'S SUPPORT OF, OR POSITION OR ACTION TAKEN IN CONNECTION WITH, THE PLAN, THE PLAN SETTLEMENT, THE PLAN DOCUMENTS AND THE CONFIRMATION ORDER MAY DIFFER FROM ITS POSITION OR TESTIMONY IN ANY OTHER LITIGATION OR PROCEEDING IN WHICH THE DEBTORS ARE NOT A PARTY. FURTHER, AND AS ALL PARTIES TO THE MEDIATION AGREED, THIS PLAN SETTLEMENT IS NOT INTENDED TO BE A BLUEPRINT FOR OTHER CHAPTER 11 CASES, NOR IS IT INTENDED TO BE USED AS PRECEDENT BY ANY PARTY.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED HEREIN, AND THE DELIVERY OF THIS DISCLOSURE STATEMENT WILL NOT CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION STATED SINCE THE DATE HEREOF.

DEBTOR'S RECOMMENDATION

THE DEBTORS SUPPORT CONFIRMATION OF THE PLAN AND URGE ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN TO VOTE TO ACCEPT THE PLAN. THE DEBTORS BELIEVE THAT THE PLAN PROVIDES THE HIGHEST AND BEST RECOVERY FOR ALL CREDITORS AND IS IN THE BEST INTERESTS OF CREDITORS.

CREDITORS' COMMITTEE RECOMMENDATION

THE CREDITORS' COMMITTEE SUPPORTS CONFIRMATION OF THE PLAN AND URGES ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN TO VOTE TO ACCEPT THE PLAN. THE CREDITORS' COMMITTEE BELIEVES THAT THE PLAN PROVIDES THE HIGHEST AND BEST RECOVERY FOR ALL UNSECURED CREDITORS AND IS IN THE BEST INTERESTS OF UNSECURED CREDITORS.

SETTLING CREDITORS

THE SETTLING CREDITORS (LISTED ON EXHIBIT B) HAVE AGREED NOT TO OBJECT TO THE PLAN, CERTAIN TERMS OF WHICH WERE REACHED FOLLOWING EXTENSIVE DELIBERATION BETWEEN THE SETTLING CREDITORS, THE DEBTORS, AND THE CREDITORS' COMMITTEE.

I. INTRODUCTION AND EXECUTIVE SUMMARY

This is the Disclosure Statement of Insys Therapeutics, Inc. (“Insys”); IC Operations, LLC; Insys Development Company, Inc.; Insys Manufacturing, LLC; Insys Pharma, Inc.; IPSC, LLC; and IPT 355, LLC. as debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”) pending in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), filed pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) and in connection with the *Joint Chapter 11 Plan of Liquidation Proposed by Insys Therapeutics, Inc., et al.*, a copy of which is annexed to this Disclosure Statement as **Exhibit A**.

SEE SECTION II INTRODUCTION TO THE DISCLOSURE STATEMENT AND PLAN VOTING AND SOLICITATION PROCEDURES, BELOW, FOR INSTRUCTIONS ON VOTING ON THE PLAN.

1.1 The Debtors' Approach to these Chapter 11 Cases

The Debtors commenced these Chapter 11 Cases with the goal of resolving their mounting and varied unliquidated litigation claims in a fair and efficient process, while providing the highest possible recovery to all of their creditors. To these ends, the Debtors initiated a three-step strategy to accomplish these goals: (i) maximizing the value of their enterprise through pursuing a sale of their assets and pursuing affirmative causes of action (see Section 5.6(a)-(b));

(ii) preserving funds by seeking a stay of burdensome and asset-consuming litigation (see Section 5.6(c)); and (iii) further preserving funds by limiting their time in chapter 11 through estimation of categories of claims to facilitate confirmation of a plan and sooner distributions to creditors. The Debtors hoped and expected that this forward-looking strategy would bring creditors to the table and ultimately result in a more consensual process.

To that end, shortly after commencement of these Chapter 11 Cases, the Debtors began working with their creditors and, in particular, the Creditors' Committee and certain States' Attorneys General to implement a more consensual alternative to a formal estimation process with the goal of formulating a consensual chapter 11 plan. Following weeks of negotiations and a mediation facilitated by Judge Kevin Carey, as described below in more detail, the Debtors, the Creditors' Committee, and certain key creditor constituencies reached a resolution on the framework of a consensual plan. The Plan attached to this Disclosure Statement is the result of those negotiations and settlements. Section 5.7 details how the Debtors achieved their objectives through working with the Debtors' advisors, the Creditor's Committee, and a number of interested parties in developing a Plan that maximizes recovery, is fair to all creditor groups, and best represents the interests of the Debtors' creditors. The key components of the Debtors' Plan – the claims against the Debtors, the assets available to satisfy those claims, and the mechanisms for distributing assets to creditors – are described below.

1.2 Debtors' Anticipated Assets as of the Effective Date

The Debtors anticipate having various assets on hand as of the Effective Date of the Plan, some of which will be unliquidated. These assets include: cash on hand (following the payment of administrative and priority claims and setting aside reserves for payment of professional fees and the costs of liquidation and wind-down of the Debtors' estates, including the costs of administering the two Trusts); unliquidated business or operating assets (if any) that remain unsold as of the Effective Date (see Section 5.6); [royalty payments from the purchaser of Subsys (as defined below) (see Section 5.6(a)(iii));] potential claims against certain insurance policies of the Debtors (see Section 5.6(b)(ii)); and unliquidated litigation claims and causes of action against numerous parties for, among other things, breaches of fiduciary duty, the receipt of preference payments, and potential fraudulent (and other avoidable) transfers (see Section 5.6(b)(i), (iii), and (iv)).

The ability to liquidate and collect on the Debtors' unliquidated assets is far from certain. The Debtors may not be able to sell their remaining business or operating assets and may instead incur additional expense to wind-down and dispose of those remaining business or operating assets. Similarly, the value of the royalties related to Subsys are uncertain. Moreover, in addition to the potential litigation risks inherent in reducing the Debtors' litigation and insurance assets to judgment, there are significant risks associated with collecting on those judgements, if and when rendered in favor of the Debtors.

As a result of these various factors, it is impossible to place a precise value on the Debtors' anticipated assets as of the Effective Date. It is expected, however, that the Debtors' assets will be insufficient, by a wide margin, to satisfy unsecured claims against the Debtors' estates.

1.3 Unsecured Claims against the Debtors' Estates

As described in further detail in Section 4.1, below, the Debtors face thousands of claims by public and private entities and individuals related, generally, to the Debtors' business operations and the Debtors' prior marketing and sales activities related to SUBSYS® ("**Subsys**"), their opioid product. The unsecured claims against the Debtors, generally, fall into one of the following categories:

- Trade creditors' claims for, generally, goods and services provided prepetition, employee indemnification, and contract rejection damages;
- Personal injury plaintiffs' and similar claimants' claims, including bodily injury claims of addicted individuals, the families of addicted individuals, and of children with neonatal abstinence syndrome ("**NAS Children**" and, collectively with all other personal injury plaintiffs and other similar claimants, the "**Personal Injury Claimants**"), for, among other things, bodily injury, addiction, wrongful death and loss of consortium;
- Insurance related claims, including those by (1) insurance providers (collectively, "**Third Party Payors**" or the "**TPPs**") and insurance rate payers (the "**Insurance Ratepayers**"), for fraud leading to the improper reimbursement and payment of prescription costs for Subsys and (2) Insurance Ratepayers for the increase of insurance premium rates related to the Debtors' conduct;
- Private hospitals' (the "**Hospitals**") and NAS Children's claims for damages³ caused by the Debtors' alleged role in the worsening opioid crisis;
- Public entities' claims – including those by the U.S. Government (described below), states, municipalities and Native American Tribes – for, among other things, consumer fraud, deceptive practices, false claims, negligence, violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, et seq. ("**RICO**"), public nuisance and abatement; and
- Claims held by the United States Department of Justice (the "**DOJ**"), including claims for fines, penalties, judgments, restitution, or other amounts arising out of, or relating to, civil and criminal investigations with respect to any of the Debtors conducted by the DOJ, including any plea agreements, settlement

³ The NAS Children assert claims relating to damages arising out of personal injury, as described above, as well as damages arising out of the marketing, distribution, and sales of Subsys (not including those arising out of personal injury).

agreements, restitution orders, or similar documents entered into in connection therewith.⁴

Some unsecured claims were raised in litigation before the Petition Date. Others have been asserted since. Following the Petition Date, additional litigations have been filed against the Debtors, certain of those with existing litigation have asserted additional theories of recovery against the Debtors, and additional parties have informed the Debtors of their intention to make claims by the appropriate Bar Date. In addition, the TPPs, Insurance Ratepayers, NAS Children, and Hospitals have each sought the authority to file class proofs of claim in these Chapter 11 Cases on behalf of the class representatives as well as each putative member of those classes.⁵

The Debtors and Creditors' Committee do not agree with such assertions and allegations. The Debtors and Creditors' Committee estimate that creditors have asserted (or will assert) over \$4 billion in claims against Insys – again, far outstripping the Debtors' assets available to satisfy such claims.

1.4 Plan Negotiations, General Terms and Table of Summary Plan Treatment

Since the Petition Date and appointment of the Creditors' Committee in these Chapter 11 Cases, the Debtors have been working steadily to develop a consensual chapter 11 plan (see Section 5.7). Most recently, during the month of August, and concluding on August 31, 2019, the Debtors, the Creditors' Committee, and representatives of each of the creditor groups listed above (other than the DOJ, who had previously entered into a settlement agreement with the Debtors) participated in mediation. Though the mediation was not 100% successful, by early September, the Debtors reached consensus and settlement with the Creditors' Committee and certain Personal Injury Claimants, Hospitals, NAS Children, Insurance Ratepayers, certain non-MDL Municipalities, and the TPPs (collectively the “**Settling Creditors**”) with respect to the Plan on, generally, the following terms:

- On the Effective Date, or as soon as practicably possible thereafter and subject to reserves for administrative and priority claims against the Debtors' estates, all assets of the Debtors will be transferred to one of two trusts for the benefit of the Debtors' creditors;
- One such trust, the Victims' Restitution Trust, will receive an assignment of the Debtors' product liability insurance policies and any proceeds thereof for the benefit of (i) the Personal Injury Claimants and (ii) States, Municipalities and Native American Tribes (the entities in (ii), collectively, the “**SMT Group**”);
- The second trust, the Insys Liquidation Trust, will receive an assignment of all other assets of the Debtors and will be charged with winding down the Debtors,

⁴ For reference, the DOJ, states, municipalities and Native American Tribes are from time to time, collectively, referred to herein as the public creditors, and all other general unsecured creditors (except Personal Injury Claimants) are collectively referred to herein as private creditors.

⁵ See, respectively, Docket Nos. 76, 486, 476, and 404. As described more fully herein, the Settling Parties have agreed not to object to these motions.

liquidating their assets, and making distributions to the Debtors' public creditors (as well as the Debtors' private creditors), other than the Personal Injury Claimants, whose sole recovery will be from the Victims Restitution Trust;

- The first \$3 million in distributions from the Insys Liquidation Trust will be for the benefit of the Debtors' trade creditors, and thereafter, up to the first \$38 million from the Insys Liquidation Trust, will be distributed to the Debtors' private (55%) (other than Personal Injury Claimants) and public (45%) creditors; and
- Distributions in excess of \$38 million from the Insys Liquidation Trust will be split 20% to private creditors (other than Personal Injury Claimants) and 80% to public creditors.
- To conserve estate and trust resources, the Debtors are:
 - Providing for class proofs of claim to be filed by the Hospitals, TPPs, Insurance Ratepayers, and NAS Children pursuant to Federal Rule of Civil Procedure 23, with the court-appointed class representative for each class to be charged with, at its sole expense, making distributions to the members of such class; and
 - Providing after the Effective Date, for a limited time and with a cap on fees, the services of an arbitrator to determine certain disputes among the Hospitals, TPPs, Insurance Ratepayers, and NAS Children – saving the estates the expense of litigating such disputes and claim objections in the Chapter 11 Cases.

Based on the Debtors' analyses and the analyses of the Debtors' consultant, Nathan Associates, Inc. ("**Nathan**"), and in consultation with the Creditors' Committee (which itself had done an independent analysis of all the claims listed above and came to its own conclusions regarding the appropriate allocation of value in the exercise of its fiduciary duties) and various creditor constituencies, the Debtors and the Creditors' Committee, in the exercise of their respective fiduciary duties, believe the allocations under the Plan and the distribution process encapsulated therein are fair and in the best interests of the estates and their creditors.

(a) Summary of Plan Treatment

Pursuant to the provisions of the Bankruptcy Code, only those holders of claims or interests in classes that are impaired under a chapter 11 plan and that are not deemed to have rejected the plan are entitled to vote to accept or reject such proposed plan. Classes of claims or interests in which the holders of claims are unimpaired under a proposed plan are presumed to have accepted such proposed plan and are not entitled to vote to accept or reject the Plan. Classes of claims or interests in which the holders of claims receive no distribution under a proposed plan are deemed to have rejected such proposed plan and are not entitled to vote to accept or reject the Plan.

The following table (the “**Treatment Table**”) summarizes: (i) the treatment of Claims and Interests under the Plan; (ii) which Classes are impaired by the Plan; (iii) which Classes are entitled to vote on the Plan; and (iv) the estimated recoveries for holders of Claims and Interests. The table is qualified in its entirety by reference to the full text of the Plan. For a more detailed summary of the terms and provisions of the Plan, see Section 6.4.

Further, the estimated recoveries set forth in the Treatment Table are based upon estimated claim amounts and estimated recoveries for affirmative claims that could vary significantly. Many of these estimated claim amounts include claims which are in the preliminary stages of investigation and can only be estimated by using broad ranges. The resolution and/or estimation of these claims for distribution purposes, and the ultimate recoveries on affirmative claims, could have a material effect on the estimated recoveries set forth in the Treatment Table.

Class	Type of Claim or Interest	Treatment	Impairment	Entitled to Vote	Estimated Percentage Recovery	Estimated Claims
None	Administrative Expense Claims	Except to the extent that a holder of an Allowed Administrative Expense Claim (other than a Professional Fee Claim) agrees to a different treatment, the holder of such Allowed Administrative Expense Claim shall receive, on account of such Allowed Claim, Cash in an amount equal to the Allowed amount of such Claim from the Claims Reserve within thirty (30) days following the later to occur of (i) the Effective Date and (ii) the date on which such Administrative Expense Claim shall become an Allowed Claim.	Unimpaired	No (Presumed to Accept)	100%	[\$TBD]
None	Professional Fee Claims	Each holder of an Allowed Professional Fee Claim shall receive, in full and final satisfaction, release, and discharge of such Claim, cash in such amounts as are Allowed by the Bankruptcy Court or authorized to be paid in accordance with the order(s) relating to or allowing any such Professional Fee Claim to be paid from the Professional Fee Escrow Account established pursuant to the terms of the Plan.	Unimpaired	No (Presumed to Accept)	100%	[\$TBD]
None	Priority Tax Claims	Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a different treatment, on the Effective Date or as soon thereafter as is reasonably practicable, the	Unimpaired	No (Presumed to Accept)	100%	[\$TBD]

Class	Type of Claim or Interest	Treatment	Impairment	Entitled to Vote	Estimated Percentage Recovery	Estimated Claims
		holder of such Allowed Priority Tax Claim shall receive, on account of such Allowed Priority Tax Claim, either Cash in an amount equal to the Allowed amount of such Claim from the Claims Reserve or such other treatment as may satisfy section 1129(a)(9) of the Bankruptcy Code.				
Class 1	Secured Claims	The legal, equitable, and contractual rights of the holders of Secured Claims are unaltered by the Plan. Except to the extent that a holder of an Allowed Secured Claim agrees to different treatment, on the Effective Date or as soon as reasonably practicable thereafter, each holder of an Allowed Secured Claim shall receive, on account of such Allowed Claim, (i) payment in full in cash in accordance with section 506(a) of the Bankruptcy Code, (ii) reinstatement pursuant to section 1124 of the Bankruptcy Code, or (iii) such other treatment as may be necessary to render such Claim Unimpaired.	Unimpaired	No (Presumed to Accept)	100%	[\$TBD]
Class 2	Other Priority Claims	The legal, equitable, and contractual rights of holders of Other Priority Claims are unaltered by the Plan. Except to the extent that a holder of an Allowed Other Priority Claim agrees to different treatment, on the Effective Date or as soon as reasonably practicable thereafter, each holder of an Allowed Other Priority Claim shall receive, on account of such Allowed Claim, (i) payment in full in Cash or (ii) such other treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.	Unimpaired	No (Presumed to Accept)	100%	[\$TBD]
Class 3	Trade and Other Unsecured Claims	In accordance with the Plan Settlement, except to the extent that a holder of an Allowed Trade and Other Unsecured Claim agrees to different	Impaired	Yes	%	[\$TBD]

Class	Type of Claim or Interest	Treatment	Impairment	Entitled to Vote	Estimated Percentage Recovery	Estimated Claims
		treatment, in full and final satisfaction, settlement, release, and discharge of an Allowed Trade and Other Unsecured Claim, each such holder shall receive, from the Insys Liquidation Trust, its Pro Rata share of (i) one-hundred percent (100%) of all Category 1 Distributions; (ii) one half percent (0.5%) of all Category 2 Distributions; and (iii) seven percent (7%) of any Preference and Indemnification Proceeds; provided, however, that aggregate Distributions to holders of Trade and Other Unsecured Claims under this Plan shall not exceed the Class 3 Recovery Cap.				
Class 4	Insurance Related Claims	In accordance with the Plan Settlement, except to the extent that a holder of an Allowed Insurance Related Claim agrees to different treatment, in full and final satisfaction, settlement, release, and discharge of an Allowed Insurance Related Claim, each such holder shall receive, from the Insys Liquidation Trust, its Pro Rata share (based upon the determination by the ILT Claims Arbiter) of sixty-eight and one half percent (68.5%) of all Category 2 Distributions.	Impaired	Yes	%	\$(TBD)
Class 5	Hospital and NAS Monitoring Claims	In accordance with the Plan Settlement, except to the extent that a holder of an Allowed Hospital and NAS Monitoring Claim agrees to different treatment, in full and final satisfaction, settlement, release, and discharge of an Allowed Hospital and NAS Monitoring Claim, each such holder shall receive, from the Insys Liquidation Trust, its Pro Rata share (based upon the determination by the ILT Claims Arbiter) of thirty-one percent (31%) of all Category 2 Distributions.	Impaired	Yes	%	\$(TBD)

Class	Type of Claim or Interest	Treatment	Impairment	Entitled to Vote	Estimated Percentage Recovery	Estimated Claims
Class 6	DOJ Claims	Except to the extent that the DOJ agrees to different treatment, in full and final satisfaction, settlement, release, and discharge of the Allowed DOJ Claims, the DOJ shall receive, as restitution with respect to the Allowed DOJ Civil Claim and any additional restitution claims, thirty-one and four tenths of a percent (31.4%) of all Category 3 Distributions; provided, however, that, as per the DOJ Settlement Order, the DOJ will receive no Distributions on account of the Allowed DOJ Civil Claim until the GUC Recovery Reallocation Threshold is met, after which point the Allowed DOJ Civil Claim will share in Category 3 Distributions.	Impaired	Yes	%	[\$TBD]
Class 7	SMT Group Claims	Except to the extent that a holder of an SMT Group Claim agrees to different treatment or has been paid for such Claim prior to the Effective Date, in full and final satisfaction, settlement, release, and discharge of an Allowed SMT Group Claim, each such holder shall receive, as restitution, from the Insys Liquidation Trust and the Victims Restitution Trust, as applicable, its Pro Rata share (based upon the determination by holders of SMT Group Claims or, if no such agreement can be reached, by the Liquidating Trustee) of (i) sixty-eight and six tenths percent (68.6%) of all Category 3 Distributions, (ii) five percent (5%) of any Products Liability Insurance Proceeds, and (iii) a one-hundred percent (100%) interest in any Excess Products Liability Insurance Proceeds.	Impaired	Yes	%	[\$TBD]
Class 8	Personal Injury Claims	Except to the extent that a holder of an Allowed ⁶ Personal Injury	Impaired	Yes	%	\$

⁶ The amount of any Allowed Personal Injury Claim shall be determined by the VRT Claims Administrator.

Class	Type of Claim or Interest	Treatment	Impairment	Entitled to Vote	Estimated Percentage Recovery	Estimated Claims
		<p>Claim agrees to different treatment, in full and final satisfaction, settlement, release, and discharge of an Allowed Personal Injury Claim, each such holder shall receive, from the Victims Restitution Trust, its Pro Rata share of ninety-five percent (95%) of any Products Liability Insurance Proceeds.</p> <p>No holder of an Allowed Personal Injury Claim will receive a Distribution of Products Liability Insurance Proceeds in excess of each such holder's Allowed Personal Injury Claim.</p>				
Class 9	510(a) and 510(b) Subordinated Claims	510(a) and 510(b) Subordinated Claims are subordinated pursuant to the Plan and sections 510(a) and (b) of the Bankruptcy Code. 510(a) and 510(b) Subordinated Claims shall be deemed expunged, discharged, released, and extinguished without further action by or order of the Bankruptcy Court, and shall be of no further force or effect.	Impaired	No	0%	\$0
Class 10	510(c) Subordinated Claims	510(c) Subordinated Claims are subordinated pursuant to the Plan and section 510(c) of the Bankruptcy Code. 510(c) Subordinated Claims shall be deemed expunged, discharged, released, and extinguished without further action by or order of the Bankruptcy Court, and shall be of no further force or effect.	Impaired	No	0%	\$0
Class 11	Intercompany Claims	Holders of Intercompany Claims shall not receive or retain any property under the Plan on account of such Claims. Intercompany Claims shall be deemed expunged, discharged, released, and extinguished without further action by or order of the Bankruptcy Court, and shall be of no further force or effect.	Impaired	No	0%	\$0

Class	Type of Claim or Interest	Treatment	Impairment	Entitled to Vote	Estimated Percentage Recovery	Estimated Claims
Class 12	Equity Interests	Holders of Equity Interests shall not receive or retain any property under this Plan on account of such Interests. As of the Effective Date, Equity Interests shall be deemed surrendered, cancelled, and/or redeemed without further action by or order of the Bankruptcy Court, and shall be of no further force or effect. For the avoidance of doubt, the Parent Holding Trust maintains Interest holders' positions relative to holders of Claims consistent with the absolute priority rule and, accordingly, is not expected to receive, or distribute, any value to its beneficial interest holders.	Impaired	No	0%	\$0

(b) Distributions

As defined in the plan:

Category 1 Distributions means Distributions of the first \$3 million of Estate Distributable Value from the ILT Recovery Fund on account of Allowed Claims, which shall be made only on account of Allowed Trade and Other Unsecured Claims. Category 1 Distributions shall be made in accordance with reallocations resulting from the DOJ Distribution Reallocation.

Category 2 Distributions means (i) with respect to Distributions of the next \$35 million of Estate Distributable Value following the Distribution of \$3 million in Category 1 Distributions to holders of Allowed Trade and Other Unsecured Claims, fifty-five percent (55%) of the Estate Distributable Value composing such Distributions and (ii) with respect to Distributions after \$38 million of Estate Distributable Value has been distributed on account of Allowed Non-PI General Unsecured Claims in the aggregate, twenty percent (20%) of the incremental Estate Distributable Value composing such Distributions. Category 2 Distributions shall be made in accordance with reallocations resulting from the DOJ Distribution Reallocation.

Category 3 Distributions means (i) with respect to Distributions of the next \$35 million of Estate Distributable Value following the payment of \$3 million in Category 1 Distributions to holders of Allowed Trade and Other Unsecured Claims, forty-five percent (45%) of the Estate Distributable Value composing such Distributions and (ii) with respect to Distributions after \$38 million of Estate Distributable Value has been distributed on account of Allowed Non-PI General Unsecured Claims in the aggregate, eighty percent (80%) of the incremental Estate Distributable Value composing such Distributions. Category 3 Distributions shall be made in accordance with reallocations resulting from the DOJ Distribution Reallocation.

Estate Distributable Value means Available Cash and any other value available for Distribution to holders of Allowed Non-PI General Unsecured Claims from the ILT Recovery Fund. The term “Estate Distributable Value” shall not include (i) Products Liability Insurance Proceeds, (ii) Excess Products Liability Insurance Proceeds, which will be deposited in the ILT Recovery Fund but designated for Distribution to holders of Allowed SMT Group Claims under Section 4.7(a) of the Plan, or (iii) seven percent (7%) of any Preference and Indemnification Proceeds, which will be deposited in the ILT Recovery Fund but designated for Distribution to holders of Allowed Trade and Other Unsecured Claims under Section 4.3(a) of the Plan.

(c) Confirmation under Section 1129(b)

If a Class of Claims is deemed to reject the Plan or is entitled to vote on the Plan and does not vote to accept the Plan, the Debtors may (i) seek confirmation of the Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify the Plan in accordance with the terms thereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Interests, or any class of Claims or Interests, are impaired, the Bankruptcy Court will, after notice and a hearing, resolve such controversy on or before the Confirmation Date. Section 1129(b) permits the confirmation of a chapter 11 plan notwithstanding the rejection of such plan by one or more impaired classes of claims or interests. Under section 1129(b), a plan may be confirmed by a bankruptcy court if it does not “discriminate unfairly” and is “fair and reasonable” with respect to each rejecting class. A more detailed description of the requirements for confirmation of a nonconsensual plan is set forth in Section 8.1(b) of this Disclosure Statement.

II. INTRODUCTION TO THE DISCLOSURE STATEMENT AND PLAN VOTING AND SOLICITATION PROCEDURES

2.1 Purpose of the Disclosure Statement

The purpose of the Disclosure Statement is to set forth information that (i) summarizes the Plan and alternatives to the Plan, (ii) advises holders of Claims and Interests of their rights under the Plan, (iii) assists creditors entitled to vote in making informed decisions as to whether they should vote to accept or reject the Plan, and (iv) assists the Bankruptcy Court in determining whether the Plan complies with the provisions of chapter 11 of the Bankruptcy Code and should be confirmed.

By order dated [], 2019 [Docket No. __] (the “**Approval Order**”), the Bankruptcy Court approved this Disclosure Statement, finding that it contains “adequate information,” as that term is used in section 1125(a)(1) of the Bankruptcy Code. However, the Bankruptcy Court has not ruled on the merits of the Plan. Creditors should carefully read the Disclosure Statement, in its entirety, before voting on the Plan. This Disclosure Statement and the attached Plan, including their respective exhibits, are the only materials creditors should use to determine whether to vote to accept or reject the Plan.

2.2 Disclosure Statement Enclosures

(a) **Solicitation Packages.** The Debtors will mail or cause to be mailed solicitation packages (the “**Solicitation Packages**”) containing the information described

below as soon as practicable after entry of the Approval Order. The Solicitation Packages contain the following enclosures:

- i. If the recipient is in a Voting Class (as defined herein) and is entitled to vote on the Plan, (i) the Cover Letter (as defined in the Approval Order), the Approval Order, the Disclosure Statement, which will include the Plan as an attachment, and the Plan, as independently filed,⁷ (iii) the Confirmation Hearing Notice (as defined in the Approval Order), (iv) a Ballot for such holder (customized as appropriate), and (v) a postage-prepaid, pre-addressed return envelope; and
- ii. If the recipient is a Non-Voting Claimant, or is not otherwise entitled to vote on the Plan, (i) the Confirmation Hearing Notice, and (ii) the applicable Notice of Non-Voting Status.⁸

2.3 Voting Procedures and Requirements

(a) **Eligible Holders.** A claimant who holds a Claim in a Voting Class, as of the Record Date, is entitled to vote on the Plan (an “**Eligible Holder**”) unless:

- i. As of the Record Date (as defined below), the outstanding amount of such claimant’s Claim is not greater than zero (\$0.00);
- ii. As of the Record Date, such claimant’s Claim has been disallowed, expunged, disqualified, or suspended;
- iii. A claimant is not scheduled in the Debtors’ Schedules, or a claimant’s Claim is scheduled as contingent, unliquidated, or disputed, and such claimant has not timely filed a proof of Claim in accordance with the Bar Date Order; or
- iv. Such claimant’s Claim is subject to an objection or request for estimation as of the Record Date, subject to the procedures set forth in the Approval Order.

⁷ The Debtors are authorized to distribute the Approval Order, the Disclosure Statement and Plan either as printed hard copies or in electronic format (i.e. on a flash drive or CD-Rom), in the Debtors’ discretion, provided, that the Ballots as well as the Cover Letter, and the Confirmation Hearing Notice shall be provided in paper format.

⁸ “**Notice of Non-Voting Status**” means, collectively, (i) the form of notice applicable to holders of Claims and Interests that are Unimpaired under the Plan and who are, pursuant to section 1126(f) of the Bankruptcy Code, conclusively presumed to accept the Plan (the “**Notice of Non-Voting Status – Unimpaired Classes**”); (ii) the form of notice applicable to holders of Claims and Interests that are Impaired under the Plan and who are, pursuant to section 1126(g) of the Bankruptcy Code, conclusively deemed to reject the Plan (the “**Notice of Non-Voting Status – Impaired Classes**”); (iii) the form of notice applicable to holders of Claims, if any, that are subject to a pending objection by the Debtors and who are not entitled to vote the disputed portion of such Claim; and (iv) the form of notice applicable to holders of Claims that are Impaired under the Plan and who are, pursuant to section 1126(g) of the Bankruptcy Code, conclusively deemed to reject the Plan, and whose Claims are being subordinated under section 510(c) of the Bankruptcy Code pursuant to the Plan (the “**Notice of Non-Voting Status and Notice of Equitable Subordination**”) substantially in the forms attached as **Exhibits []** to the Approval Order.

(b) **Record Date.** The record date for determining which creditors are entitled to vote on the Plan is [], 2019 (the “**Record Date**”).

(c) **Voting Deadline and Solicitation Agent.** The Debtors have engaged Epiq Corporate Restructuring LLC, as solicitation and voting agent (the “**Solicitation Agent**”), to assist in the transmission of voting materials and in the tabulation of votes with respect to the Plan. **IN ORDER FOR YOUR VOTE TO BE COUNTED, YOUR VOTE MUST BE ACTUALLY RECEIVED BY THE SOLICITATION AGENT AT THE ADDRESS SET FORTH BELOW OR ELECTRONICALLY RECEIVED IN ACCORDANCE WITH THE INSTRUCTIONS SET FORTH ON THE BALLOT ON OR BEFORE 4:00 P.M. (PREVAILING EASTERN TIME) ON [], 2019 (THE “VOTING DEADLINE”), UNLESS EXTENDED BY THE DEBTORS.**

If a Ballot is damaged or lost, claimants may contact the Solicitation Agent to receive a replacement Ballot. Any Ballot that is executed and returned but which does not indicate a vote for acceptance or rejection of the Plan will not be counted. If claimants have any questions concerning the voting procedures, claimants may contact the Solicitation Agent at:

Insys Therapeutics Inc.
Claims Processing Center
c/o Epiq Corporate Restructuring
10300 SW Allen Blvd.
Beaverton, OR 97005

Email: tabulation@epiqglobal.com with a reference to “INSYS” in the subject line or

Phone (Toll-Free): (855) 424-7683

Phone (if calling from outside the U.S. or Canada): (503) 520-4461

Copies of the Disclosure Statement are also available on the Solicitation Agent’s website (the “**Case Website**”), <https://dm.epiq11.com/Insys>.

(d) **Parties Entitled to Vote.** Under the Bankruptcy Code, only holders of Claims or interests in “impaired” classes are entitled to vote on a plan. Under section 1124 of the Bankruptcy Code, a class of Claims or interests is deemed to be “impaired” under a plan unless: (i) the plan leaves unaltered the legal, equitable, and contractual rights to which such Claim or interest entitles the holder thereof; or (ii) notwithstanding any legal right to an accelerated payment of such Claim or interest, the plan cures all existing defaults (other than defaults resulting from the occurrence of events of bankruptcy) and reinstates the maturity of such claim or interest as it existed before the default.

If, however, the holder of an impaired claim or interest will not receive or retain any distribution under the plan on account of such claim or interest, the Bankruptcy Code deems such holder to have rejected the plan, and, accordingly, holders of such claims and interests do not actually vote on the plan. If a claim or interest is not impaired by the plan, the Bankruptcy Code deems the holder of such claim or interest to have accepted the plan and, accordingly, holders of such claims and interests are not entitled to vote on the Plan.

A vote may be disregarded if the Bankruptcy Court determines, pursuant to section 1126(e) of the Bankruptcy Code, that it was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

The Bankruptcy Code defines “acceptance” of a plan by a class of claims as acceptance by creditors in that class that hold at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the claims that cast ballots for acceptance or rejection of the plan. As set forth below, the Claims in Classes 3, 4, 5, 6, 7, and 8 are impaired and entitled to vote to accept or reject the Plan (the “**Voting Classes**”).

(e) **Voting Procedures.** All Ballots must be signed by the holder of record of the Claim or such holder’s authorized signatory (or, if applicable, the Voting Representative of such holders) and comply with the procedures set forth in the Approval Order. As set forth in the Approval Order, unless otherwise ordered by the Bankruptcy Court, Ballots will not be counted if claimant fails to comply with the Solicitation and Voting Procedures, including by: (i) failing to indicate on the Ballot whether claimant votes to accept or reject the Plan; (ii) marking on the Ballot that claimant both accepts and rejects the Plan; (iii) returning your Ballot to the Solicitation Agent after the Voting Deadline; (iv) returning a Ballot that is illegible or that contains insufficient information to permit the identification of the claimant; (v) returning a Ballot that is not signed in accordance with the procedures set forth in the Approval Order, (vi) transmitting a Ballot to the Solicitation Agent by a means not specifically permitted under the Solicitation and Voting Procedures as approved by the Approval Order. The Debtors, in their sole discretion, and the Creditors’ Committee (after consultation with the Debtors) may request that the Solicitation Agent attempt to contact such voters to cure any defects in the Ballots.

Under the Bankruptcy Code, for purposes of determining whether the requisite votes for acceptance have been received, only holders of Claims within the Voting Classes who actually vote will be counted. The failure of a holder to timely deliver a duly executed Ballot to the Solicitation Agent will be deemed to constitute an abstention by such holder with respect to voting on the Plan and such abstentions will not be counted as votes for or against the Plan.

If a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or another, acting in a fiduciary or representative capacity, such person should indicate such capacity when signing and, if requested, must submit proper evidence satisfactory to the Debtors of authority to so act. Authorized signatories should submit a separate Ballot for each Eligible Holder for whom they are voting.

UNLESS THE BALLOT IS SUBMITTED TO THE SOLICITATION AGENT ON OR PRIOR TO THE VOTING DEADLINE, SUCH BALLOT WILL BE REJECTED AS INVALID AND WILL NOT BE COUNTED AS AN ACCEPTANCE OR REJECTION OF THE PLAN; PROVIDED, HOWEVER, THAT THE DEBTORS AND THE CREDITORS’ COMMITTEE RESERVE THE RIGHT, EACH IN THEIR SOLE DISCRETION, TO REQUEST THE BANKRUPTCY COURT TO ALLOW SUCH BALLOT TO BE COUNTED.

2.4 Confirmation Hearing and Objection Deadline

(a) **The Confirmation Hearing.** The hearing on confirmation of the Plan (the “**Confirmation Hearing**”) will be held before the Honorable Kevin Gross, Chief United States Bankruptcy Judge, in Courtroom [] of the United States Bankruptcy Court for the District of Delaware, 824 Market Street N., Wilmington, Delaware, on [], 2019 at []:00 a.m. (Prevailing Eastern Time), or as soon thereafter as counsel may be heard. The Confirmation Hearing may be adjourned from time to time by the Debtors or the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any subsequent adjourned confirmation hearing.

(b) **The Plan Objection Deadline.** The Bankruptcy Court has directed that objections, if any, to confirmation of the Plan be filed on or before [], 2019 at 4:00 p.m. (Prevailing Eastern Time) (the “**Plan Objection Deadline**”). Any objection to confirmation of the Plan must be in writing, must conform to the Bankruptcy Rules, must set forth the name of the objector, the nature and amount of the Claims held or asserted by the objector against the Estates, the basis for the objection and the specific grounds therefore, and must be filed with the Bankruptcy Court, with a copy to the chambers of the Honorable Kevin Gross, together with proof of service thereof, and served upon the following parties (by regular or electronic mail), including such other parties as the Bankruptcy Court may order:

<i>Counsel to the Debtors</i> Weil, Gotshal & Manges LLP 767 Fifth Avenue New York, New York 10153 Attn: Gary T. Holtzer Ronit J. Berkovich Candace M. Arthur Brenda Funk	<i>Office of the U.S. Trustee</i> Office of the U.S. Trustee for the District of Delaware 844 King Street, Suite 2207 Wilmington, Delaware 19899 Attn: Jane Leamy, Esq.
	<i>Counsel to the Creditors’ Committee</i> Akin Gump Strauss Hauer & Feld LLP One Bryant Park New York, New York 10036 Attn: Arik Preis Mitchell Hurley Edan Lisovicz
<i>Co-Counsel to the Debtors</i> Richards, Layton & Finger, P.A. 920 N. King Street Wilmington, Delaware 19801 Attn: Paul N. Heath Zachary Shapiro	<i>Co-Counsel to the Creditors’ Committee</i> Bayard, P.A. 600 N. King Street, Suite 400 Wilmington, Delaware 19801 Attn: Justin R. Alberto Erin R. Fay Daniel N. Brogan

**UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY FILED, IT MAY NOT
BE CONSIDERED BY THE BANKRUPTCY COURT.**

III. OVERVIEW OF THE DEBTORS

3.1 The Debtors' Business and Employees

The Debtors were, as of the Petition Date, a specialty pharmaceutical company that developed and commercialized innovative drugs and novel drug delivery systems of therapeutic molecules that improved patients' quality of life. The Debtors' primary operations included research and development (including preclinical and clinical trials and studies), manufacturing, marketing, and sales in support of certain drugs and novel drug delivery systems for targeted therapies. Insys had two marketed products: Subsys, a proprietary sublingual fentanyl spray, and SYNDROS®, a proprietary, orally administered liquid formulation of dronabinol, described further below.

In addition, the Debtors were developing other differentiated product candidates, described below, by leveraging their capabilities in cannabinoid formulation and manufacturing and their proprietary sublingual and nasal spray drug delivery technology. The Debtors expected that these product candidates would offer solutions to patients with unmet needs.

Insys maintains its headquarters in Chandler, Arizona. The Debtors historically maintained two manufacturing facilities under operating lease agreements, which are both located in Round Rock, Texas. As of the Petition Date, the Debtors employed 155 full-time employees, including 48 manufacturing employees, 38 sales and marketing employees, 34 employees engaged in research and development, and 35 employees in administration.

On August 9, 2019, the Debtors issued conditional notices pursuant to The Worker Adjustment and Retraining Notification Act (“**WARN Notices**”) to the 98 of its then 128 full-time employees required to receive WARN Notices. The WARN Notices set forth the Debtors' expectations that the closure or layoff will be permanent and will take place on October 8, 2019, unless a buyer of the Company's assets offers employment or the employee is asked to continue their employment with the Debtor beyond October 8, 2019 to assist with the wind down of the Debtors business or the transfer of Debtor assets to a buyer.

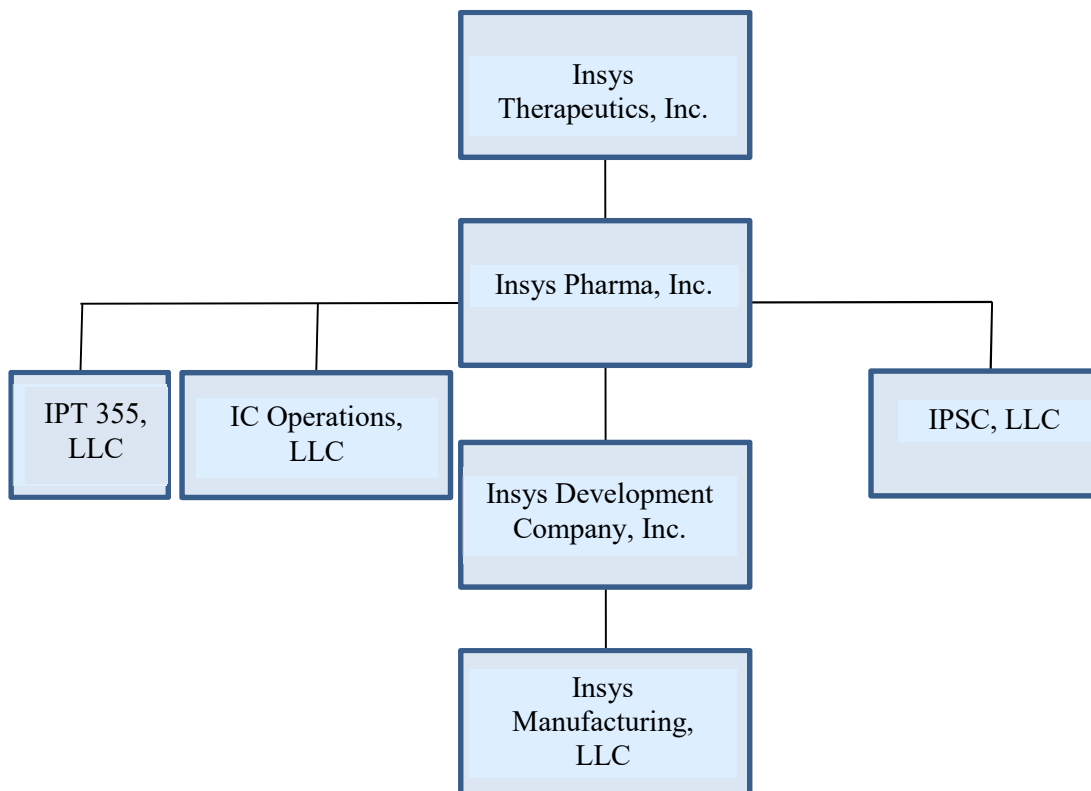
As of September 4, 2019, the Debtors employed 124 full-time employees and 1 part-time employee, including 36 manufacturing employees, 35 sales and marketing employees, 24 employees engaged in research and development, and 30 employees in administration.

As discussed below, pending (i) approval of the Bankruptcy Court regarding the Subsys Transaction and (ii) the successful closing of the Chilion Transaction and the Subsys Transaction (as later defined), the Debtors will have sold substantially all of their business assets during the Chapter 11 Cases.

3.2 The Debtors' Corporate Structure

There are seven Debtors in these Chapter 11 Cases: Insys, Insys Pharma, Inc., IC Operations, LLC, Insys Development Company, Inc., IPSC, LLC, IPT 355 LLC, and Insys Manufacturing, LLC. Insys is the direct parent of Insys Pharma, Inc., which is the direct parent of each of IC Operations, LLC, Insys Development Company, Inc., IPT 355 LLC, and IPSC, LLC.

Insys Development Company, Inc. is the direct parent of Insys Manufacturing, LLC. Insys Therapeutics, Inc. was incorporated in Delaware in June 1990.



3.3 The Debtors' Capital Structure

Insys is a publicly traded company with its shares formerly listed on the NASDAQ Global Market LLC under the ticker symbol INSY. On June 24, 2019, a Form 25 relating to the delisting and deregistration under section 12(b) of the Act of the Insys's common stock was filed by The Nasdaq Stock Market LLC. Insys's common stock trades on the OTC Pink Sheets Market.

(a) Prepetition Equity Interests

Preferred Stock. As of March 31, 2019, Insys had 0 shares issued and outstanding and 10,000,000 shares authorized of preferred stock.

Common Stock. Insys had 74,569,163 shares of common stock outstanding at March 31, 2019. It is unlikely that holders of the Debtors' common stock will receive any recovery on account of such securities.

On October 29, 2017, the Board accepted the resignations of John Kapoor and Patrick P. Fourteau, as board members. As part of his resignation, Kapoor agreed to place his shares of Insys, which represented approximately 59% of the outstanding shares of common stock of Insys, into an independent trust. Effective as of February 27, 2018, Insys entered into a voting trust agreement with Kapoor (and certain of his beneficiaries) and an independent trustee (the

“Kapoor Voting Trust”). During the term of the Kapoor Voting Trust, the independent trustee, and not Kapoor (or certain of his beneficiaries), has control over voting decisions over the shares of Insys common stock beneficially owned by Kapoor and his beneficiaries (except under limited circumstances).

(b) **Funded Debt Obligations**

As of the Petition Date, Insys had no outstanding funded debt obligations.

3.4 The Debtors’ Liquidity

As of the Petition Date, Insys held approximately \$37 million in cash and cash equivalents and investments. As of the date of this Disclosure Statement, the Debtors have approximately \$[50] million cash on hand, which includes sale proceeds of \$17 million from the sale of assets to Hikma, but does not include any sale proceeds from the Chilion Transaction.

IV. KEY EVENTS LEADING TO THE COMMENCEMENT OF THE CHAPTER 11 CASES

Prior to the Petition Date, several factors culminated in creating a critical situation that threatened the Debtors’ ability to continue to operate as a going concern.

Over the last several years, the Debtors faced a litany of litigation relating to what has been commonly referred to as the “opioid crisis.” The cost of litigating and settling these claims was overwhelming and unsustainable. At the same time, the Debtors’ revenues declined significantly, while spending to advance their Pipeline Products continued to be a drain on liquidity. The Debtors’ revenues from Subsys declined rapidly as a result of, among other factors, the increased national scrutiny of prescription of opioids by healthcare professionals, the resulting high-profile political and legal actions taken against manufacturers and distributors of opioids, and specific news relating to certain of the Debtors’ former executives’ criminal activity, as described herein.

Prior to the Petition Date, Insys took significant steps to address past wrongdoing, and new management of the Debtors was, and continues to be, committed to engaging in marketing practices that strictly complied with federal and state laws and regulations, including implementing an overhaul of key personnel (as described below), and focused extensively on instilling the highest respect for fundamentally sound values among all of its employees.

As a smaller company than some other opioid manufacturers, and with over 90% of its current revenue coming from the sale of opioids, Insys could not withstand the concurrent negative impact of massive litigation costs and significant opioid revenue deterioration. These factors caused a substantial cash drain on the company. Notwithstanding the Debtors’ efforts to cut costs and pursue liquidity-enhancing transactions, they determined that pursuit of these Chapter 11 Cases was the only path to avoid running out of money and to maximize recoveries for their numerous stakeholders.

4.1 Opioid Investigations and Litigation

Since 2013, the Debtors have faced an onslaught of investigative inquiries and litigation claims by both the government and private parties in connection with Subsys, which claims continued to surge with the ongoing and heightened publicity surrounding the national opioid crisis. As of the Petition Date, one or more of the Debtors had been named in over one thousand lawsuits, and additional lawsuits have been filed after the Petition Date. Some of the litigation is common to opioid manufacturers in general, while other claims are based on particular alleged activities of the Debtors' former executives, many of whom either pleaded guilty to or were convicted after trial of federal criminal activity relating to such activities. Many of these inquiries and lawsuits against the Debtors (and certain of their former employees, officers, and directors) have focused on the marketing of Subsys and issues related to potential violations of the Anti-Kickback Statute and the Food, Drug & Cosmetic Act and the Debtors' business unit created to secure prior authorizations required for insurance reimbursement of prescription costs for patients, known as the "Insys Reimbursement Center" or the patient services hub. Public and private parties allege, among other things, that this activity was illegal (and indeed, in some instances former directors and officers have pled guilty) and that it led to improper use of, and reimbursement for, Subsys.

(a) U.S. Government Investigations and U.S. and State *Qui Tam* Litigation

Beginning in late 2013, the Debtors began receiving subpoenas and other requests for information relating to their sales and marketing of Subsys and the Insys Reimbursement Center from various government entities. The Debtors cooperated with these investigations and produced a substantial number of documents in response thereto.

Between August 2013 and October 2016, certain individuals (the "***Qui Tam Plaintiffs***") filed actions against Insys related to the company's marketing and sales of Subsys pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the "***Qui Tam Actions***"). The United States and the states of California, Colorado, Indiana, Minnesota, New York, North Carolina, and Virginia intervened in part and declined to intervene in part in certain of the *Qui Tam* Actions. The United States' Complaint in Intervention, which was ordered unsealed on May 11, 2018, brings claims on behalf of the Office of Inspector General for the U.S. Department of Health and Human Services (the "**HHS-OIG**"), the Centers for Medicare & Medicaid Services (Medicare program), and the Defense Health Agency (TRICARE program) (the "**DOJ Civil Action**"). The Debtors' continuing discussions with federal agencies with respect to the federal investigations culminated in a resolution on June 5, 2019, described further below. As part of such resolution, the DOJ agreed to move to dismiss the United States' claims with prejudice in the *Qui Tam* Actions, excepting certain claims for attorneys' fees and retaliation claims.

In addition to the DOJ Civil Action, the DOJ commenced criminal investigations against Debtors Insys Pharma, Inc. and Insys Therapeutics, Inc. (the "**DOJ Criminal Actions**," and, together with the DOJ Civil Action, the "**DOJ Actions**"). Additionally, HHS-OIG considered a potential action to exclude Insys from participation in certain federal healthcare programs, such as Medicare and Medicaid (the "**HHS-OIG Potential Action**").

After months of negotiations, on June 5, 2019, the Debtors, the DOJ and the HHS-OIG agreed to a global resolution of the DOJ Actions and the HHS-OIG Potential Action, and in connection therewith entered into several interrelated, interdependent agreements and related documents, including the DOJ Civil Settlement, the Plea Agreement and the CIA, each as described below.

To resolve the DOJ Civil Action, the United States and the Debtors entered into the Settlement Agreement with the United States (the “**DOJ Prepetition Civil Settlement Agreement**”), pursuant to which the Debtors agreed to a \$195 million restitution payment, with \$5 million of that paid within one day of the execution of the agreement, and the United States agreed to a release of certain civil claims against the Debtors. In connection therewith, the parties agreed to the terms of a stipulation to be executed after the Petition Date and to be filed with a motion for approval pursuant to section 9019 of the Bankruptcy Code in this Court (the “**DOJ Stipulation**”), pursuant to which the Debtors agreed that the United States will have a \$243 million allowed unsecured claim in the Chapter 11 Cases (capped at a \$195 million recovery, including the \$5 million prepetition payment) as the sole remedy for restitution under the DOJ Prepetition Civil Settlement Agreement and the “Covered Conduct” (as defined in the DOJ Prepetition Civil Settlement Agreement) and for any breach by Insys of the DOJ Prepetition Civil Settlement Agreement (which breach would result in much higher claims under the terms of such agreement), the United States agreed that there will be no successor liability in the case of a section 363 sale of Subsys, and both parties agreed to certain other releases. A motion to approve the DOJ Stipulation was filed with the Bankruptcy Court on June 10, 2019 and [is currently pending]. The State of Florida filed an objection to the Debtors’ motion. The Creditors’ Committee did not file a formal objection, but instead engaged in significant discussion and negotiation with the Debtors and the DOJ regarding the DOJ Stipulation.

As of the date of the filing of this Disclosure Statement, the parties have reached a resolution of the objections to the Court’s approval of the DOJ Stipulation, subject to final internal approval by the DOJ (which the Creditors’ Committee has been told will be forthcoming) and approval by the Bankruptcy Court. Pursuant to that resolution, the Debtors will submit a revised order to the Bankruptcy Court pursuant to which the Debtors will ask the Bankruptcy Court to approve the DOJ Stipulation and the DOJ’s retention of the \$5 million paid to the DOJ before the Petition Date. The revised order will incorporate an agreement that was reached with the DOJ after the settlement motion was filed, under which the DOJ agreed that it would not receive a distribution on account of its allowed claim under the DOJ Stipulation until after other allowed, general unsecured, nonsubordinated claims receive a recovery of four percent (4%) on account of such claims.

To resolve the DOJ Criminal Actions, the United States Attorney for the District of Massachusetts entered into the Plea Agreement with Insys Pharma, Inc. (the “**Plea Agreement**”) and the related Deferred Prosecution Agreement with Insys Therapeutics, Inc. (the “**DPA**”). Pursuant to the Plea Agreement, Insys Pharma, Inc. pleaded guilty to five counts of mail fraud on June 7, 2019. As part of the resolution, the parties agreed to resolve claims against Insys Pharma, Inc., through its guilty plea to five counts of mail fraud and a recommended sentence for Insys Pharma, Inc. to pay a \$2 million fine and \$28 million in forfeiture. Pursuant to the Plea Agreement, the first payment totaling \$5 million was due ten days after the criminal sentencing of Insys Pharma, Inc. on July 10, 2019; however, given, among other things, the pendency of the Chapter

11 Cases and the settlement motion, Insys Pharma, Inc. did not make that payment. Moreover, the parties also agreed that the fine and forfeiture would be treated as an unsecured claim in the Chapter 11 Cases. Pursuant to the DPA, among other things, the United States agreed to defer prosecution against Insys of its criminal mail fraud actions for a term of five years if Insys abides by the terms of the DPA, with Insys's agreement that it is jointly and severally liable for the money owed by Insys Pharma, Inc. pursuant to the Plea Agreement, and with certain cooperation and compliance obligations.

To resolve the HHS-OIG Potential Action, on June 5, 2019, Insys entered into a Corporate Integrity Agreement and Conditional Exclusion Release ("**CIA**") with the HHS-OIG, under which, among other things, the Debtors agreed to establish and maintain for a period of five years an extensive program intended to promote compliance with the statutes, regulations, and written directives of Medicare, Medicaid, and all other federal health care programs, and with the statutes, regulations, and written directives of the FDA, and the HHS-OIG agreed not to exclude the Company from federal health care programs for the covered time period, if it complies with the terms of the agreement. Pursuant to the CIA, the Debtors are required to take a number of actions which include, among other things: (a) ceasing the marketing and promotion of Subsys within 90 days of the effective date of the CIA or the divestiture of Subsys, whichever occurs first, and (b) divesting Subsys and its buprenorphine candidate product to a bona fide independent third party, and ceasing all business activities related to opioids within 12 months of the effective date of the CIA.

In addition, on May 21, 2019, the HHS-OIG provided the Debtors with a letter (the "**OIG Side Letter**"), in which, among other things, the HHS-OIG acknowledged that Insys is likely to file for bankruptcy and stated that its general rule is that in an asset sale under section 363 of the Bankruptcy Code, a bona fide unrelated third party purchaser of assets is not subject to the obligations of the CIA. The HHS-OIG also committed in the **OIG Side Letter** to work expeditiously with any purchaser of the Debtors' assets to make a determination about successor liability issues associated with the purchases stemming from the bankruptcy.⁹

(b) State Attorneys General Investigations and Litigation

The Debtors have received information requests or subpoenas from at least fifteen states' offices of the attorney general (or similarly named and authorized office), which have ongoing investigations regarding the Debtors' sales and marketing practices related to Subsys and the Insys Reimbursement Center (the "**AG Investigations**"). In addition, the Debtors received an administrative subpoena from the California Insurance Commissioner. As of the Petition Date, the Debtors were cooperating with each of those investigations, and settled several claims before the Petition Date, consisting of claims brought by the states of Oregon, New Hampshire, Illinois, and Massachusetts. As of the Petition Date, Insys was also a defendant in legal proceedings commenced by ten states' offices of the attorney general (the "**Attorney General Actions**"). The Attorney General Actions are in various stages of litigation.

⁹ On August 13, 2019, the HHS-OIG provided the Debtors with a letter in which, among other things, the HHS-OIG agreed to extend a sixty-day extension of the deadlines contained in the CIA and represented that December 2, 2019 is the due date for the Debtors' report regarding implementation.

(c) Municipality Litigation

Certain Debtors have been named, together with various other defendants, including opioid manufacturers, distributors, prescribers, pharmacies, and others, in opioid-related complaints by various counties, states, Native American tribes, and third-party payors in many state and federal courts in approximately 32 states. The Debtors are defendants in approximately 1,000 of these cases filed prepetition and similar parties have continued to file after the Petition Date (the “**Municipal Actions**”).

The majority of the Municipal Actions have been consolidated into Multidistrict Litigation No. 2804 (the “**MDL**”) in the United States District Court for the Northern District of Ohio (the “**MDL Court**”). Most of the cases in the MDL are currently stayed while a limited number of cases proceed. Specifically, the MDL Court has ordered two litigation tracks of five total cases for accelerated discovery, motion practice, and bellwether trials, the first of which is scheduled to begin on October 21, 2019. Track 1 comprises three cases brought by plaintiffs located in the Northern District of Ohio. Certain of the Debtors are named in those cases alongside approximately 23 Defendant Families.¹⁰ Track 2 includes claims of Cabell County Commission, West Virginia and City of Huntington, West Virginia.

In addition, approximately 200 Municipal Actions against various Debtors are pending outside the MDL, mostly in state courts in Arizona, California, Connecticut, New York, Oklahoma, Pennsylvania, South Carolina, Texas, and Virginia. These cases are in various stages of motion practice and discovery and parties continued to file actions after the Petition Date.

(d) Hospital and Insurance Ratepayer Litigation

On June 16, 2019, twenty-five individually named parties filed the *Motion of the Class Claimants for Leave to File Class Proof of Claim* [Docket No. 76], seeking class action status on behalf of certain plaintiffs in the MDL that had filed putative class action lawsuits against Insys claiming that, as a result of the actions of Insys and others, all citizens of their states are paying higher insurance premiums. On August 7, 2019, four individually named parties filed the *Motion by Hospital Class Action Claimants Pursuant to Bankr. P. 9014 and 7023 to Make Federal Rule of Civil Procedure 23 Applicable to These Proceedings and to Permit the Filing of a Class Proof of Claim* [Docket No. 404], seeking class action status on behalf of certain plaintiffs in the MDL that have filed lawsuits, including a putative class action lawsuit, claiming that they incurred unique losses as a result of the allegedly deceptive, false, and unfair marketing of prescription opioids by the Debtors and others.

(e) Private Insurance Litigation

The TPP claims include currently pending claims brought by, or on behalf of, six insurance companies and two self-funded health care plans. These proceedings are in various states of litigation. The claims brought by the TPPs allege that the Debtors are liable for payments and reimbursements for opioid prescriptions that the TPPs would not have been required to cover but for the Debtors’ misconduct. On August 20, 2019, Louisiana Health Services & Indemnity

¹⁰ “Defendant Families” are groups of related corporate entity defendants.

Company, d/b/a Blue Cross and Blue Shield of Louisiana, and HMO Louisiana, Inc. (“**BCBSLA**”) filed the *Third Party Payor Class Action Claimants’ Motion to Apply Rule 23 of the Federal Rules of Civil Procedure to These Proceedings and to Permit the Filing of a Class Proof of Claim* [Docket No. 486] (the “**TPP Class Claim Motion**”), seeking approval by the Bankruptcy Court of BCBSLA’s use of a class action vehicle to assert the claims of all Third Party Payors in the aggregate. As described above, the Settling Parties have agreed not to object to the TPP Class Claim Motion.

(f) Personal Injury Plaintiff Litigation

There are currently 27 personal injury lawsuits, including those that seek class action status, alleging a variety of claims, including negligent misrepresentation, failure to warn, wrongful death, loss of consortium, negligence, and fraud concerning the Debtors’ marketing and sale of Subsys. The Debtors and their product liability insurance carriers have received, in what the Debtors believe is a violation of the automatic stay, approximately 12 settlement demands related to additional personal injury claimants since the Petition Date.

4.2 Other Litigation and Claims

(a) Securities Litigation

Insys, along with certain former officers, is a defendant in three pending federal securities litigation proceedings in federal courts in Arizona and New York.

(b) Indemnity Claims

The Debtors are parties to prepetition indemnity agreements and other undertaking agreements with certain current and former executive officers and employees and certain current and former members of the Insys Board of Directors (the “**Board**”), which require the Debtors to advance expenses (including attorneys’ fees) incurred in connection with any legal proceeding related to their position, as well as indemnification for any and all expenses, actually and reasonably incurred, in connection with the investigation, defense, settlement, or appeal of such a proceeding, subject to certain limitations set forth in the agreements or as otherwise may be applicable pursuant to other documents or agreements or governing law.

These indemnification agreements became a drain on the Debtors’ liquidity prior to the Petition Date, as a number of the Debtors’ former employees and former executives were charged in criminal proceedings related to the above-referenced investigations. Indeed, the Debtors advanced \$[] on behalf of John N. Kapoor (“**Kapoor**”), the Debtors’ founder and former President, CEO, and director, and \$[] on behalf of Michael Babich in connection with legal proceedings. A number of these former employees and executives have since pleaded guilty. In addition, on May 2, 2019, Kapoor, and four other former employees were convicted on criminal racketeering charges in federal court in Boston. Kapoor is scheduled to be sentenced on November 12, 2019.

In addition, certain of the Debtors’ former officers and directors are defendants in three pending shareholder actions asserting derivative claims in Delaware and Arizona (together with any related shareholder derivative actions, the “**Derivative Litigation**”). Insys formed a

Special Litigation Committee of its Board comprising independent and disinterested directors to investigate and evaluate the claims asserted and factual allegations in the Derivative Litigation. Further details regarding the Special Litigation Committee and its investigation of the Derivative Litigation are set forth in Section 5.6(a) *Derivative Claims Against Former Directors and Officers*. The Debtors are committed to maximizing value for the benefit of their estates consistent with their fiduciary duties and have fully supported the Special Litigation Committee throughout the course of its investigation and during these Chapter 11 Cases.

As stated above, Insys and certain of its former officers are defendants in three pending federal securities litigation proceedings in federal courts in Arizona and New York. These proceedings are the subject of indemnification claims as well.

The Company has paid many millions of dollars for such indemnification claims and the former officers and directors have asserted millions more in unpaid indemnification claims for legal costs incurred in the foregoing actions. The Debtors may be able to seek to claw back the amounts paid upon the sentences of any such individuals who have pleaded guilty or have been convicted, and they intend to pursue such clawback claims vigorously.

The Creditors' Committee believes that the Debtors' or the Insys Liquidation Trust's ability to clawback any and all amounts paid as indemnification or otherwise under the prepetition indemnity agreements may be broader than as stated above, and believe that these claims should be asserted by the Insys Liquidation Trust.

(c) Other Investigations and Litigation

The Debtors are also plaintiffs in certain patent infringement lawsuits with TEVA USA related to Subsys, in which TEVA USA is asserting certain counterclaims. These lawsuits have been consolidated in the United States District Court for the District of Delaware as case C.A. No. 17-1303 (CFC), and have been stayed pursuant to court order.

In addition to the Special Litigation Committee's investigation of the claims in the Derivative Litigation, the Debtors currently are in the process of investigating and evaluating other claims that the estates might have, including, but not limited to, additional potential clawback claims for indemnification payments and potential avoidance or other claims.

The Creditors' Committee believes that the Debtors should not be expending estate resources investigating or evaluating these claims, but instead should transfer these claims to the Insys Liquidation Trust.

4.3 Market Conditions and Decline in Business

The Debtors' revenues from Subsys sales, which at all relevant times made up at least 90% of their total revenue, experienced significant decline leading up to the Chapter 11 filing. Subsys, along with the TIRF class in which it is classified, has experienced a significant downward trend for the past several years. Specifically, based upon industry data available to the Debtors, since 2015, TIRF class prescriptions have declined approximately 75%. Subsys was declining at a faster rate than the overall market, potentially due to the negative publicity surrounding the company. Moreover, the Debtors believe that the nature of the pricing on their branded products

such as Subsys and Syndros adversely affected their overall market share and the revenue generated from such branded products. This was compounded by the fact that pharmaceutical product pricing has recently received increased governmental and media attention. The Debtors believe that migration to lower-cost generics resulted from this increased attention and focus.

4.4 The Debtors' Liquidity and Financial Resources

The Debtors' financial situation was also impacted by the Debtors spending on Research and Development ("**R&D**") costs to advance their pipeline products (the "**Pipeline Products**"), which take years to develop before they even bring in a single dollar of revenue.

Further compounding the situation, the Debtors' auditors informed the Debtors in connection with the filing of the 2018 10-K that, notwithstanding management's efforts to reduce costs and the Debtors' bankers' efforts to identify liquidity-enhancing transactions, they would not provide the Debtors with an unqualified going concern audit opinion for the Debtors' Form 10-K filed with the SEC in March 2019. The going concern qualification negatively affected the Debtors' prepetition attempts to obtain funding.

4.5 Debtors' Efforts to Restructure

As a result of such events leading to a deterioration of the Debtors' financial condition, the Debtors took certain actions to seek to ameliorate the situation. Specifically, the Debtors' management team examined and implemented cost reduction initiatives to align operating expenses more closely with their reduced revenue. On July 12, 2018, the Debtors eliminated 45 positions through headcount reduction and role consolidation. The headcount reduction included 30 employees, the majority of which were sales and marketing employees, and represented approximately 9% of their workforce at the time. On and around November 1, 2018, the Debtors eliminated an additional 48 positions through further headcount reduction and role consolidation. The headcount reduction included 36 employees, the majority of which were sales and marketing employees, and represented approximately 13% of the Debtors' workforce at the time. On May 31, 2019, the Debtors eliminated an additional 8 positions that represented approximately 5% of the Debtors' workforce at that time.

Furthermore, to enhance their liquidity position, on November 5, 2018, the Debtors announced a process to review strategic alternatives for their opioid-related assets, including Subsys, and engaged JMP Securities LLC ("**JMP**") as their financial advisor to assist with this process. JMP engaged in an extensive marketing process for Subsys, which led to several offers. None of such offers, however, could be consummated quickly or provide sufficient near-term cash by themselves to enable the Debtors to "fund the gap" between their existing cash burn situation and the period in the future when they would expect to generate revenues.

As the extent of their funding gap became clearer, the Debtors also engaged Lazard Freres & Co. LLC ("**Lazard**") in December 2018 to advise the Debtors on capital planning and the evaluation of strategic alternatives related to the Debtors' opioid-related assets, as well as to explore other potential sale, financing, or partnership opportunities. Notwithstanding the broad mandate Lazard was given to find a transaction for any of the Debtors' assets that could bring in

sufficient liquidity to provide a long-term runway for the Debtors, the Debtors were unable to identify a transaction or group of transactions that would ensure the Debtors' long-term survival.

Moreover, after determining that the offers they received were not likely, individually or combined, to enable them to avoid a chapter 11 filing, the Debtors decided that pursuing such transactions in a chapter 11 process would be most likely to maximize value. Accordingly, the Debtors did not consummate any such transactions, but have sought to sell such assets through the Sale Process in the Chapter 11 Cases. The Debtors' postpetition sales process is detailed further in Section 5.5.

4.6 Changes in Management

Since April of 2017, Insys has replaced all of the independent directors on its Board (half of whom were replaced in April of 2017), and several of its most senior management personnel. The Debtors also restructured and realigned their sales force and added additional new hires to the sales force, bringing additional experience with appropriate promotion of specialty pharmaceuticals to the company.

On October 29, 2017, the Board accepted the resignations of Kapoor and Patrick P. Fourteau, as board members. On April 15, 2019, the Debtors announced further leadership changes, including Andrew Long's appointment as CEO, the appointment of a new CFO, Andrece Housley (who had been Insys's Corporate Controller), and a new Chief Scientific Officer, Dr. Venkat Goskonda (who had been Insys's Senior Vice President of Research and Development). On May 22, 2019, John A. McKenna Jr., who has over 20 years of restructuring experience, joined the Board as an independent director. John McKenna and Elizabeth Bohlen were chosen to serve on the Restructuring Committee of the Board, which committee was created on June 9, 2019 in order to consider and evaluate various strategic alternatives, including but not limited to, the sale or divestiture or licensing of one or more of the Debtors' assets and/or product lines, the possibility of the Debtors filing these Chapter 11 Cases, or other restructuring transactions or transactions to otherwise address the Debtors' liquidity constraints, that may have been available to the debtors. Previously, on June 5, 2019, the Board accepted the resignations of two of its members, Steven Meyer and Pierre Lapalme, who were, prior to their resignations from the Board, the longest-serving Insys directors. In connection with Mr. Meyer's resignation, the Board elected John McKenna to serve as a chair of the Audit Committee and chair of the Board, effective immediately following Mr. Meyer's resignation.

All in all, as of the Petition Date, most of the Insys management team and the commercial organization, including the sales force, was new to the company since 2015, and the majority of the Debtors' employees, which included physicians, researchers, and scientists with advanced academic degrees, were new to the company since 2015. In addition, the members of the Board, consisting of John McKenna, Elizabeth Bohlen, Vaseem Mahboob, Trudy Vanhove, Rohit Vishnoi, and Andrew Long all joined the Board no earlier than May 2017.

4.7 The Debtors Commence Prepetition Marketing and Sale Process

As noted above, in November of 2018, the Debtors announced that they had commenced a process to review strategic alternatives for their opioid-related assets, including

Subsys, and previously had engaged JMP to serve as their investment banker in connection therewith. To implement their sale strategy, the Debtors and JMP identified and contacted a broad array of parties that potentially could have the interest and ability to consummate a potential sale or license of rights with respect to Subsys (a “**Subsys Transaction**”) on terms acceptable to the Debtors.

In addition to a potential Subsys Transaction, in furtherance of their operational and financial goals, the Debtors continued to explore a comprehensive set of strategic alternatives to increase the Debtors’ liquidity and maximize value for the Debtors and their stakeholders. In connection therewith, in December 2018, the Debtors engaged Lazard to, among other things, explore opportunities to engage in a strategic partnership or financing transaction with respect to some or all of the Debtors’ Pipeline Products. To implement their strategy, the Debtors and Lazard identified and contacted a broad array of parties that potentially could have the interest and ability to consummate transaction(s) with respect to some or all of the Pipeline Products on terms acceptable to the Debtors. In connection with the Debtors’ assessment of the possible need to file for chapter 11 protection, the marketing efforts with respect to a Subsys Transaction were transitioned to Lazard in April 2019 and JMP’s engagement was terminated in April 2019.

Although the Debtors negotiated potential sale transactions with numerous counterparties, they ultimately determined it was prudent to file chapter 11 before a stalking horse transaction could be fully negotiated and to continue the sale process in the Chapter 11 Cases. The Debtors’ postpetition sales process is detailed further in Section 5.5.

For a more detailed description of the Debtors’ prepetition operations and the events leading up to the commencement of the Chapter 11 Cases, please consult the *Declaration of Andrew G. Long in Support of Debtors’ Chapter 11 Petitions and First Day Relief* [Docket No. 11] (the “**Long Declaration**”), which is incorporated herein by reference.

V. OVERVIEW OF THE DEBTORS’ CHAPTER 11 CASES

5.1 Commencement of the Chapter 11 Cases and First-Day Motions

On the Petition Date, the Debtors commenced the Chapter 11 Cases in the Bankruptcy Court. As of the date hereof, the Debtors continue to manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

Also on the Petition Date, the Debtors filed several motions seeking various relief from the Bankruptcy Court and authorizing the Debtors to maintain their operations in the ordinary course (collectively, the “**First-Day Motions**”). This relief was designed to ensure a seamless transition between the Debtors’ prepetition and postpetition business operations, facilitate expedited Chapter 11 Cases, and minimize any disruptions to the Debtors’ operations to preserve value. A detailed description of the First-Day Motions is set forth in the Long Declaration. The Bankruptcy Court granted substantially all of the relief requested in the First-Day Motions and entered various orders authorizing the Debtors to, among other things:

- Continue paying employee wages and benefits¹¹ [Docket No. 231];
- Continue the use of the Debtors' cash management system, bank accounts, and business forms [Docket No. 243];
- Continue insurance programs and the processing of workers' compensation claims [Docket No. 234];
- Continue the Debtors' customer programs [Docket No. 53];
- Pay certain prepetition taxes and assessments [Docket No. 233];
- Pay certain prepetition obligations for critical vendors [Docket Nos. 238];
- Restrict certain transfers of equity interests in the Debtors [Docket No. 235]; and
- Establish procedures for utility companies to request adequate assurance of payment and to prohibit utility companies from altering or discontinuing service [Docket No. 237].

5.2 Appointment of Statutory Committee

On July 20, 2019, the U.S. Trustee appointed the Creditors' Committee, which currently consists of the following members:

- **McKesson Corporation**, Attn: Ben Carlsen, 1 John Henry Drive, Robbinsville, NJ 08691, Phone: 609-312-4665
- **Infirmity Health Hospitals, Inc.**, Attn: Mark Nix, 5 Mobile Infirmity Circle, Mobile, AL 36607, Phone: 251-435-2400
- **Louisiana Health Service & Indemnity Co. d/b/a Blue Cross and Blue Shield of Louisiana and HMO, LA, Inc.** Attn: Allison Pham, 5525 Reitz Avenue (70809) P.O. Box 98029, Baton Rouge, Louisiana 70898-9029
- **LifePoint Health, Inc.**, Attn: Jonah Fecteau, 330 Seven Springs Way, Brentwood, TN 37027, Phone: 615-920-7647
- **Deborah Fuller, administrator for Estate of Sarah Fuller**, Attn: Richard Hollawell, Esq., 121 Saratoga Lane, Woolwich Twp, NJ 08085, Phone: 215-498-8609, Fax: 856-467-5101

¹¹ Multiple parties in interest, including the Creditors' Committee, raised concerns and filed formal objections regarding the Debtors' request to make severance payments to certain employees. Following a hearing at which the Bankruptcy Court declined to grant that relief, the Debtors and the Creditors' Committee, with the input of other objecting parties, arranged a process for careful evaluation of the Debtors' proposed recipients of severance payments.

- **Julie Key**, Attn: Anne Andrews, Esq., Andrews & Thornton, 4701 Von Karman Avenue, Suite 300, Newport Beach, CA 92660, Phone: 949-748-1000, Fax: 949-315-3540
- **James Starling, Jr.**, Attn: Phillip Edwards, Esq., Murphy & Landon, 1011 Centre Road, Suite 210, Wilmington, DE 19805, Phone: 302-472-8102, Fax: 302-472-8135
- **Angela Mistrulli-Cantone**, Attn: S. Randall Hood, McGowan, Hood and Felder, LLC, 1539 Healthcare Drive, Rock Hill, SC 29732, Phone: 803-327-7828, Fax: 803-324-1483
- **Lisa Mencucci**, Attn: Zachary Mandell, Esq., Mandell, Boisclair & Mandell, Ltd, One Park Row, Providence, RI 02903, Phone: 401-273-8330, Fax: 401-751-7830

The Creditors' Committee retained Akin Gump Strauss Hauer & Feld LLP as its attorneys, Province, Inc. as its financial advisor, and Bayard, P.A. as its Delaware counsel.

5.3 Public Entities Committee Motion

On June 24, 2019, a group consisting of the City of Prescott, Arizona; the City of Surprise, Arizona; Carroll County, Maryland; and Henry County, Missouri (collectively, the **"Public Entity Movants"**) filed the Motion Seeking Appointment of Official Committee of Public Entities Pursuant to 11 U.S.C. §§ 1102(a)(2) & 105(a) [Docket No. 134] (the **"Public Entity Committee Motion"**). The Public Entity Movants argued, based on their position that claims by public entities form the majority of the Debtors' liabilities, that the Bankruptcy Court should direct the Office of the United States Trustee (the **"UST"**) to appoint a second official committee in these Chapter 11 cases to represent the interests of public entities. Around the same time, the Public Entity Movants sent a letter to the UST requesting that the UST reconstitute the Creditors' Committee to include public entities. The UST filed a formal objection to the Public Entity Committee Motion [Docket No. 265], asserting that in the UST's view, public entities are not eligible to sit on official committees, and responded by letter to the Public Entity Movants declining to reconstitute the Creditors' Committee.

Recognizing the advantage to negotiations that would be provided by a centralized representative for public entities' interests, but concerned about the costs a second official committee would impose on the Debtors' already limited resources, the Debtors and the Creditors' Committee engaged in extensive negotiations regarding a proposed resolution to the objections that the Debtors and the Creditors' Committee would have submitted to the Public Entity Committee Motion. On July 14, 2019, the Debtors, the Creditors' Committee, and the Public Entity Movants jointly filed a proposed agreed order [Docket No. 291] granting the Public Entity Committee Motion on a very limited basis (including limitations on scope, time, fee reimbursement, ability to be terminated, and ability to seek reinstatement), contingent on the agreement of at least one member of the Plaintiffs' Executive Committee appointed in the MDL to sit on such a committee (thereby ensuring that the proposed committee would have the ability to speak for a significant cross-section of public entities in the upcoming negotiations). On July 19, 2019, the Plaintiffs' Executive Committee in the MDL filed a response [Docket No. 319] declining the invitation to sit on the proposed public entities committee on the terms proposed by

the Debtors and the Creditors' Committee, and the State of Maryland filed an objection to the agreed order [Docket No. 321] asserting that a committee representing the interests of municipalities was unnecessary in light of the participation in these cases by states. In light of these responses, on July 23, 2019, the Creditors' Committee filed the *Reply of the Official Committee of Unsecured Creditors to Various Objections Filed to the Proposed Form of Order with Regard to the Motion Seeking Appointment of Official Committee of Public Entities Pursuant to 11 U.S.C. §§ 1102(a)(2) & 105(a)* [Docket No. 332], objecting to appointment of a public entities' committee on terms other than those in the proposed agreed order.

At the hearing held on July 24, 2019, the Bankruptcy Court denied the Public Entities Committee Motion, finding that appointment of a second official committee was not warranted under the circumstances of these cases. As a show of goodwill, the Creditors' Committee offered ex officio seats on the Creditors' Committee to representatives of the Public Entity Movants, as well as to a second group of municipalities that had participated in the cases under separate counsel. Both groups accepted the Creditors' Committee's offer, and now serve as ex officio members of the Creditors' Committee and the members of each group are Settling Creditors.

5.4 Filings of Schedules of Assets and Liabilities and Statements of Financial Affairs

On July 30, 2019, the Debtors filed their schedules of assets and liabilities, schedules of executory contracts and unexpired leases, and statements of financial affairs (collectively, the "**Schedules**").

5.5 Claims Bar Dates and Noticing Procedures

On July 15, 2019, the Bankruptcy Court entered an order [Docket No. 294] (the "**Bar Date Order**") establishing certain deadlines (collectively, the "**Bar Dates**") and procedures for the filing of proofs of claim in the Chapter 11 Cases (each a "**Proof of Claim**").

Specifically, the Bar Date Order established the following deadlines for filing proofs of claim:

- **General Bar Date:** September 16, 2019 at 5:00 p.m. (Prevailing Pacific Time) as the deadline for all creditors other than Governmental Units and Native American Tribes to file proofs of claim against the Debtors.
- **Governmental and Native American Tribes Bar Date:** December 9, 2019 at 5:00 p.m. (Prevailing Pacific Time) as the deadline for all Government Units (as defined in section 101(27) of the Bankruptcy Code) and Native American Tribes (as used herein, defined as any Native American, American Indian, or Alaska Native tribal entity that is recognized by the federal government of the United States of America and/or the Bureau of Indian Affairs, Department of the Interior) to file proofs of claim against the Debtors.

In addition to establishing the various Bar Dates, the Bar Date Order approved a form of notice of the Bar Dates to be served on all traditional creditors in the Chapter 11 Cases (the “**Bar Date Notice**”).

Additionally, the Bar Date Order provided that the Debtors were to publish the notice of the Bar Dates (the “**Publication Notice**”) once in each of two (2) national and ten (10) local publications in the United States. The Debtors published the notice once in the national editions of *The New York Times* and *USA Today*, and once in the following local publications: *Memphis Commercial Appeal*, *Indianapolis Star*, *Florida Times Union (Jacksonville)*, *Las Vegas Review Journal Sun*, *Saginaw News*, *Arizona Republic*, *Dallas Morning News*, *Miami Herald*, *Los Angeles Times*, and *San Antonio Express News*. The Bankruptcy Court included in the Bar Date Order its finding that the noticing procedures outlined therein, constituted adequate notice of the Bar Dates to creditors of the Debtors, including unknown creditors.

As of the date hereof, approximately [596] proofs of claim were filed in these Chapter 11 Cases.

5.6 Sales of Assets and Pursuit of Affirmative Claims

The Debtors engaged in a robust pre- and post-petition marketing process, resulting in the sale of certain of the Debtors’ assets. Further, the Debtors have been evaluating affirmative causes of action in order to bring further value to the Debtors’ Estate.

(a) The Debtors Continue the Postpetition Marketing and Sale Process¹²

The postpetition phase of the Sale Process consisted of the potential sales of the Debtors’ assets related to each of (i) Subsys, (ii) Syndros, and other assets related to CBD, (iii) Epinephrine, (iv) Naloxone, (v) Buprenorphine (and collectively with assets related to Subsys, Syndros, CBD, Epinephrine, and Naloxone, the “**Assets**”). The Debtors, in consultation with their advisors and the Creditors’ Committee, developed procedures to govern various aspects of the postpetition Sale Process (the “**Bidding Procedures**”).

The Bankruptcy Court entered its order approving the Bidding Procedures on July 2, 2019 [Docket No. 56].

The Bidding Procedures were designed to provide the Debtors with flexibility to run the postpetition Sale Process in a manner that would maximize the value of their assets for their stakeholders. The Bidding Procedures allowed interested parties to submit bids for any individual Asset or combination of Assets, subject to the terms and provisions of the Bidding Procedures. If, however, the Debtors determined that the bids for any of the Assets would not provide sufficient value for such Assets, the Debtors reserved the right not to sell such Assets pursuant to the Bidding Procedures.

¹² The descriptions of the Hikma Transaction, the Chilion Transaction, and the Subsys Transaction herein do not purport to be complete and are subject to, and qualified in their entirety by, the full text of the Hikma Asset Purchase Agreement, the Chilion Asset Purchase Agreement, and the Subsys Asset Purchase Agreement (all as defined herein), and, where applicable, the Bankruptcy Court’s sale orders approving the same.

i. Hikma Transaction (Spray Products)

Pursuant to the Bidding Procedures, on August 5, 2019, Insys and Hikma Pharmaceuticals USA Inc. (“**Hikma**”) entered into an Asset Purchase Agreement (the “**Hikma Asset Purchase Agreement**”). Pursuant to the Hikma Asset Purchase Agreement, Insys agreed to sell, transfer and assign to Hikma, pursuant to section 363(b) of the Bankruptcy Code, Insys’s epinephrine 7mg and 8.5mg unit-dose nasal spray products and naloxone 8mg unit-dose nasal spray products (the “**Hikma Products**”) and certain equipment and liabilities primarily related to the Hikma Products (collectively, the “**Hikma Purchased Assets**”), in consideration for an amount in cash equal to \$17,000,000, payable at the closing of the transaction (the “**Hikma Transaction**”). In addition, Hikma agreed to pay the cure costs for Purchased Contracts (as defined in the Hikma Asset Purchase Agreement) that are assumed and assigned to Hikma under the Hikma Asset Purchase Agreement, and assumed certain other specified liabilities.

On August 22, 2019, the Bankruptcy Court entered an order approving the Hikma Purchase Agreement and the sale of the Hikma Purchased Assets to Hikma. The Hikma Transaction closed on August 29, 2019.

ii. Chilion Transaction (CBD-Related Assets)

In addition, pursuant to the Bidding Procedures, on August 6, 2019, Insys and Chilion Group Holdings US, Inc. entered into an Asset Purchase Agreement (the “**Chilion Asset Purchase Agreement**”). Pursuant to the Chilion Asset Purchase Agreement, the Debtors agreed to sell, transfer and assign to Chilion Group Holdings US, Inc., pursuant to section 363(b) of the Bankruptcy Code, Insys’s: (i) CBD formulations across current pre-clinical, clinical, third-party grants and investigator initiated study activities (including any future activities or indications), (ii) THC programs of Syndros oral dronabinol solution, and (iii) Buprenorphine products (collectively, the “**Chilion Products**”), and certain related equipment and other assets (collectively with the Chilion Products, the “**Chilion Purchased Assets**”), in consideration for an amount in cash equal to \$12,200,000, payable at the closing of the transaction (the “**Chilion Transaction**”). On August 9, 2019, the Debtors filed the *Notice of Adequate Assurance for Successful Bidder for Certain Assets Relating to CBD Formulations, Syndros, and Buprenorphine* [Docket No. 426] indicating that Chilion Group Manufacturing US, LLC (“**Chilion**”) had been designated as affiliate assignee of Chilion Group Holdings US, Inc. for the Chilion Purchased Assets, pursuant to the Chilion Asset Purchase Agreement. In addition, Chilion Group Holdings US, Inc. agreed to pay the cure costs for the Purchased Contracts (as defined in the Chilion Asset Purchase Agreement) that are assumed and assigned to Chilion Group Holdings US, Inc. under the Chilion Asset Purchase Agreement and to assume certain other specified liabilities.

On August 23, 2019, the Bankruptcy Court entered an order approving the Chilion Asset Purchase Agreement and the sale of the Chilion Purchased Assets to Chilion. The Debtors expect the Chilion Transaction to close in September 2019.

Pursuant to the Chilion Asset Purchase Agreement, Chilion will take over the lease for the Company’s Round Rock facility, and also agreed to make offers of employment to certain of the Debtors’ employees.

iii. Subsys Transaction (Fentanyl-Related Assets)

Pursuant to the Bidding Procedures, on September 1, 2019, Insys and BTcP Pharma, LLC (“**BTcP**”) entered into an Asset Purchase Agreement (the “**Subsys Asset Purchase Agreement**”). Pursuant to the Subsys Asset Purchase Agreement, Insys agreed to sell, transfer and assign to BTcP, pursuant to section 363(b) of the Bankruptcy Code, all strengths, doses and formulations in the world (except for the Republic of Korea, Japan, China, Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Timor-Leste, and Vietnam) of the Debtors’ Subsys (fentanyl sublingual spray) product (the “**Subsys product**”) and certain other related assets, in consideration for [(i) the assumption by BTcP of certain specified liabilities, including responsibility for all cure costs, and (ii) post-closing royalty payments payable by BTcP to Insys (or the Insys Liquidation Trust, as of the Effective Date) based on sales of the Subsys product, the Lazanda® (fentanyl nasal spray) product of BTcP and its affiliates and any branded or generic equivalent fentanyl nasal spray, sublingual fentanyl spray, or any transmucosal immediate release fentanyl product (collectively, the “**Combined Products**”), for the period of time commencing on the closing date until the expiration of the last to expire orange book listed patent in respect of the Combined Products. Annual royalty payments to Insys will equal forty-five percent (45%) of the annual amount that equals (a) combined net sales generated from sales of the Combined Products, less (i) the cost of goods sold, (ii) legal defense, litigation, and any litigation settlement expenses that are exclusively related to the Subsys product, solely to the extent in respect of actions or events that occurred prior to the closing date, and (iii) expenses in respect of settlement of certain existing litigation, less (b) an expense allocation amount based on the actual amount of operational overhead expense, to the extent attributable to the Combined Products and subject to certain limitations.

Further, prior to the second anniversary of the closing date, BTcP will pay to Insys (or the Liquidation Trust, as of the Effective Date) an amount equal to the sum of: (x) the total of the closing date accounts receivable actually collected by BTcP and its affiliates, and (y) the value of all Subsys product inventory transferred to BTcP at closing that is actually sold by or on behalf of BTcP at Insys’s cost of acquisition of such inventory (together, the “**Post-Closing Payments**”), subject to negotiated reductions specified in the Subsys Asset Purchase Agreement. In addition, from the date of the Subsys Asset Purchase Agreement through September 30, 2019, the Debtors will pay as and when due any and all third-party costs and expenses resulting from an observation in a U.S. Food and Drug Administration (“**FDA**”) Form 483 letter relating to certain of the Debtors’ Subsys products. Following September 30, 2019 until the second anniversary of the closing date, BTcP will pay such costs and expenses as and when due and will have the ability to offset the aggregate amount of such costs and expenses against any and all Post-Closing Payments due to Insys.

The Subsys Asset Purchase Agreement is subject to approval by the Bankruptcy Court (the hearing on which is currently scheduled for September 19, 2019) and provides for customary closing conditions, including entry and effectiveness of the sale order of the Bankruptcy Court authorizing and approving the transaction, and delivery of certain transfer letters to the FDA related to the products being sold. The Subsys Asset Purchase Agreement also provides for customary termination rights.

iv. The Debtors' Other Assets

The Debtors' sale process with respect to its remaining assets is ongoing.

(b) Affirmative and Potential Claims of the Estate

In addition to maximizing the value of the assets of the Debtors' estates (the "**Estates**") through the sale process, the Debtors also have identified certain potential causes of action that the Estates might have.

i. Derivative Claims Against Former Directors and Officers

On August 26, 2016, shareholders of Insys filed a derivative complaint regarding the Derivative Litigation (as amended, the "**Complaint**") against John N. Kapoor, Patrick P. Fourteau, Pierre LaPalme, Steven Meyer, Theodore H. Stanley, Brian Tambi, and Michael L. Babich in the Court of Chancery of the State of Delaware, which action now is captioned *In re Insys Therapeutics Inc. Derivative Litigation*, Consol. C.A. No. 12696-VCL. On November 30, 2017, the Court of Chancery stayed that Derivative Litigation in light of the related Derivative Litigation pending in the United States District Court for the District of Arizona, and the United States' criminal prosecution of certain defendants in the Derivative Litigation.

On March 6, 2018, and at a time when certain defendants under the Complaint were still on the board, Insys's board of directors formed a Special Litigation Committee to investigate the allegations in the Derivative Litigation and to make a determination as to how Insys should proceed with respect to the Derivative Litigation. The Special Litigation Committee was comprised at that time, and still is comprised, of two independent directors, Dr. Rohit Vishnoi and Vaseem Mahboob. In forming the Special Litigation Committee, Insys's board determined that Messrs. Vishnoi and Mahboob both are independent and disinterested with respect to the Derivative Litigation.

Pursuant to the delegation of authority from Insys's board, the Special Litigation Committee retained its own counsel, Wilson, Sonsini, Goodrich & Rosati, P.C. The Special Litigation Committee and its counsel conducted a thorough factual and legal investigation over the course of approximately sixteen months. The Special Litigation Committee is concluding its investigation and the Special Litigation Committee is consulting with the Board, counsel, and the Creditors' Committee regarding how best to proceed to maximize value for the Estates.

The causes of action that are the subject of the Derivative Litigation may include, but are not limited to, breaches of fiduciary duty against former directors and officers. These causes of action relate to, among other things, alleged misconduct by one or more of Insys's former executives and/or directors, and actions taken by (or failed to be taken by) certain of the Debtors' former executives, officers, and directors in response to such misconduct.

ii. Insurance Coverage Disputes

The Debtors may have claims or causes of action against one or more of their products liability insurers related to denials of coverage for lawsuits filed against Insys.

Prior to the Petition Date, the Debtors purchased products liability insurance policies, including excess insurance policies, from various insurance companies, including Illinois Union Insurance Company (“**Chubb**”), certain underwriters at Lloyd’s of London (“**Underwriters**”), and Ironshore Indemnity Inc. and Ironshore Specialty Insurance Company (“**Ironshore**”) (collectively, the “**Insurers**”). The Debtors purchased the policies to protect against the risk of third-party claims for damages arising out of, among other things, the Insys’s manufacture, marketing, and sale of its drug, Subsys. For all times relevant, the Debtors had at least \$30 million in annual products liability insurance coverage, as detailed below.

For the period of March 26, 2016 to March 26, 2017, the Debtors purchased \$30 million in insurance coverage for products liability claims. Specifically, the Debtors purchased a primary products liability policy from Chubb that provided \$10 million in insurance coverage, and an additional \$20 million in excess insurance from Underwriters and Ironshore, collectively. In March 2017, the Debtors renewed their \$30 million tower of products liability insurance with Chubb, Underwriters and Ironshore, for the period of March 26, 2017 to March 26, 2018, which was later extended until April 25, 2018.

In or about March 2018, Chubb advised the Debtors that, in their view, any renewal policy would contain a broad opioid exclusion intended to preclude coverage for future Subsys-related lawsuits. Accordingly, the Debtors purchased an extended reporting period (“**Tail Policy**”) from Chubb, Underwriters and Ironshore, that was intended to extend the expiring primary and excess policies to cover Subsys-related lawsuits first made against Insys until April 25, 2023, to the extent such claims arose out of covered occurrences taking place prior to the April 25, 2018 policy expiration.

The Debtors also purchased \$30 million in products liability policies for the period of April 25, 2018 to April 25, 2019.

Since in or about July 2016 and continuing through these Chapter 11 Cases, the Debtors have been sued by hundreds of parties, including individuals and municipalities, for products liability or personal injury relating to the manufacture, marketing, and sale of Subsys. The Debtors, in turn, timely tendered the claims to the Insurers, including under the 2016-2017 policies, the 2017-2018 policies, and the Tail Policies.

In response to the claims, Chubb initially agreed to, and did, defend certain of the lawsuits under a reservation of rights. Chubb also indemnified the Debtors for portions of settlements paid to resolve certain of the claims. However, beginning around July 2018, in a series of letters, Chubb began denying coverage for the lawsuits. Chubb’s denials of coverage were based on various arguments. In October 2018, Chubb asserted that, even if there was coverage for the claims, all of the Subsys-related lawsuits related back to purported “advisory communications” issued during the 2016-2017 policy period and, therefore, only the 2016 to 2017 policies applied to the Subsys-related lawsuits, limiting coverage to a single \$30 million tower of products liability insurance. Although Chubb has not yet specifically responded to each and every one of the claims tendered by Insys for coverage, it is the Debtor’s understanding that Chubb is disclaiming coverage for all Subsys-related lawsuits.

To date, Underwriters and Ironshore have taken the position that their policies do not respond until the underlying Chubb policies have been exhausted. Accordingly, neither Underwriters nor Ironshore have expressly disclaimed coverage for the Subsys-related lawsuits under the 2016 to 2017 or the 2017 to 2018 policies.

Debtors dispute Chubb's position on coverage, and believe they have claims and causes of action against the Insurers for, among other things, declaratory judgment, breach of contract, bad faith, and unfair insurance practices. As per the Plan, the Victims Restitution Trust will be entitled to bring such claims and causes of action.

iii. Avoidance Actions and Potential Clawback

As noted above in Section 5.6(b)(iii), the Debtors have begun the process of investigating and evaluating potential avoidance claims, including but not limited to under chapter 5 of the Bankruptcy Code and applicable state law. The Debtors may seek to avoid and recover transfers (or obligations) made by the Debtors during the several years prior to the Petition Date pursuant to applicable law. Prior to the Petition Date, among other things, the Debtors advanced legal fees and expenses for certain current and former employees, officers, and directors in connection with governmental investigations and other proceedings. The Debtors may have rights to the return or clawback of funds advanced to these persons, or their counsel, pursuant to agreements executed in connection with the advancements. Separately, the Debtors entered into separation agreements with some employees that provided for the payment of severance and other obligations by Insys, and the Debtors may have the right to avoid and recover any such payments and obligations. The description of specific transfers included in this section is for descriptive, not limiting, purposes.

The Creditors' Committee believes these claims are meritorious and should be transferred to the Insys Liquidation Trust, and that the Debtors should not expend estate resources for the investigation and evaluation of such claims.

iv. Other Claims

In addition to the foregoing, the Debtors may also have claims against various other third parties under applicable state law based on pre-petition conduct. The Debtors' diligence and investigation regarding such claims is ongoing.

The Creditors' Committee believes these claims are meritorious and should be transferred to the Insys Liquidation Trust, and that the Debtors should not expend estate resources for the investigation and evaluation of such claims.

(c) Stabilizing Litigation through Enjoining Actions

On June 10, 2019, the Debtors initiated an adversary proceeding, Adv. Proc. 19-50261 (KG), seeking to enjoin certain state and local governments from pursuing lawsuits potentially not automatically stayed by section 362 of the Bankruptcy Code, and filed the related *Debtors' Motion for a Preliminary Injunction Pursuant to U.S.C. § 105(a)* [Adv. Pro. 19-50261 Docket No. 2] (the "**PI Motion**"). Such lawsuits are all by government plaintiffs or claimants

seeking to hold the Debtors liable in connection with claims and/or causes of action arising out of, or related to, Subsys.

Following discussions and negotiations with litigating parties, certain litigants agreed by stipulation to halt litigation against the Debtors. Further, as a result of negotiations between the Debtors, the Creditors' Committee, and certain State Attorneys General, on July 2, 2019, the Bankruptcy Court entered the *Agreed Order Regarding Estimation Motion, PI Motion, and Approving Case Procedures* [Adv. Pro. Docket No. 45] (the "**Agreed Order**"), pursuant to which the Bankruptcy Court entered a stay of all pending government actions that were the subject of the PI Motion and not otherwise the subject of a stipulation with the Debtors (the "**Enjoined Actions**"), abated the Debtors' PI Motion, and approved the Case Protocol (as further described therein and as later defined herein).

(d) The Case Protocol and Estimation of Claims

As noted above, on the Petition Date, the Debtors filed the Motion of Debtors for (I) Entry of Orders Pursuant to 11 U.S.C. §§ 105(a) and 502(c) (A) Establishing Procedures and Schedule for Estimation Proceedings and (B) Estimating Debtors' Aggregate Liability for Certain Categories of Claims, (II) Entry of Protective Order, and (III) Subordination of Certain Penalty Claims [Docket No. 29] (the "**Estimation Motion**"), seeking to approve procedures for estimating aggregate totals for certain categories of claims to form the basis of a chapter 11 plan. In reaction to the Debtors' proposed estimation procedures, the Creditors' Committee and certain State AGs approached the Debtors to negotiate and implement an alternative to the relief proposed in the Estimation Motion. The Debtors worked with these parties on a resolution of the issues surrounding the Estimation Motion and the PI Motion, with the Debtors and State AGs recognizing that the Creditors' Committee, as a neutral party and fiduciary to all unsecured creditors, could serve an important role in working with the Debtors and negotiating with other creditors to determine the amount of claims in certain relevant categories. Through this lens, the Debtors, the Creditors' Committee, and certain State AGs began developing a multi-pronged comprehensive case protocol (the "**Case Protocol**") that documented a schedule and a potential path forward to resolve issues regarding claim estimation, plan classification, allocations, and related issues.¹³

The Agreed Order is the product of the Debtors' aforementioned time spent in negotiations, analysis of claims, and collaboration with interested parties. The Agreed Order included, as part of the overall Case Protocol, a timeline for the Debtors to work with various groups to develop, file and solicit a proposed plan of liquidation. Along with the aspects of the Case Protocol previously discussed, the Case Protocol provided for mediation and a deadline by which the Debtors would file a plan. The Case Protocol provides that should the Debtors file a non-consensual plan, any party that objected to the PI Motion on or before June 28, 2019, and that did not resolve such objection through a stipulation or other voluntary agreement to stay, may file with the Court a Notice of Scheduling Conference on or after September 2, 2019 to set a hearing date on the PI Motion solely with respect to such noticing party. *See* Agreed Order, Ex. A (Case

¹³ Prior to the Petition Date, the Debtors engaged Nathan to, among other things, estimate the amount of certain Claims. Nathan relied on data provided by the Debtors and their advisors as well as third-parties in conducting their analysis. Post-petition, Nathan, together with the Debtors' other advisors, consulted with the advisors to the Creditors' Committee in preparing its analysis (the "**Nathan Analysis**").

Protocol) at 3. Concurrent with the Court's approval of the Case Protocol, the Debtors withdrew the Estimation Motion and held the PI Motion in abeyance and the Enjoined Actions were stayed.

5.7 Creditor Discussions, Mediation and Plan Settlement

(a) Creditor Discussions

Following the entry of the Agreed Order and the Case Protocol, the Debtors and the Creditors' Committee started on the path toward reaching a consensual plan by meeting with various groups of creditors. In a short span of time, representatives of the Debtors and the Creditors' Committee met one or more times (and/or had telephonic conversations) with representatives of (1) certain States' Attorneys General, (2) the Plaintiffs' Executive Committee appointed in the MDL, (3) certain Municipalities not part of the MDL, (4) the TPPs, (5) the Insurance Ratepayers, (6) Hospitals, (7) NAS Children, (8) Native American Tribes, and (9) certain Personal Injury Claimants. As part of those discussions, the creditors presented the factual and legal bases for their claims and the alleged value of those claims against the Debtors.

Immediately following this initial round of creditor meetings, the Debtors and Creditors' Committee met to discuss their initial estimates of the aggregate claims against the Debtors' Estates held by the various categories of creditors. In some cases, the Debtors and Creditors' Committee agreed on those estimates and, in some cases, they did not. Both had prepared their own analysis and conclusions based on, among other things: information presented by creditors (both during meetings and thereafter); claims asserted in prepetition litigation; discovery conducted in connection therewith; prepetition litigation settlements; publicly available market data sources and statistical analysis; government agency, academic and other research studies regarding the impacts and costs of the opioid crisis; Subsyst's small percentage (less than two tenths of one percent) of the overall opioid market between 2012 and 2016, and the fact that Insys was not in existence prior thereto (unlike many other opioid companies); and legal research regarding litigation risks associated with prosecution and defense of the asserted claims.

Based on the various discussions among the Debtors, the Creditors' Committee, and the creditor group representatives referenced above, and consistent with the Agreed Order and the Case Protocol, in early August the Debtors and the Creditors' Committee reached agreement on what they collectively felt was a fair allocation of estate value, and made a joint settlement proposal regarding claim classifications and allocation of estate value to each creditor group. The Debtors and the Creditors' Committee were best situated to formulate a settlement proposal because of their unique positions of having fiduciary duties and no pecuniary interest of their own in the outcome of such allocation.

(b) Plan Mediation

In connection with that initial joint proposal and acknowledging the recommendation of many creditor representatives that a third party mediator would be more effective than the more informal negotiation process outlined in the Case Protocol, the Debtors and the Creditors' Committee requested that Judge Kevin Carey of the Bankruptcy Court mediate, among other things, issues related to allocation of estate value, plan classification, and implementation among the Debtors' various creditors. On August 5, 2019, the Bankruptcy Court

entered an order appointing Judge Carey to mediate the foregoing issues among the Debtors, the Creditors' Committee, the various creditor group representatives discussed above, and any other creditor wishing to participate in the mediation. *See Order Appointing Mediator* [Docket No. 398]. The mediation was conducted between August 6, 2019 and August 31, 2019, and included numerous in-person meetings in Delaware among the mediation parties and telephonic conferences with the mediator. The Debtors and the Creditors' Committee used the springboard of mediation to continue negotiations with all parties and have agreed, with the Settling Creditors, on the Plan Settlement described in further detail below.

(c) Plan Settlement

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, the Plan incorporates a compromise and settlement of certain Claims and controversies between the Debtors, the Creditors' Committee, and the Settling Creditors, in the form of a settlement (the "**Plan Settlement**"). The Plan Settlement is the cornerstone of the Plan and is necessary to achieve a beneficial and efficient resolution of the Chapter 11 Cases for all parties in interest. The Plan will be deemed to constitute a motion seeking approval of the Plan Settlement pursuant to Bankruptcy Rule 9019, and the entry of the Confirmation Order will constitute the Bankruptcy Court's approval of such motion and each of the compromises or settlements comprising the Plan Settlement. Furthermore, the Bankruptcy Court's findings will constitute its determination that such compromises and settlements are: within the range of reasonableness; in the best interests of the Debtors, their Estates, their Creditors, and other parties-in-interest; and fair and equitable.

The Plan Settlement comprises, among other things, agreements with respect to plan classification, procedures for determining Allowed Claims in certain Classes, and allocations of plan value by Class. Each component of the Plan Settlement acknowledges and addresses the unique characteristics of these Chapter 11 Cases and the parties-in-interest therein. Further, and as all parties to the mediation agreed, the Plan Settlement is not intended to be a blueprint for other chapter 11 cases, nor is it intended to be used as precedent by any party.

i. Plan Classification and Determination of Allowed Claims

Third Party Payors (TPPs) and Insurance Ratepayers (Class 4)

Third Party Payors and Insurance Ratepayers, collectively, have asserted claims against Insys for, among other things, fraud leading to the improper reimbursement and payment of prescription costs for Subsys, and Insurance Ratepayers have asserted claims against Insys stemming from the alleged increase in the cost of insurance premiums as a result of Insys's conduct. The Insurance Ratepayers further allege that 100% of the increased costs suffered by the Third Party Payors as a result of the Debtors' conduct were passed along to the Insurance Ratepayers who ultimately pay insurance premiums, and have asserted claims against Insys for the resulting increase of insurance premium rates. The Third Party Payors dispute such assertions, among other things. With the benefits of allowing the Debtors to proceed to Plan confirmation and of saving the Debtors' Estates the time and resources required to object to these claims, the Third Party Payors and the Insurance Ratepayers have agreed to (i) have their claims classified together and (ii) arbitrate the dispute regarding the proper allocation of Class 4 recoveries as between these two creditor groups before a Claims Arbiter for a period of two months. From that

point, and using such allocation, the Liquidating Trustee will work with the Third Party Payors and the Insurance Ratepayers to settle or otherwise determine each of the Allowed Claims in this Class in accordance with the Plan and with the assistance, if required, of the Bankruptcy Court. [If the Bankruptcy Court grants these parties' Motions to Allow the Filing of Class Claims (Docket Nos. 76 and 486), to which both the Debtors and Creditors' Committee have agreed not to object, the assistance of the Liquidating Trustee will not be required.]

Hospitals and NAS Children Monitoring (Class 5)

Hospitals and the representatives of the putative class representing the need to monitor NAS Children affected by opioid addicted mothers have, in many respects, similar or overlapping claims with regard to the damage caused by Insys's conduct and the need to abate the opioid crisis at the private level, along with the public level. Supporting the same overall goals of a swift plan confirmation and efficient use of Estate resources, the Hospitals and NAS Children have also agreed to use the services of the Claim Arbiter to resolve the dispute over the proper allocation within Class 5 as between these two creditor groups. From that point, and using such allocation, the Liquidating Trustee will work with the parties to settle or otherwise determine each of the Allowed Claims in Class 5. [If the Bankruptcy Court grants the pending motions of the Hospitals and NAS Children to allow the filing of class claims (Docket Nos. 404 and 476), to which both the Debtors and the Creditors' Committee have agreed not to object, the assistance of the Liquidating Trustee will not be required.]

States, Municipalities and Native American Tribes (Class 7)

The wide ranging litigation against opioid manufacturers (including Insys), distributors, and other defendants has, to some extent, been recently overshadowed by the public dispute among certain States and Municipality plaintiffs in the MDL as to which public entities are the right parties to bring and collect on such claims as a matter of state and federal constitutional law. Rather than expend Estate resources in resolving this dispute within the context of the Debtors' Chapter 11 Cases, which would likely dissipate the assets available to pay creditors, the Debtors and the Creditors' Committee agreed as part of the overall Plan Settlement to combine these parties into a single Class 7 and allow the parties, as well as (1) the Native American Tribes, which are also part of the MDL, and (2) the municipalities, most of which are also part of the MDL, in this class to determine amongst themselves the appropriate allocation of creditor recoveries among the various claimants in Class 7. [The Liquidating Trustee will be charged with retaining any Distributions on account of Class 7 until satisfactory instructions are received from Class 7 regarding the payment of such Distributions].

ii. Estimation of Classes of Claims and Allocation of Plan Value

The Plan Settlement estimates Classes of Claims and allocates Plan value at two levels: first as between the public and private creditors, and second, among the private and public creditors themselves.

Estimation of Classes of Claims

For the sole purpose of guiding the allocation of Distributions under the Plan Settlement, the Debtors, the Creditors' Committee and the Settling Creditors agreed, for a number

of reasons, that the following Class claim estimates are fair and equitable and within the range of reasonableness:

	Class	Claim Estimate
Class 3	Trade Claims and Other Unsecured Claims	\$50 million
Class 4	Insurance Related Claims	\$258 million
Class 5	Hospital / NAS Monitoring Claims	\$117 million
Class 7	SMT Group Claims	\$597 million

The chart above: (1) does not include an estimate of the personal injury claims, which are separately addressed below; (2) is based on the work described above, performed by the Debtors and the Creditors' Committee; and (3) takes into consideration all of the types of factors and information noted above, including creditor meetings, information provided, independent analysis, and Insys's miniscule share of the overall opioid market from 2012–2016 (and its non-existence prior thereto). The Claim estimates were negotiated by all parties, and agreed to by the Settling Parties, and represent the “settlement” values for these claims—*i.e.*, if the Plan and Plan Settlement are not approved in the form and manner set forth herein, all parties retain the right to argue, without prejudice, that these amounts should be adjusted, up or down, and perhaps materially.

Allocation Between Public Creditors and Private Creditors

As an initial matter, Trade and Other Unsecured Claims in Class 3 will receive the first \$3 million of distributions from the Estates. The Debtors believe that Allowed Claims in this Class will total approximately \$50 million, assuming the disallowance and/or equitable subordination (as provided in Class 10) of the Claims of persons (or on behalf of such persons) who engaged in, aided and abetted, or whose Claim arises from, any act or omission that constitutes criminal conduct, fraud, willful misconduct, or other wrongful or inequitable conduct in connection with the sale, distribution, and marketing of Subsys. The Creditors' Committee has not had the opportunity to review fully the information underlying the Trade and Other Unsecured Claims, and, as such, agreed to the settlement contained herein based on the Debtors' representations with respect thereto.

Following this first level of Distributions, the second level of Distributions (from \$3 million to \$38 million) will be made 55% to private creditors (Classes 3, 4 & 5) and 45% to public creditors (Classes 6 & 7).

After the first \$38 million in Distributions, the allocation swings widely in favor of the Debtors' public creditors. At that point, 80% of Distributions will go to public creditors and 20% to private creditors. The distribution scheme set forth above was reached to both allow for potentially higher recoveries to public litigants if affirmative claims prove to have substantial value, but also provide meaningful dollar recoveries from first-dollars out to private litigants with more direct and compensatory claims. The distribution scheme also comports with the views held by the Debtors and the Creditors' Committee regarding the type of claims held by the public litigants as being more speculative, but perhaps with higher potential values to the extent they can

be proved, due to the sheer number of states, municipalities and Native American Tribes that have asserted, and may assert, claims.

Allocations among certain Private Creditor Classes

The private creditors' share of the Distributions allocated above are split roughly *pro rata* based on the Settling Parties' agreed Class estimates for Classes 4 and 5. In exchange for receiving the benefit of the first \$3 million in Distributions from the Estate, Claims in Class 3 (Trade and Other Unsecured Creditors) receives 0.5% of certain continuing Distributions thereafter.

Allocations among Public Creditor Classes

The public creditors' share of the Distributions allocated above are split roughly *pro rata* based on the amount of Allowed Civil DOJ Claim and the Debtors' and the Creditors' Committee's agreed Class estimate for the aggregate amount of the SMT Group Claims (Class 7).

Allocation to Personal Injury Claimants (Class 8)

Personal Injury Claimants in Class 8 will not receive Distributions in the same manner or from the same sources as the public and private creditor Classes. Instead, the Personal Injury Claimants in Class 8 will receive the benefit of the proceeds (if any) of the Debtors' products liability insurance, to the extent recovered, until such time as the Allowed Personal Injury Claims are paid in full, in the manner, and pursuant to the sharing mechanic, described in the Plan and the Disclosure Statement. The Debtors, the Creditors' Committee and the Settling Creditors believe that treating the Personal Injury Claimants in this manner is fair and equitable due to: (i) the Personal Injury Claimants' unique rights against the Debtors' products liability insurance policies; (ii) the products liability insurance's unique position in these cases; and (iii) the fact that the Personal Injury Claimants have agreed to forego any other type of Distribution in these cases, thereby taking the full risk of litigation with the products liability insurance carriers.

The Debtors, the Creditors' Committee, and the Settling Creditors believe that the Plan Settlement is fair and equitable and is in the best interest of all creditors because it avoids costly and time consuming litigation, and allows the Debtors to emerge quickly from the Chapter 11 Cases. Moreover, the Class claim estimates that are the basis of the plan allocations are well within the range of reasonableness for each Class, and the Debtors and the Creditors' Committee will be prepared to provide evidence to this effect at the Confirmation Hearing. Moreover, given the fact that the Debtors and the Creditors' Committee do not have any stake in any intercreditor disputes and have no pecuniary interest in the outcome, that fact that two estate fiduciaries have agreed on this plan settlement is a powerful statement as to its fundamental fairness.

Finally, as part of the overall settlement, the Debtors, the Creditors' Committee, and the Settling Parties have agreed (solely among themselves) that (i) the Plan, the Plan Settlement, the Plan Documents and the Confirmation Order constitute a good faith compromise and settlement of Claims and controversies based upon the unique circumstances of these Chapter 11 Cases, (ii) none of the foregoing documents, nor any materials used in furtherance of Plan confirmation (including, but not limited to, the Disclosure Statement, notes and drafts), may be offered into evidence, deemed an admission, used as precedent, or used in any context whatsoever

beyond the purposes of this Plan, in any other litigation or proceeding except as necessary and as admissible in such context, to enforce their terms before the Bankruptcy Court or any other court of competent jurisdiction, and (iii) such documents will be binding as to the matters and issues described therein, but will not be binding with respect to similar matters or issues that might arise in any other litigation or proceeding in which the Debtors are not a party. Any Person's support of, or position or action taken in connection with, the Plan, the Plan Settlement, the Plan Documents and the Confirmation Order may differ from its position or testimony in any other litigation or proceeding in which the Debtors are not a party.

VI. Summary of the Plan

6.1 Substantive Consolidation

(a) Consolidation of the Debtors

Substantive consolidation is a judicially created equitable doctrine that treats separate legal entities as if they were merged into a single consolidated surviving entity, with all the assets and liabilities (other than inter-entity liabilities, including the Intercompany Claims, and guarantees, which are extinguished) permanently becoming assets and liabilities of the consolidated survivor. The effect of consolidation is the pooling of the Debtors' assets, and the claims against the Debtors, and in turn, satisfying liabilities from a common fund and combining the creditors of the Debtors for the purposes of voting on the Plan. In the absence of consolidation, the creditors of an individual debtor could only look to the assets of that particular individual debtor to satisfy such creditor's claim. As a result of the consolidation, a creditor of one individual debtor is treated as a creditor of the Debtors, and issues of individual corporate ownership of assets and individual corporate liability on obligations are no longer pertinent.

The Plan will consolidate all of the Debtors, including for the purpose of implementing the Plan, for purposes of voting, for assessing whether Confirmation standards have been met, for calculating and making distributions under the Plan, and for filing post-Confirmation reports and paying quarterly fees to the U.S. Trustee. Pursuant to the Confirmation Order, as of the Effective Date: (a) all assets and liabilities of the Debtors will be deemed merged; (b) all guarantees by one Debtor of the obligations of any other Debtor will be deemed eliminated so that any Claim against any Debtor and any guarantee thereof executed by any other Debtor and any joint or several liability of any of the Debtors shall be deemed to be a single obligation of the Debtors; (c) each and every Claim filed or to be filed in the Chapter 11 Case of any Debtor will be deemed filed against the Debtors and will be deemed one Claim against and a single obligation of the Debtors, and the Debtors may file and the Bankruptcy Court will sustain objections to Claims for the same liability that are filed against multiple Debtors; and (d) Intercompany Claims between any Debtors will be eliminated and extinguished in accordance with Section 4.11 of the Plan and no Distributions shall be made under the Plan on account of any Intercompany Claim.¹⁴

¹⁴ The Debtors engage in intercompany transactions between and among the Debtors in the ordinary course of business ("Intercompany Transactions"), which in turn generates intercompany receivables and payables (each, an "Intercompany Claim"). The Intercompany Transactions include fees charged by certain Debtors to other Debtors on account of intercompany provision of goods or services, including management support services, contract manufacturing services, claims and business relationships management, and intercompany sales of manufactured

This consolidation will not: (i) affect the legal and corporate organizational structures of the Debtors; (ii) affect the vesting of assets in the Debtors, the Insys Liquidation Trust or Victims Restitution Trust; (iii) affect the rights of any Claimant with respect to the collateral securing such Claim, if any; (iv) constitute a change of control of any Debtor for any purpose, (v) cause a merger or consolidation of any legal entity, (vi) affect executory contracts that were entered into during the Chapter 11 Cases or that have been or will be assumed, assumed and assigned, or rejected; (vii) affect the Debtors' or the Insys Liquidation Trust's or the Victims Restitution Trust's ability to subordinate or challenge Claims on an entity by entity basis; or (viii) prejudice the rights of any Debtor with respect to the prosecution or defense of any Cause of Action including, but not limited to, preferential transfers and fraudulent conveyances, against and person or entity as if there was no substantive consolidation, including payments or transfers by and among the Debtors and any related or affiliated entity prior to the Petition Date.

(b) The Basis for Consolidation

Substantive consolidation of the Debtors is an important element of the successful implementation of the Plan. It is well established that section 105(a) of the Bankruptcy Code empowers the Bankruptcy Court to substantively consolidate multiple debtors. The Debtors believe that the Plan's proposed consolidation structure is supported by the applicable legal standards, practical considerations, and the Debtors' prepetition and postpetition operations and financial affairs. Further, based on the facts of this case, the Creditors' Committee supports substantive consolidation of the Debtors and believes it is in the best interest of all parties.

Prepetition, the Debtors' operational and financial affairs were inextricably intertwined and any disentanglement efforts are likely to be time-consuming and expensive, and ultimately may not produce a clear benefit to the Debtors' Chapter 11 Cases. The Debtors directed substantially all of their operations from one corporate headquarters under the same management team. The Debtors prepared and reported their financial statements and filed their Federal tax returns on a consolidated basis. One entity conducted all sales activity for the entire enterprise and received all proceeds from the Debtors' commercial activity, while intellectual property was held among various entities. Upon receipt, cash was distributed on an as-needed basis to other Debtor entities. Any additional funding needs of the Debtor entities were funded from cash or investments held by Insys (the parent company). With regards to the aforementioned transfers of cash there was no formal documentation (promissory notes, etc.) of the resulting intercompany obligations. The Debtors did log each prepetition intercompany transfer of cash and goods, but such intercompany activity was so regular and in the Debtors' ordinary course that the prepetition Debtors effectively functioned as one unit, with cash, assets, and liabilities flowing to the entity in which such cash or assets could be most effectively utilized, or such liabilities most effectively assessed, at any given time.

Perhaps even more importantly, the prepetition and postpetition litigation against the Debtors related to Subsys would be very difficult, and time consuming, to apportion to any one particular Debtor or Debtors. The recoveries for unsecured creditors in the Chapter 11 Cases will

products. The Debtors generally account for and record all Intercompany Transactions and Intercompany Claims in their centralized accounting system, the results of which are recorded concurrently on the Debtors' balance sheets and regularly reconciled. This results in a net balance of zero when consolidating all intercompany accounts.

predominantly derive from the Debtors' cash on hand, asset sale proceeds, and, potentially, the Debtors' Affirmative Claims (which may be paid from proceeds of insurance or from the defendants themselves). The Debtors submit that it will be nearly impossible to allocate such sales proceeds or recoveries among each Debtor's individual Estate given the interconnectedness of the Debtors' operations and assets subject to the asset sales. The asset sales themselves did not allocate proceeds among legal entities. In the event that a particular creditor may receive a better recovery in the absence of substantive consolidation, that recovery is likely to be consumed by the costs associated with investigating and litigating any: (i) inter-creditor claims, and (ii) inter-creditor allocation disputes regarding those recoveries. Furthermore, the consolidation of the Debtors will expedite the conclusion of the Chapter 11 Cases. Accordingly, the Debtors believe there would be significant difficulties and enormous costs that would be borne by the Debtors' Estate to disentangle the Debtors' estates, which would deplete the recoveries for all creditors and cause unnecessary and costly delays in the confirmation of the Plan and distributions to creditors. The Debtors believe that the result would likely be worse recoveries for all creditors. The particular facts and circumstances of these Chapter 11 Cases present unique arguments warranting substantive consolidation.

(c) Consolidation Order

The Plan will serve as a motion seeking entry of an order consolidating the Debtors, as described and to the extent set forth in section 5.2 of the Plan. Unless an objection to such consolidation is made in writing by any creditor or Claimant affected by the Plan and timely filed and served on or before the [Confirmation Objection Deadline], or such other date as may be fixed by the Bankruptcy Court, the order approving consolidation (which may be the Confirmation Order) may be entered by the Bankruptcy Court. In the event any such objections are timely filed, a hearing with respect thereto will occur at the Confirmation Hearing. This, however, will not affect the obligation of the consolidated Debtors to (a) pay a single quarterly fee to the U.S Trustee in accordance with 28 U.S.C. § 1930 based upon the consolidated disbursements made by the substantively consolidated Debtors or (b) seek the closing of their substantively consolidated Chapter 11 Cases.

6.2 Equitable Subordination under Bankruptcy Code 510(c)

The Plan will be deemed to constitute a motion to equitably subordinate under Section 510(c) of the Bankruptcy Code, to the extent such claims are not disallowed, the claims of persons (or on behalf of such persons and including claims for indemnification or repayment of fees and expenses, including legal/defense fees and expenses) who engaged in, or aided and abetted, or whose claim arises from, any act or omission that constitutes criminal conduct, fraud, willful misconduct, or other wrongful or inequitable conduct in connection with the sale, distribution, and marketing of Subsys, and the entry of the Confirmation Order will constitute the Bankruptcy Court's approval of such motion. Under the doctrine of equitable subordination articulated in section 510(c)(1) of the Bankruptcy Code, a creditor's claims may be subordinated to the claims of other creditors for distribution purposes. Courts in the Third Circuit generally apply a three-pronged test to determine whether a claim may be equitably subordinated: (1) the claimant must have engaged in some type of inequitable conduct; (2) the claimant's misconduct must have resulted in injury to other creditors or conferred an unfair advantage on the claimant; and (3) equitable subordination of the claim must not be inconsistent with the Bankruptcy Code.

Shubert v. Lucent Techs. Inc (In re Winstar Communs., Inc.), 554 F.3d 382, 411 (3d Cir. 2009) (providing that “three conditions must be satisfied before exercise of the power of equitable subordination is appropriate: (1) [t]he claimant must have engaged in some type of inequitable conduct; (2) [t]he misconduct must have resulted in injury to the creditors of the bankrupt or conferred an unfair advantage on the claimant; and (3) [e]quitable subordination of the claim must not be inconsistent with the provisions of the Bankruptcy [Code].”); *see also Citicorp Venture Capital, Ltd. v. Comm. of Creditors Holding Unsecured Claims*, 160 F.3d 982, 986–87 (3d Cir. 1998) (same).

The Debtors and the Creditors’ Committee are working together to identify claimants who meet the above-described criteria. Each of those individuals will be provided notice informing each of their proposed treatment under the Plan and affording each the opportunity to object such treatment. Objections, if any, to equitable subordination will be heard at the hearing on confirmation of the Plan.

6.3 Class Proofs of Claim

In the course of these Chapter 11 Cases, four different motions seeking, among other things, leave of the Bankruptcy Court to permit the submission of a class Proof of Claim on behalf of an uncertified proposed class of claimants have been filed (the “**Motions for Class Proofs of Claim**”). All of the Motions for Class Proofs of Claim concern similar and/or identical allegations against the Debtors.

The Motions for Class Proofs of Claim are described further, as follows:

(a) On June 16, 2019, twenty-five individually named parties filed the *Motion of the Class Claimants for Leave to File Class Proof of Claim* [ECF No. 76], seeking class action status on behalf of certain plaintiffs in the MDL who are claiming that, as a result of the actions of Insys and others, all citizens of their states are paying higher insurance premiums. The proponents seek to certify a class consisting of all persons (including natural persons and entities) who purchased private health insurance policies in the States from 1996 through the present, and all persons who paid for any portion of employer provided health insurance from 1996 through the present. The plaintiffs acting as putative class representatives purchased health insurance during the applicable time period (the “**Insurance Ratepayers**”). The Insurance Ratepayers allege, among other things, that Insys and others (1) engaged in a deceptive marketing scheme to encourage doctors and patients to use opioids to treat chronic pain, (2) falsely minimized the risks of opioids and overstated their benefits, and (3) generated more opioid prescriptions than should have been issued. The Insurance Ratepayers further allege that the direct and proximate consequence of the Debtors’ misconduct is that every purchaser in the States of private health insurance paid higher premiums, co-payments, and deductibles, as insurance companies passed on to their insureds the expected costs of future care regarding opioid-related coverage. The Insurance Ratepayers seek to bring claims for all monetary components of the relief sought in their MDL class action complaints, including for money damages, restitution, statutory and civil penalties, and any claims for counsel fees and expenses.

(b) On August 7, 2019, four individually named parties filed the *Motion by Hospital Class Action Claimants Pursuant to Bankr. P. 9014 and 7023 to Make Federal Rule of*

Civil Procedure 23 Applicable to These Proceedings and to Permit the Filing of a Class Proof of Claim [ECF No. 404], seeking class action status on behalf of certain plaintiffs in the MDL who are claiming that they incurred losses as a result of the allegedly deceptive, false, and unfair marketing of prescription opioids by Insys and others. The proponents seek to certify a class consisting of all hospitals in the United States which treated patients with opioid conditions, including patients with opioid overdose; opioid addiction; babies born opioid addicted; opioid users committed to mental health treatment programs; and users with pretextual excuses for obtaining opioids. Excluded from this class would be any hospitals directly or indirectly owned or operated by the Debtors or the Debtors' affiliated entities. The hospitals acting as putative class representatives are all hospitals who have treated patients for conditions related to the use of prescription opiates manufactured by the Debtors and other manufacturers (the "**Hospitals**"). The Hospitals allege that Insys and others (1) disseminated false information about their products to create false narrative about the safety and utility of prescription opioids, downplaying their addictive nature and other dangers associated with their use, (2) underreported or failed to report suspicious orders, excessive order flow through various distribution and retail channels, and other information that would have jeopardized the success of the false narrative and threatened their lucrative business. The Hospitals have brought claims alleging (1) violations of RICO and state law equivalents, (2) nuisance, (3) negligence, (4), common law fraud, (5) violations of state consumer protection statutes; and (6) unjust enrichment.

(c) On August 19, 2019, three individually named parties filed the *Motion by NAS Baby Class Action Claimants Pursuant to Fed. Bankr. P. 9014 and 7023 to Make Federal Rule of Civil Procedure 23 Applicable to These Proceedings and to Permit the Filing of a Class Proof of Claim* [ECF No. 476], seeking class action status on behalf of certain plaintiffs in the MDL who are claiming that they incurred losses as a result of the allegedly deceptive, false, and unfair marketing of prescription opioids by Insys and others. The proponents seek to certify a medical surveillance/medical monitoring class consisting of all persons in the U.S. under the age of 18 who were diagnosed with neonatal abstinence syndrome (NAS) and whose birth mother ingested opioids during gestation. The babies acting as putative class representatives are all babies who were born addicted to opioids taken by their mothers, allegedly manufactured by the Debtor and other manufacturers and supplied by multiple distributors (the "**NAS Babies**"). The NAS Babies allege that Insys and others (1) disseminated false information about their products to create false narrative about the safety and utility of prescription opioids, downplaying their addictive nature and other dangers associated with their use, (2) underreported or failed to report suspicious orders, excessive order flow through various distribution and retail channels, and other information that would have jeopardized the success of the false narrative and threatened their lucrative business. The NAS Babies have brought claims under (1) nuisance, (2) negligence, (3), common law fraud, (4) products liability; and (5) unjust enrichment.

(d) On August 20, 2019, two individually named parties filed the *Third-Party Payor Class Action Claimants' Motion to Apply Rule 23 of the Federal Rules of Bankruptcy Procedure to these Proceedings and to Permit the Filing of a Class Proof of Claim* [ECF No. 486], seeking class action status on behalf of certain plaintiffs in the MDL, who are claiming that they incurred losses as a result of Insys's allegedly deceptive, false, fraudulent, and unfair marketing, distribution, and sales practices regarding Subsys. The proponents seek to certify a class consisting of all Third Party Payors in the United States and its territories (other than governmental entities and including health insurers, employer-provided health care plans, union health and welfare

funds, and other private providers of health care benefits) who indirectly purchased, paid, and/or reimbursed, in whole or in part, for the drug Subsys from January 1, 2013 to the present for purposes other than resale. The Third Party Payors acting as putative class representatives are all Third Party Payors who were alleged victims of the Debtors' fraudulent scheme to unlawfully and unjustly obtain reimbursements from Third Party Payors for prescriptions of Subsys that were not properly reimbursable. The TPPs allege that Insys and others (1) disseminated false information about their products to create false narrative about the safety and utility of prescription opioids, downplaying their addictive nature and other dangers associated with their use, (2) underreported or failed to report suspicious orders, excessive order flow through various distribution and retail channels, and other information that would have jeopardized the success of the false narrative and threatened their lucrative business. The TPPs have brought claims under (1) RICO and state law equivalents, (2) nuisance, (3) negligence, (4), common law fraud, (5) violations of state consumer protection statutes; and (6) unjust enrichment.

As part of the Plan Settlement, the Debtors and Creditors' Committee agreed not to object to the Motions for Class Proofs of Claim. To ensure that the creditors in those classes will receive the recoveries to which they are entitled from the claim representatives, the Class Claimants will seek approval of certain class solicitation and distribution procedures.

6.4 Plan Summary

This Disclosure Statement contains the material terms of the Plan and a more detailed description will be added. The Plan, in its entirety, is attached as **Exhibit A**.

VII. CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

The following discussion summarizes certain U.S. federal income tax consequences of the implementation of the Plan to the Debtors and to holders of certain Claims. This discussion does not address the U.S. federal income tax consequences to (i) creditors whose Claims are unimpaired or otherwise entitled to payment in full in cash under the Plan, (ii) public entities or Governmental Units, including the U.S. Government, states, municipalities and Native American Tribes, or (iii) holders who are deemed to reject the Plan, such as holders of Prepetition Equity Interests.

The discussion of U.S. federal income tax consequences below is based on the U.S. Internal Revenue Code of 1986, as amended (the "**Tax Code**"), Treasury regulations, judicial authorities, published positions of the Internal Revenue Service ("**IRS**"), and other applicable authorities, all as in effect on the date of this Disclosure Statement and all of which are subject to change or differing interpretations, possibly with retroactive effect. The U.S. federal income tax consequences of the Plan are complex and subject to significant uncertainties. The Debtors have not requested an opinion of counsel or a ruling from the IRS with respect to any of the tax aspects of the Plan. No assurance can be given that the IRS will not take a position contrary to the description of U.S. federal income tax consequences of the Plan described below.

This discussion does not address non-U.S., state, or local tax consequences of the Plan, nor does it purport to address the U.S. federal income tax consequences of the Plan to special classes of taxpayers (e.g., public entities and Governmental Units (including the U.S. Government,

states, municipalities and Native American Tribes), foreign taxpayers, small business investment companies, regulated investment companies, real estate investment trusts, banks and certain other financial institutions, insurance companies, tax-exempt organizations, retirement plans, individual retirement and other tax-deferred accounts, holders that are, or hold Claims through, S corporations, partnerships or other pass-through entities for U.S. federal income tax purposes, persons whose functional currency is not the U.S. dollar, dealers in securities or foreign currency, traders that mark-to-market their securities, persons subject to the alternative minimum tax or the “Medicare” tax on unearned income, persons who use the accrual method of accounting and report income on an “applicable financial statement,” and persons holding Claims that are part of a straddle, hedging, constructive sale, or conversion transaction). In addition, this discussion does not address U.S. federal taxes other than income taxes, nor does it address the Foreign Account Tax Compliance Act.

The following discussion generally assumes that the Plan implements the liquidation of the Debtors for U.S. federal income tax purposes (including by way of distributions to the Insys Liquidation Trust and Victims Restitution Trust), and that all distributions by the Debtors will be taxed accordingly. Additionally, this discussion assumes that (i) the various arrangements to which any of the Debtors is a party will be respected for U.S. federal income tax purposes in accordance with their form and (ii) except if otherwise indicated, the Claims are held as “capital assets” (generally, property held for investment) within the meaning of section 1221 of the Tax Code.

The following discussion of certain U.S. federal income tax consequences is for informational purposes only and is not a substitute for careful tax planning and advice based upon your individual circumstances. Each holder of a Claim or Interest is urged to consult its own tax advisor for the U.S. federal, state, local and other tax consequences applicable under the Plan.

7.1 Consequences to the Debtors

Each of the Debtors is a member of an affiliated group of corporations that files a consolidated federal income tax return with Insys as the common parent (the “**Insys Group**”) or an entity disregarded as separate from its owner for U.S. federal income tax purposes whose business activities and operations are reflected on the consolidated U.S. federal income tax returns of the Insys Group. The Debtors estimate that, as of the Petition Date, the Insys Group had consolidated net operating losses (“**NOLs**”) for U.S. federal income tax purposes of approximately \$130 million, among other tax attributes (including estimated tax credits of approximately \$14 million). However, the amount of any NOLs and other tax attributes, as well as the application of any limitations on their use, remain subject to review and adjustment by the IRS.

(a) Limitations on NOL Carryforwards and Other Tax Attributes

The Insys Group’s ability to utilize its NOLs and certain other tax attributes could be subject to limitation if the Insys Group underwent or were to undergo an ownership change within the meaning of section 382 of the Tax Code after the Petition Date. Accordingly, the Debtors obtained a Bankruptcy Court order (the “**Stock Restrictions Order**”), effective as of the Petition Date, imposing certain restrictions with respect to trading in Insys stock (and the claiming of a worthless stock deduction by any 50-percent shareholder of Insys, within the meaning of

section 382) so as to avoid such an ownership change. The Debtors believe that no ownership change of the Insys Group for section 382 purposes has occurred to date (including by reason of formation of the Kapoor Voting Trust) and intend that no such ownership change will occur prior to the liquidation of the Debtors pursuant to the Plan, expected to occur in or about December 2019 or early 2020. Moreover, pursuant to the Plan, the restrictions imposed by the Stock Restrictions Order – including the restriction on claiming of a worthless stock deduction by any 50-percent shareholder of Insys – shall remain in full force and effect following the Effective Date, and for periods on or after the Effective Date, the term Common Stock as used therein shall also include the Parent Equity Interest. If, however, the Insys Group were to undergo an ownership change for purposes of section 382 of the Tax Code by reason of the implementation of the Plan prior to the distribution of all of its remaining assets to the Insys Liquidation Trust and Victims Restitution Trust, the Debtors expect that such change should only be regarded as occurring (if at all) by reason of a deemed acquisition of interests by qualifying creditors under section 382(l)(5) of the Tax Code; in such case, the Debtors would not expect the Insys Group’s utilization of its NOLs or other tax attributes to be meaningfully impaired.

(b) Transfer of Assets to the Insys Liquidation Trust and Victims Restitution Trust; Dissolution of the Debtors

Pursuant to the Plan, two trusts – the Insys Liquidation Trust and Victims Restitution Trust (each, a “**Trust**”) – will be established. In or about December 2019 or early 2020 (based on the expected timing of the Effective Date), the Victims Restitution Trust will receive an assignment of the Debtors’ product liability insurance policies (and the proceeds thereof) together with the VRT Operating Reserve, and the Insys Liquidation Trust will receive an assignment of all the other assets of the Debtors. The Debtors will thereafter be dissolved. Accordingly, as of the end of the date of such transfers, all of the Debtors should be treated as having completely liquidated for U.S. federal income tax purposes. For U.S. federal income tax purposes, the transfer of the Debtors’ assets to the Insys Liquidation Trust or the Victims Restitution Trust generally is treated as equivalent to a sale of such assets at their then fair market value. *See* Section 7.3.

Although the Debtors may recognize taxable income in connection with the transfer of assets to the Insys Liquidation Trust or the Victims Restitution Trust and their liquidation in the taxable year of such transfer, the Debtors expect to have sufficient current deductions for such year, available NOL carryforwards and/or other tax attributes for such year to avoid any meaningful U.S. federal income tax liability for such year. Depending on the availability of and limitations on the Debtors’ NOLs and tax credits for state and local income tax purposes, the Debtors may be subject to certain state or local income tax liabilities relating to such transfers. In this connection, the Debtors intend that the transfer of assets to the Insys Liquidation Trust and the Victims Restitution Trust gives rise to a deduction to the extent permitted under the Tax Code. With respect to the transferred assets relating to amounts expected to be distributable to Classes 6 (with respect to Allowed DOJ Civil Claims) and 7, the Plan provides that such amounts shall constitute restitution. As such, the Debtors intend that transfers of assets to the Insys Liquidation Trust in respect of such claims will give rise to a deduction for U.S. federal income tax purposes to the extent of the amount of the transferred assets (equal to the amount of cash and the fair market value of the other assets transferred) that constitutes restitution. However, the rules applicable to the determination of the deductible amount are unclear in circumstances – such as those expected to exist in part with respect to the transfer of assets to the Insys Liquidation Trust – where the

identity of the holders of Allowed Claims is not fully known at the time of the payment in respect of which the deduction is claimed.

(c) Cancellation of Debt

The Tax Code provides that a debtor must recognize cancellation of debt (“**COD**”) income upon the elimination or reduction of debt for insufficient consideration. The Tax Code provides an exception to such income recognition treatment for any COD arising by reason of the discharge of the debtor’s indebtedness in the bankruptcy case or to the extent of the debtor’s insolvency immediately before the cancellation of the debt. In such case, the Tax Code generally requires the debtor to reduce certain of its tax attributes – such as current year NOLs, NOL carryforwards, tax credits, capital losses and tax basis in assets – by the amount of any such excluded COD income. COD income generally is the amount by which the adjusted issue price of cancelled debt exceeds the sum of the amount of cash and the fair market value of any other property given in exchange therefor. In general, any reduction in tax attributes under the COD rules does not occur until the end of the tax year, after such attributes have been applied to determine the tax for the year or, in the case of asset basis reduction, the first day of the taxable year following the tax year in which the COD occurs. Also, where the Debtor joins in the filing of a consolidated U.S. federal income tax return, applicable Treasury Regulations require, in certain circumstances, that the tax attributes of the consolidated subsidiaries of the debtor and other members of the group also be reduced.

Consistent with the intended treatment of the Plan as a plan of liquidation for U.S. federal income tax purposes, the Debtors believe that no COD should be incurred by a Debtor as a result of the implementation of the Plan prior to the distribution by such Debtor of all of its assets. In such case, the reduction of tax attributes resulting from such COD (which, as indicated above, only occurs as of the end of the tax year in which the COD occurs) generally should not have a material impact on the Debtors. There can be no assurance that the IRS will agree to such characterization, due to, among other things, a lack of direct authoritative guidance as to when COD occurs in the context of a liquidating Chapter 11 plan, and thus there can be no assurance that all or a substantial amount of the COD will not be incurred earlier.

7.2 Consequences to Holders of Certain Claims

Pursuant to the Plan, each holder of an Allowed Claim in Class 3, 4 and 5 will receive, in full and final satisfaction of its applicable claim, an interest in the Insys Liquidation Trust representing such holder’s right to receive a share of certain cash proceeds. As discussed below (*see* Section 7.3), each holder of an Allowed Claim that receives a beneficial interest in the Insys Liquidation Trust will be treated for U.S. federal income tax purposes as directly receiving, and as a direct owner of, an undivided interest in the assets transferred to such Trust consistent with its economic rights in the Insys Liquidation Trust, and subject to any portion(s) of the Insys Liquidation Trust being treated as a “disputed ownership fund” or a “qualified settlement fund” for U.S. federal income tax purposes.

Each holder of an Allowed Claim in Class 8 will receive, in full and final satisfaction of its applicable claim, an interest in the Victims Restitution Trust representing such holder’s right to receive its pro rata share of the proceeds of the product liability insurance policies

assigned to the Victims Restitution Trust. As discussed further below, the Victims Restitution Trust is intended to be treated as a “qualified settlement fund” for U.S. federal income tax purposes.

(a) Consequences to Holders in Classes 3, 4, or 5

In general, a holder of an Allowed Claim in Class 3, 4 or 5 will recognize gain or loss with respect to its Allowed Claim in an amount equal to the difference between (i) the sum of the amount of any cash and the fair market value of its undivided interest in the other assets transferred to the Insys Liquidation Trust and treated as received in respect of its Claim (other than any consideration attributable to a Claim for accrued but unpaid interest) and (ii) the adjusted tax basis of the Claim exchanged therefor (other than any tax basis attributable to accrued but unpaid interest previously included in the holder’s taxable income).

Pursuant to the Plan, the Insys Liquidation Trust will in good faith value the assets transferred thereto, and all parties to the Insys Liquidation Trust (including holders of Allowed Claims receiving interests therein) must consistently use such valuation for all U.S. federal income tax purposes. As discussed below, the amount of cash or other property received in respect of an Allowed Claim for accrued but unpaid interest will be taxed as ordinary income, except to the extent previously included in income by a holder under its method of accounting. *See* Section 7.2(c).

After the date of transfer of assets to the Insys Liquidation Trust, a holder’s share of any collections received on the assets of the Insys Liquidation Trust (other than as a result of the subsequent disallowance of Disputed Claims or the reallocation of undeliverable distributions) should not be included, for U.S. federal income tax purposes, in the holder’s amount realized in respect of its Allowed Claim but should be separately treated as amounts realized in respect of such holder’s ownership interest in the underlying assets of the Insys Liquidation Trust.

In the event of the subsequent disallowance of any Disputed Claim, it is possible that a holder of a previously Allowed Claim may receive additional distributions in respect of its Claim. Accordingly, it is possible that the recognition of any loss realized by a holder with respect to an Allowed Claim may be deferred until all Claims are Allowed or Disallowed. Alternatively, it is possible that a holder will have additional gain in respect of any additional distributions received. *See also* Section 7.3(c).

In addition, it is possible that the Insys Liquidation Trust may, in whole or in part, be treated as a “qualified settlement fund” as of the Effective Date. To such extent, any holder having an interest in such qualified settlement fund would not be treated as receiving a distribution from the Debtors in respect of their Claim with respect to such interest until such time as the qualified settlement fund actually makes distributions. *See also* Section 7.3(c).

If gain or loss is recognized, such gain or loss may be long-term capital gain or loss if the Allowed Claim disposed of is a capital asset in the hands of the holder and has been held for more than one year. Each holder of an Allowed Claim should consult its tax advisor to determine whether gain or loss recognized by such holder will be long-term capital gain or loss and the specific tax effect thereof on such holder. The character of any gain or loss depends on, among

other things, the origin of the holder's Allowed Claim, when the holder receives payment (or is deemed to receive payment) in respect of such Allowed Claim, whether the holder reports income using the accrual or cash method of tax accounting, whether the holder acquired its Allowed Claim at a discount, whether the holder has taken a bad debt deduction with respect to such Allowed Claim, and/or whether (as intended and herein assumed) the Plan implements the liquidation of the Debtors for U.S. federal income tax purposes.

A holder's aggregate tax basis in its undivided interest in the Insys Liquidation Trust's assets (subject to any portion(s) of the Insys Liquidation Trust being treated as a "disputed ownership fund" or a "qualified settlement fund" for U.S. federal income tax purposes) will equal the fair market value of such interest increased by its share of the Debtors' liabilities to which such assets remain subject upon transfer to the Insys Liquidation Trust, and a holder's holding period generally will begin on the day following the date of transfer of such assets to the Insys Liquidation Trust.

(b) Consequences to Holders in Class 8

Each Allowed Personal Injury Claim will be satisfied in cash only from the Victims Restitution Trust. For U.S. federal income tax purposes, distributions made from the Victims Restitution Trust to holders of Allowed Personal Injury Claims will be treated, with respect to such holders, as if distributed by the Debtors. *See* Section 7.3(e). The U.S. federal income tax treatment of the receipt of payments by a holder of an Allowed Personal Injury Claim generally will depend on the nature of the Claim. Amounts received by a holder of a personal injury claim generally should not be taxable to such holder for U.S. federal income tax purposes to the extent they represent damages (other than punitive damages) received on account of personal physical injuries or physical sickness. Because the tax treatment of any amounts received by a holder under the Plan will depend on facts particular to each holder, all holders of Personal Injury Claims are urged to consult their own tax advisors as to the proper tax treatment of such amounts under their particular facts and circumstances.

(c) Distributions in Respect of Accrued But Unpaid Interest

In general, to the extent any amount received (whether cash or other property) by a holder of a debt instrument is received in satisfaction of interest that accrued during its holding period, such amount will be taxable to the holder as ordinary interest income (if not previously included in the holder's gross income under the holder's normal method of accounting). Conversely, a holder generally recognizes a deductible loss to the extent any accrued interest was previously included in its gross income and is not paid in full.

Pursuant to Section 6.17 of the Plan, except as otherwise required by law (as reasonably determined by the Liquidating Trustee), distributions in respect of any Allowed Claim shall be allocated first to the principal amount of such Allowed Claim (as determined for U.S. federal income tax purposes) and, thereafter, to the remaining portion of such Allowed Claim, if any. However, there is no assurance that such allocation would be respected by the IRS for U.S. federal income tax purposes. You are urged to consult your own tax advisor regarding the allocation of consideration received under the Plan, as well as the deductibility of accrued but

unpaid interest and the character of any loss claimed with respect to accrued but unpaid interest previously included in gross income for U.S. federal income tax purposes.

7.3 Tax Treatment of the Trusts and Holders of Beneficial Interests Therein

As indicated above, the Debtors will transfer the Product Liability policies (and the proceeds thereof) together with the VRT Operating Reserve to the Victims Restitution Trust, and will transfer their remaining assets to the Insys Liquidation Trust. As discussed below, subject to any portion(s) of the Insys Liquidation Trust being treated as a “disputed ownership fund” or a “qualified settlement fund” for U.S. federal income tax purposes, the Insys Liquidation Trust is intended to be treated as a “liquidating trust” for U.S. federal income tax purposes. Whether all or any portion of the Insys Liquidation Trust is treated as a disputed ownership fund or a qualified settlement fund depends in part on the nature and status of the Claims held by recipients of beneficial interests therein and elections made by the Liquidating Trustee.

(a) Classification of the Insys Liquidation Trust

The Insys Liquidation Trust is intended to qualify as a “liquidating trust” for U.S. federal income tax purposes (other than in respect of any portion of the assets transferred to the Insys Liquidation Trust and allocable to, or retained on account of, Disputed Claims or treated as held by a qualified settlement fund, as discussed below). In general, a liquidating trust is not a separate taxable entity but rather is treated for U.S. federal income tax purposes as a “grantor” trust (i.e., a pass-through entity). The IRS, in Revenue Procedure 94-45, 1994-2 C.B. 684, set forth the general criteria for obtaining an IRS ruling as to the grantor trust status of a liquidating trust under a chapter 11 plan. The Insys Liquidation Trust will be structured with the intention of complying with such general criteria. Pursuant to the Plan, and in conformity with Revenue Procedure 94-45, all parties (including, without limitation, the Debtors, the Liquidating Trustee and beneficiaries of the Insys Liquidation Trust) shall treat the transfer of assets to the Insys Liquidation Trust as (1) a transfer of such assets (subject to any obligations relating to those assets) directly to recipients of beneficial interests in the Insys Liquidation Trust (other than to the extent such assets are allocable to Disputed Claims or treated as held by a qualified settlement fund), followed by (2) the transfer by such beneficiaries to the Insys Liquidation Trust of such assets in exchange for beneficial interests in the Insys Liquidation Trust. Accordingly, except in the event of contrary definitive guidance, holders of beneficial interests in the Insys Liquidation Trust shall be treated for U.S. federal income tax purposes as the grantors and owners of their respective share of the assets transferred by the Debtors to the Insys Liquidation Trust (other than such assets as are allocable to Disputed Claims or treated as held by a qualified settlement fund).

No ruling is currently being requested from the IRS concerning the tax status of the Insys Liquidation Trust as a grantor trust. Accordingly, there can be no assurance that the IRS would not take a contrary position to the classification of the Insys Liquidation Trust as a grantor trust. If the IRS were to challenge successfully such classification, the U.S. federal income tax consequences to the Insys Liquidation Trust and the holders of Claims could vary from those discussed herein. Certain U.S. federal income tax consequences of the Insys Liquidation Trust or portions thereof being treated as a “disputed ownership fund” or as a “qualified settlement fund” within the meaning of Treasury Regulation section 1.468B-1 *et seq.* are also discussed below.

(b) General “Liquidating Trust” Tax Reporting by the Insys Liquidation Trust and Liquidating Trust Beneficiaries

For all U.S. federal income tax purposes, all parties must treat the Insys Liquidation Trust as a grantor trust of which the holders of beneficial interests in the Insys Liquidation Trust are the owners and grantors, and treat such beneficiaries as the direct owners of an undivided interest in the assets transferred to the Insys Liquidation Trust (other than any assets allocable to Disputed Claims or treated as held by a qualified settlement fund), consistent with their economic interests therein. The Liquidating Trustee will file tax returns for the Insys Liquidation Trust treating the Insys Liquidation Trust as a grantor trust pursuant to section 1.671-4(a) of the Treasury Regulations. The Liquidating Trustee also shall annually send to each holder of a beneficial interest in the Insys Liquidation Trust a separate statement regarding the receipts and expenditures of the Insys Liquidation Trust as relevant for U.S. federal income tax purposes.

All taxable income and loss of the Insys Liquidation Trust will be allocated among, and treated as directly earned and incurred by, the holders of beneficial interests in the Insys Liquidation Trust with respect to such holder’s interest in the assets of the Insys Liquidation Trust (and not as income or loss with respect to its prior Claims), with the possible exception of any taxable income and loss allocable to any assets allocable to, or retained on account of, Disputed Claims or to a qualified settlement fund. The character of any income and the character and ability to use any loss would depend on the particular situation of the holder.

As soon as reasonably practicable after the transfer of the Debtors’ assets to the Insys Liquidation Trust, the Insys Liquidation Trust shall make a good faith valuation of such assets. All parties to the Insys Liquidation Trust (including, without limitation, the Debtors, holders of Allowed Claims, and the beneficiaries of the Insys Liquidation Trust) must consistently use such valuation for all U.S. federal income tax purposes. The valuation will be made available, from time to time, as relevant for tax reporting purposes.

The U.S. federal income tax obligations of a holder with respect to its beneficial interest in the Insys Liquidation Trust are not dependent on the Insys Liquidation Trust distributing any cash or other proceeds, subject to any portion(s) of the Insys Liquidation Trust allocable to Disputed Claims or treated as held by a qualified settlement fund. Thus, a holder may incur a U.S. federal income tax liability with respect to its allocable share of the Insys Liquidation Trust’s income even if the Insys Liquidation Trust does not make a concurrent distribution to the holder. In general, other than in respect of cash retained on account of Disputed Claims or from a qualified settlement fund (the subsequent distribution of which still relates to a holder’s Allowed Claim), a distribution of cash by the Insys Liquidation Trust will not be separately taxable to a beneficiary of the Insys Liquidation Trust since the beneficiary is already regarded for U.S. federal income tax purposes as owning the underlying assets (and was taxed at the time the cash was earned or received by the Insys Liquidation Trust). Holders are urged to consult their tax advisors regarding the appropriate U.S. federal income tax treatment of any subsequent distributions of cash originally retained by the Insys Liquidation Trust on account of Disputed Claims.

The Liquidating Trustee will comply with all applicable governmental withholding requirements (*see* Section 6.20 of the Plan and Section 7.4 herein).

(c) Tax Reporting for Assets Allocable to Disputed Claims

Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Liquidating Trustee of an IRS private letter ruling if the Liquidating Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidating Trustee) or, alternatively, to treatment as a qualified settlement fund, the Liquidating Trustee (A) may elect to treat any assets of the Insys Liquidation Trust that are allocable to, or retained on account of, Disputed Claims (including any assets allocable to any Class of Claims as to which the allocation within such Class is not yet determined) as a “disputed ownership fund” governed by section 1.468B-9 of the Treasury Regulations, if applicable, and (B) to the extent permitted by applicable law, will report consistently for state and local income tax purposes.

Accordingly, if a “disputed ownership fund” election is made with respect to assets allocable to, or retained on account of, Disputed Claims, such reserve will be subject to tax annually on a separate entity basis on any net income earned with respect to the assets allocable thereto (including any gain recognized upon the disposition of such assets). All distributions from such reserves (which distributions will be net of the expenses, including taxes, relating to the retention or disposition of such assets) will be treated as received by holders in respect of their Claims as if distributed by the Debtors. All parties (including, without limitation, the Debtors, the Liquidating Trustee and the beneficiaries of the Insys Liquidation Trust) will be required to report for tax purposes consistently with the foregoing.

A reserve will be responsible for payment, out of the assets of the reserve, of any taxes imposed on the reserve or its assets. In the event, and to the extent, any cash in the reserve is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets of such reserve (including any income that may arise upon the distribution of the assets in such reserve), assets of the reserve may be sold to pay such taxes.

(d) Tax Reporting if the Insys Liquidation Trust or any Portion thereof is Treated as a Qualified Settlement Fund

Notwithstanding the foregoing, the Insys Liquidation Trust or portions thereof may be treated (now or in the future) as a “qualified settlement fund” within the meaning of Treasury Regulations section 1.468B-1. To the extent that the beneficiaries of the Insys Liquidation Trust are solely holders of “qualifying” claims, or a portion of the assets of the Insys Liquidation Trust are segregated from its other assets and held for the benefit of former holders of qualifying Claims, the Insys Liquidation Trust may be required to be characterized as a qualified settlement fund. In general, as relevant to the Plan, a qualifying claim is a claim asserting liability arising out of a tort, breach of contract, or violation of law. Trade claims are not qualifying claims for this purpose.

A qualified settlement fund generally is taxed similarly to a disputed ownership fund for U.S. federal income tax purposes. *See* Section 7.3(c). As a qualified settlement fund, the Insys Liquidation Trust or such segregated portion treated as a qualified settlement fund would be subject to a separate entity-level U.S. federal income tax at the maximum rate applicable to trusts and estates (currently 37%). For the avoidance of doubt, any income or loss (including administrative costs) allocable to assets that are treated as held by a qualified settlement fund,

including any gain or loss recognized upon disposition or distribution of such assets (treating the fair market value of the property on the date received by the qualified settlement fund as its initial tax basis), will be included in the taxable income of the qualified settlement fund that is subject to a separate entity level tax and excluded from the Insys Liquidation Trust's income for purposes of determining the taxable income that is passed through to holders of beneficial interests in the liquidating trust. All parties (including, without limitation, the Debtors, the Insys Liquidation Trust and the holders of beneficial interests in the Insys Liquidation Trust) will be required to report for tax purposes consistently with the foregoing.

(e) Classification of the Victims Restitution Trust

The Victims Restitution Trust is expected to be treated as a qualified settlement fund. The U.S. federal income tax treatment of the Victims Restitution Trust generally will be the same as described above with respect to the potential characterization of the Insys Liquidation Trust as a qualified settlement fund (*see* Section 7.3(d)). All parties (including, without limitation, the Debtors, the Victims Restitution Trust, and the holders of beneficial interests in the Victims Restitution Trust) will be required to report for tax purposes consistently with the foregoing.

7.4 Withholding on Distributions and Information Reporting

All distributions to holders of Allowed Claims under the Plan are subject to any applicable tax withholding, including employment tax withholding. Under U.S. federal income tax law, interest, dividends, and other reportable payments may, under certain circumstances, be subject to "backup withholding" at the then applicable withholding rate (currently 24%). Backup withholding generally applies if the holder (a) fails to furnish its social security number or other taxpayer identification number, (b) furnishes an incorrect taxpayer identification number, (c) fails properly to report interest or dividends, or (d) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the tax identification number provided is its correct number and that it is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions. Holders of Allowed Claims are urged to consult their tax advisors regarding the Treasury Regulations governing backup withholding and whether the transactions contemplated by the Plan would be subject to these Treasury Regulations.

In addition, Treasury Regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer's claiming a loss in excess of specified thresholds. Holders are urged to consult their tax advisors regarding these Treasury Regulations and whether the transactions contemplated by the Plan would be subject to these Treasury Regulations and require disclosure on the holder's tax returns.

The foregoing summary has been provided for informational purposes only. All holders of Claims and Interests are urged to consult their tax advisors concerning the federal, state, local and other tax consequences applicable under the Plan.

VIII. Certain Risk Factors to be Considered

THE PLAN AND ITS IMPLEMENTATION ARE SUBJECT TO CERTAIN RISKS, INCLUDING, BUT NOT LIMITED TO, THE RISK FACTORS SET FORTH BELOW. HOLDERS OF CLAIMS WHO ARE ENTITLED TO VOTE ON THE PLAN SHOULD READ AND CAREFULLY CONSIDER THE RISK FACTORS, AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT AND THE PLAN, BEFORE DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN.

ADDITIONAL RISK FACTORS IDENTIFIED IN INSYS'S PUBLIC FILINGS WITH THE SEC MAY ALSO BE APPLICABLE TO THE MATTERS SET OUT HEREIN AND SHOULD BE REVIEWED AND CONSIDERED IN CONJUNCTION WITH THIS DISCLOSURE STATEMENT, TO THE EXTENT APPLICABLE. THE RISK FACTORS SET FORTH IN INSYS'S ANNUAL REPORT ON FORM 10-K FOR THE FISCAL YEAR ENDED DECEMBER 31, 2018, AS UPDATED BY THE QUARTERLY REPORT ON FORM 10-Q FOR THE QUARTER ENDED MARCH 31, 2019, AND THE RISK FACTORS SET FORTH IN EXHIBIT 99.1 TO THE CURRENT REPORT ON FORM 8-K FILED BY INSYS WITH THE SEC ON AUGUST 8, 2019 ARE HEREBY INCORPORATED BY REFERENCE. ANY CURRENT REPORTS ON FORM 8-K (OTHER THAN INFORMATION FURNISHED PURSUANT TO ITEMS 2.02 OR 7.01 AND ANY RELATED EXHIBITS OF ANY FORM 8-K, UNLESS EXPRESSLY STATED OTHERWISE THEREIN), QUARTERLY REPORTS ON FORM 10-Q OR ANNUAL REPORTS ON FORM 10-K FILED BY INSYS WITH THE SEC AFTER THE DATE OF THIS DISCLOSURE STATEMENT MAY ALSO INCLUDE RISK FACTORS AND WILL BE CONSIDERED A PART OF THIS DISCLOSURE STATEMENT FROM THE DATE OF THE FILING OF SUCH DOCUMENTS. NEW FACTORS, RISKS AND UNCERTAINTIES EMERGE FROM TIME TO TIME AND IT IS NOT POSSIBLE TO PREDICT ALL SUCH FACTORS, RISKS AND UNCERTAINTIES.

These risk factors should not, however, be regarded as constituting the only risks involved in connection with the Plan and its implementation. No representations concerning or related to the Debtors, the Chapter 11 Cases or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. Any representations or inducements made to secure acceptance or rejection of the Plan that are not contained in, or included with, this Disclosure Statement should not be relied upon by claimants in arriving at their decision.

8.1 Risks Associated with the Bankruptcy Process

(a) **Risk of Non-Confirmation of the Plan.** There can be no assurance that the requisite acceptances to confirm the Plan will be obtained. Thus, while the Debtors believe the Plan is confirmable under the standards set forth in section 1129 of the Bankruptcy Code, there is no guarantee that the Plan will be accepted by the requisite Classes entitled to vote on the Plan. Even if all Voting Classes vote in favor of the Plan or the requirements for "cramdown" are met with respect to any Class that rejects the Plan, the Bankruptcy Court could decline to confirm the Plan if it finds that any of the statutory requirements for confirmation are not met. If the Plan is not confirmed, there can be no assurances that the Chapter 11 Cases will continue rather than be dismissed or converted

to a Chapter 7 liquidation or that any alternative plan of liquidation or reorganization would be on terms as favorable to the holders of Claims as the terms of the Plan. If another liquidation or protracted reorganization were to occur, there is a substantial risk that the value of the Debtors' assets would be substantially reduced to the detriment of all stakeholders. Further, in such event, the Debtors may not have sufficient liquidity to operate in bankruptcy for such an extended period.

(b) **Nonconsensual Confirmation.** Pursuant to the cramdown provisions of section 1129(b) of the Bankruptcy Code, the Bankruptcy Court can confirm the Plan notwithstanding the nonacceptance of the Plan by an impaired class of claims or interests if at least one impaired class of claims has accepted the Plan (with such acceptance being determined without including the acceptance of any insider (as defined in section 101(31) of the Bankruptcy Code) in such class) and, as to each impaired class which has not accepted the Plan, the Bankruptcy Court determines that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to impaired classes. If necessary, the Debtors intend to request confirmation of the Plan in accordance with section 1129(b) of the Bankruptcy Code.

Although the Debtors believe the Plan meets such requirements, there can be no assurance the Bankruptcy Court will reach the same conclusion. Moreover, although the Debtors and the Creditors' Committee encourage all Voting Classes to vote to accept the Plan, and the Debtors and the Creditors' Committee believe that they are likely to have at least one impaired Class vote in favor of the Plan, there is no guaranty that this will occur. If no impaired Voting Class votes in favor of the Plan, the Plan cannot be confirmed as written.

(c) **Claims Could be More than Projected.** There can be no assurance that the estimated Allowed amount of Claims in certain Classes will not be significantly more than projected, which in turn, could cause the value of distributions to creditors to be reduced substantially. Certain assumptions may not materialize, and unanticipated events and circumstances may affect the ultimate results. For example, discrepancies between the actual amounts and the estimates regarding the Allowed Administrative Expense Claims and Allowed Other Priority Claims could significantly impact the distributions to other creditors. In addition, the Debtors are named defendants in numerous actions commenced prior to the Petition Date (as described in further detail in Section 4.1 herein). These litigations are at preliminary stages and involve contingencies and uncertainties that may impact the Chapter 11 Cases, such as the allowance of class action claims other than those presented in the Motions for Class Proofs of Claim and the apportionment of liability among the Debtors and their third-party co-defendants. Given these uncertainties, the Debtors have utilized broad ranges for the estimated claim amounts of these litigation claims. For the foregoing reasons, the actual amount of Allowed Claims may vary and, in some instances, the variation may be material.

(d) **Distributions to Allowed Claims Under the Plan May Change.** Projected distributions are based upon good faith estimates of the total amount of Claims ultimately allowed and the funds available for distribution. The Debtors believe that these assumptions and estimates are reasonable. However, as aforementioned unanticipated events or circumstances could result in such estimates or assumptions increasing or

decreasing materially, both the actual amount of Allowed Claims in a particular Class and the funds available for distribution to such Class may differ from the Debtors' estimates. If the total amount of Allowed Claims in a Class is higher than the Debtors' estimates, or the funds available for distribution to such Class are lower than the Debtors' estimates (including estimates of the amount of cash to be realized from liquidation of the Debtors' remaining assets), the percentage recovery to holders of Allowed Claims in such Class will be less than projected. For example, if Administrative Expense Claims are lower (or higher) than anticipated, then the amount available for distribution to creditors would be more (or less) than projected herein and recoveries on account of Allowed Claims would be more (or less) than the estimated recoveries set forth herein.

(e) **Classification and Treatment of Claims and Interests.** Section 1122 of the Bankruptcy Code requires that the Plan classify Claims against, and Interests in, the Debtors. The Bankruptcy Code also provides that the Plan may place a Claim or Interest in a particular Class only if such Claim or Interest is substantially similar to the other Claims or Interests in such Class. The Debtors believe that all Claims and Interests have been appropriately classified in the Plan, pursuant to the Plan Settlement reached by the Debtors, the Creditors' Committee and the Settling Creditors.

To the extent that the Bankruptcy Court finds that a different classification is required for the Plan to be confirmed, the Debtors may seek (i) to modify the Plan to provide for whatever classification might be required for Confirmation and (ii) to use the acceptances received from any creditor for the purpose of obtaining the approval of the Class or Classes of which such creditor ultimately is deemed to be a member. Any such reclassification of creditors, although subject to the notice and hearing requirements of the Bankruptcy Code, could adversely affect the Class in which such creditor was initially a member, or any other Class under the Plan, by changing the composition of such Class and the vote required for approval of the Plan. There can be no assurance that the Bankruptcy Court, after finding that a classification was inappropriate and requiring a reclassification, would approve the Plan based upon such reclassification. Except to the extent that modification of classification in the Plan requires resolicitation, the Debtors may, in accordance with the Bankruptcy Code and the Bankruptcy Rules, seek a determination by the Bankruptcy Court that acceptance of the Plan of any holder of Allowed Claims will constitute a consent to the Plan's treatment of such holder regardless of the Class as to which such holder is ultimately deemed to be a member. The Debtors believe that under the Bankruptcy Rules, they would be required to resolicit votes for or against the Plan only when a modification adversely affects the treatment of the claim of any creditor or equity interest holder.

The Bankruptcy Code also requires that the Plan provide the same treatment for each Claim or Interest in a particular Class unless the Holder of a particular Claim or Interest agrees to a less favorable treatment of its Claim or Interest. The Debtors believe that the Plan complies with the requirement of equal treatment, or has otherwise been agreed to by the Settling Creditors. To the extent that the Bankruptcy Court finds that the Plan does not satisfy such requirement, the Bankruptcy Court could deny Confirmation of the Plan.

Issues or disputes relating to classification and/or treatment could result in a delay in the Confirmation and consummation of the Plan and could increase the risk that the Plan will not be consummated.

(f) **The Debtors, the Liquidating Trustee or the VRT Claims Administrator May Object to Amount or Classification of a Claim.** The Debtors and their successors reserve the right to object to the amount or classification of any Claim under the Plan. The estimated recoveries set forth in this Disclosure Statement cannot be relied on by any holder of an Allowed Claim where such Claim is or may become subject to an objection. Any holder of an Allowed Claim that is or may become subject to an objection may not receive its expected share of the potential distributions described in this Disclosure Statement.

(g) **Risk of Delayed Confirmation or Effective Date.** Although the Debtors expect that the Plan will be confirmed on or shortly after the Confirmation Hearing scheduled for [], 2019, there is a risk that confirmation of the Plan will be delayed. Similarly, there can be no assurances that the Effective Date will occur as scheduled on [], 2019 because the Effective Date is contingent upon satisfaction of the conditions precedent to the Effective Date set forth in the Plan. If the Plan is not effective by [] it could detrimentally impact the administration of the Debtors' estate and reduce recoveries available to creditors.

(h) **Risk of Conversion into Chapter 7 Cases.** If no plan can be confirmed, or if the Bankruptcy Court otherwise finds that it would be in the best interest of holders of Claims and Interests, the Chapter 11 Cases may be converted to cases under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be appointed or elected to liquidate the Debtors' assets for distribution in accordance with the priorities established by the Bankruptcy Code. *See* Section 9.1(b) hereof for a discussion of the negative effects that a chapter 7 liquidation would have on the recoveries of holders of Claims.

(i) **The Value of Retained Causes of Action is Uncertain.** The Causes of Action that will vest in the Insys Liquidation Trust and the Victims Restitution Trust are inherently difficult to value, and any such Cause of Action may prove to have limited or zero value. In addition, litigating Causes of Action is a time consuming and expensive process. While the Debtors believe that the Causes of Action are valuable, the Debtors have not placed a specific value on any of the Causes of Action.

8.2 Other Considerations, Risk Factors, and Disclaimers

(a) **Financial Information Disclaimer.** To the extent financial information is contained in this Disclosure Statement, the exhibits to this Disclosure Statement or any document filed in connection herewith, such information is derived from the Debtors' books and records available at the time of preparation and has not been audited. Although the Debtors have used their reasonable business judgment to ensure the accuracy of any financial information provided in this Disclosure Statement, and while the Debtors believe that any such information fairly reflects, in all material respects, the financial condition and

results of the Debtors as of the date or time period stated, the Debtors are unable to warrant or represent that such information is without inaccuracies.

(b) **Tax Claims Could be More than Projected.** There can be no assurance that the estimated Allowed amount of Claims with respect to Classes 3, 4, 5, and 7 (with respect to secured, priority unsecured, and general unsecured Claims relating to federal and state income tax exposure, including penalties and interest) will not be significantly more than projected, which in turn, could cause the value of distributions to creditors to be reduced substantially. The Debtors have made certain assumptions in arriving at these estimates, including, without limitation, with respect to the outcome of an ongoing IRS tax audit of the Debtors and the availability of certain state tax refunds. These assumptions may not be accurate, and unanticipated events or circumstances may affect the ultimate tax liability. Given these uncertainties, the actual amount of Allowed Claims with respect to taxes may vary from those projected in Section 5.7(c)(ii), and the variation may be material.

(c) **Potential Tax Liability in Implementation.** The Debtors may incur certain federal, state, or local tax liabilities relating to the transfer of assets to the Insys Liquidation Trust and the liquidation of the Debtors. Such tax liabilities may be material, depending on certain factors, including, without limitation, the value of the assets at the time of the transfer, the extent that such transfers give rise to deductions, and the availability of certain net operating loss carryforwards and tax credits. There can be no assurance that taxing authorities will agree with the Debtors' valuation of the transferred assets or the availability or amount of any deductions claimed or net operating loss carryforwards or tax credits utilized. Accordingly, the Debtors may incur taxes on the transfer of the assets to the Insys Liquidation Trust, which could cause the value of distributions to creditors to be reduced materially.

(d) **Other Tax Considerations.** There are a number of material income tax considerations, risks and uncertainties associated with the consummation of the Plan. Holders of Claims and Interests and other interested parties should read carefully the discussion of certain U.S. federal income tax consequences of the Plan set forth above.

(e) **This Disclosure Statement Was Not Approved by the Securities and Exchange Commission.** Neither the SEC nor any state regulatory authority has passed upon the accuracy or adequacy of this Disclosure Statement, or the exhibits or the statements contained herein, and any representation to the contrary is unlawful.

(f) **The Debtors Have No Duty to Update.** The statements contained in this Disclosure Statement are made by the Debtors (or the Creditors' Committee where indicated) as of the date hereof, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has been no change in the information set forth herein since that date. The Debtors have no duty to update this Disclosure Statement unless otherwise ordered to do so by the Bankruptcy Court.

(g) **No Representations Outside of this Disclosure Statement Are Authorized.** The information contained in this Disclosure Statement is for purposes of soliciting acceptances of the Plan and may not be relied upon for any other purposes. No representations concerning or related to the Debtors, the Chapter 11 Cases, or the Plan are

authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. Any representations or inducements made to secure your acceptance or rejection of the Plan that are other than as contained in, or included with, this Disclosure Statement should not be relied upon by you in arriving at your decision.

(h) **Projections and Other Forward-Looking Statements Are Not Assured, and Actual Results May Vary.** Certain of the information contained in this Disclosure Statement is, by nature, forward-looking, and contains estimates and assumptions, which might ultimately prove to be incorrect, and projections, which may be materially different from actual future experiences. There are uncertainties associated with all projections and estimates, and they should not be considered assurances or guarantees of the amount of funds or the amount of Claims in the various Classes that might be allowed.

(i) **No Legal or Tax Advice Is Provided to You by This Disclosure Statement.** The contents of this Disclosure Statement should *not* be construed as legal, business or tax advice. Each holder of a Claim or Interest should consult his, her, or its own legal counsel and accountant as to legal, tax and other matters concerning his, her, or its Claim or Interest. This Disclosure Statement is not legal advice to you. This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan or object to confirmation of the Plan.

(j) **No Admission Made.** The information and statements contained in the Plan and this Disclosure Statement will neither constitute an admission of any fact or liability by any Entity nor be deemed evidence of the tax or other legal effects of the Plan on the Debtors, Reorganized Debtors, holders of Claims or Interests or any other parties in interest. In addition, no reliance should be placed on the fact that a particular litigation Claim is, or is not, identified in this Disclosure Statement.

IX. Confirmation of the Plan

9.1 Requirements of Section 1129(a) of the Bankruptcy Code

(a) **General Requirements.** At the Confirmation Hearing, the Bankruptcy Court will determine whether the confirmation requirements specified in section 1129(a) of the Bankruptcy Code have been satisfied including, without limitation, whether:

- the Plan complies with the applicable provisions of the Bankruptcy Code;
- the Debtors have complied with the applicable provisions of the Bankruptcy Code;
- the Plan has been proposed in good faith and not by any means forbidden by law;
- any payment made or promised by the Debtors or by a person acquiring property under the Plan, for services or for costs and expenses in or in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been disclosed to the Bankruptcy Court,

and any such payment made before confirmation of the Plan is reasonable, or if such payment is to be fixed after confirmation of the Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable;

- the Debtors have disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director or officer, an affiliate of the Debtors participating in a Plan with the Debtors, or a successor to the Debtors under the Plan, and the appointment to, or continuance in, such office of such individual is consistent with the interests holders of Claims and Interests and with public policy, and the Debtors have disclosed the identity of any insider who will be employed or retained by the Reorganized Debtors, and the nature of any compensation for such insider;
- with respect to each Class of Claims or Interests, each holder of an impaired Claim or impaired Interest has either accepted the Plan or will receive or retain under the Plan, on account of such holder's Claim or Interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount such holder would receive or retain if the Debtors were liquidated on the Effective Date of the Plan under chapter 7 of the Bankruptcy Code;
- except to the extent the Plan meets the requirements of section 1129(b) of the Bankruptcy Code with respect to each rejecting Class (as discussed further below), each Class of Claims either accepted the Plan or is not impaired under the Plan;
- except to the extent that the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides that administrative expenses and priority Claims, other than priority tax Claims, will be paid in full on the Effective Date, and that priority tax Claims will receive either payment in full on the Effective Date or deferred cash payments over a period not exceeding five (5) years after the Petition Date, of a value, as of the Effective Date of the Plan, equal to the allowed amount of such Claims;
- at least one Class of impaired Claims has accepted the Plan, determined without including any vote for acceptance of the Plan by any insider holding a Claim in such Class;
- confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors or any successor to the Debtors under the Plan; and
- all fees payable under section 1930 of title 28, as determined by the Bankruptcy Court at the Confirmation Hearing, have been paid or the Plan provides for the payment of all such fees on the Effective Date of the Plan.

(b) **Best Interests of Creditors / Liquidation Analysis.** As noted above, with respect to each impaired class of claims and equity interests, confirmation of a plan requires

that each such holder either: (i) accept the plan; or (ii) receive or retain under the plan property of a value, as of the effective date of the plan, that is not less than the value such holder would receive or retain if the debtors were liquidated under chapter 7 of the Bankruptcy Code. This requirement is referred to as the “best interests test.”

This test requires a bankruptcy court to determine what the holders of allowed claims and allowed equity interests in each impaired class would receive from a liquidation of the debtor’s assets and properties in the context of a liquidation under chapter 7 of the Bankruptcy Code. To determine if a plan is in the best interests of each impaired class, the value of the distributions from the proceeds of the liquidation of the debtor’s assets and properties (after subtracting the amounts attributable to the aforesaid claims) is then compared with the value offered to such classes of claims and equity interests under the plan.

Allowed Claims in Classes 1 and 2 are not Impaired and therefore deemed to accept the Plan unanimously (thereby rendering the “best interests” test inapplicable to such Classes). Claims in Classes 3, 4, 5, 6, 7, and 8 are Impaired and entitled to vote on the Plan. Classes 9, 10, 11, and 12 (respectively, the 501(a) and 510(b) Subordinated Claims, 510(c) Subordinated Claims, Intercompany Claims and Equity Claims) will receive no recovery and are deemed to reject the Plan.

The Debtors believe that the Plan satisfies the best interests test because, among other things, the recoveries expected to be available to holders of Allowed Claims under the Plan will be greater than the recoveries expected to be available in a chapter 7 liquidation, and distributions under the Plan will commence at an earlier point in time than they would if a chapter 7 trustee were put in place.

In a typical chapter 7 case, a trustee is elected or appointed to liquidate (as opposed to sell in an orderly section 363 sale) a debtor’s assets for distribution to creditors in accordance with the priorities set forth in the Bankruptcy Code. Generally, secured creditors are paid first from the proceeds of sales of the properties securing their liens. If any assets are remaining in the estates after satisfaction of secured creditors’ claims from their collateral, administrative expenses are next to receive payment.

Unsecured creditors are paid from any remaining sales proceeds, according to their respective priorities. Unsecured creditors with the same priority share in proportion to the amount of their allowed claims in relationship to the total amount of allowed claims held by all unsecured creditors with the same priority. Finally, equity interest holders receive the balance that remains, if any, after all creditors are paid.

Liquidating the Debtors’ assets under chapter 7 would require the appointment of a chapter 7 trustee. Such an appointment would delay distributions to holders of Claims and would likely provide a smaller distribution because of the additional fees and expenses that would be incurred during a chapter 7 liquidation. These include potential added time, fees and expenses incurred by a chapter 7 trustee and any of its retained professionals who would need to familiarize themselves with the complex matters described above, all of which the Debtors’ current retained professionals have spent significant time analyzing and understanding. Any appointed chapter 7 trustee would take a percent fee from the recoveries of any of the Debtors’ assets, including the

Debtors' affirmative claims and litigation recoveries. The Debtors anticipate that these amounts would exceed the amounts expended to those professionals selected to administer the Insys Liquidation Trust and the Victims Restitution Trust, lowering the amount available for distribution to creditors.

Given the additional cost and timing savings of continuing with the Plan, Debtors submit that the Plan satisfies the "best interests" test in Bankruptcy Code section 1129(a)(7).

(c) **Feasibility.** Also as noted above, section 1129(a)(11) of the Bankruptcy Code requires that a debtor demonstrate that confirmation of a plan is not likely to be followed by liquidation or the need for further financial reorganization. The Debtors believe that they will be able to timely perform all obligations described in the Plan, and, therefore, that the Plan satisfies the feasibility requirement. In particular, the Debtors believe that the Plan satisfies the feasibility requirement with respect to both (i) obligations relating to the Sales Transactions, if any, and (ii) obligations relating to the Insys Liquidation Trust and the Victims Restitution Trust.

- *Obligations Relating to the Sales Transaction[s].* The Debtors believe that proceeds from the Sales Transactions and the Debtors' other cash on hand will be sufficient to satisfy all of the Debtors' obligations under the Plan that are due on the Effective Date. First, the Debtors are confident that, in accordance with the Plan, the Sales Transactions will have either already closed, or will close immediately prior to or simultaneously with the occurrence of the Effective Date. The Debtors do not believe that the Sales Transactions will be delayed or enjoined by governmental authorities.
- *Sufficiency of the Trust Operating Reserves.* The Debtors believe that the Trust Operating Reserves to be funded pursuant to the Plan, along with \$2million Cash allocated to the Trust Operating Reserves, will be sufficient for the Trusts to carry out the purposes for which they were established.

(d) **Additional Requirements for Non-Consensual Confirmation.** In the event that any impaired Class of Claims or Interests does not accept or is deemed to reject the Plan, the Court may still confirm the Plan at the request of the Debtors if, as to each impaired Class of Claims or Interests that has not accepted the Plan, the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to such Classes of Claims or Interests, pursuant to section 1129(b) of the Bankruptcy Code. Both of these requirements are in addition to other requirements established by case law interpreting the statutory requirements.

(e) **Unfair Discrimination Test.** The "unfair discrimination" test applies to Classes of Claims or Interests that are of equal priority and are receiving different treatment under the Plan. A chapter 11 plan does not discriminate unfairly, within the meaning of the Bankruptcy Code, if the legal rights of a dissenting Class are treated in a manner consistent with the treatment of other Classes whose legal rights are substantially similar to those of the dissenting Class and if no Class of Claims or Interests receives more than it

legally is entitled to receive for its Claims or Interests. This test does not require that the treatment be the same or equivalent, but that such treatment is “fair.”

The Debtors believe the Plan satisfies the “unfair discrimination” test with respect to any dissenting Class of Claims. Claims of equal priority are receiving comparable treatment and such treatment is fair under the circumstances. Other parties in interest may disagree that the Plan satisfies the “unfair discrimination” test and may challenge this conclusion in connection with confirmation of the Plan.

As a result of the Plan Settlement, unsecured creditors will not receive exact *pro rata* recovery under the Plan. The Plan Settlement settles disputes regarding the allowed amounts of creditor claims, and includes a settlement regarding which creditors will receive consideration from which sources of recovery under the Plan. The Debtors and the Creditors’ Committee believe that if any dissenting party were to object to their treatment under the “unfair discrimination” test, the Debtors and the Creditors’ Committee would prevail given the amount of work and analysis that the Debtors and the Creditors’ Committee did to arrive at the settlement embodied herein and, moreover, given that the Debtors and the Creditors’ Committee do not have any pecuniary stake in how value is allocated.

(f) **Fair and Equitable Test.** The “fair and equitable” test applies to classes of different priority and status (*e.g.*, secured versus unsecured) and includes the general requirements that (a) no class of claims receive more than 100% of the allowed amount of the claims in such class and (b) no junior class of claims or interests receive any recovery under the Plan until senior classes have received a full recovery on their claims. As to dissenting classes, the test sets different standards depending on the type of claims in such class. The Debtors believe that the Plan satisfies the “fair and equitable” test because the holders of claims and equity interests that are junior to the claims of the dissenting class, if any, will not receive any property under the plan of reorganization. Accordingly, the Plan meets the “fair and equitable” test with respect to all Classes.

X. Alternatives to Confirmation and Consummation of the Plan

The Debtors have evaluated several alternatives to the Plan. After studying these alternatives, the Debtors have concluded that the Plan is the best alternative and will maximize recoveries to parties in interest, assuming confirmation and consummation of the Plan. If the Plan is not confirmed and consummated, the alternatives to the Plan are: (i) the preparation and presentation of an alternative plan of liquidation or reorganization; or (ii) a liquidation under chapter 7 of the Bankruptcy Code.

10.1 Alternative Plan of Liquidation or Reorganization

If the Plan is not confirmed, the Debtors (or if the Debtors’ exclusive period in which to file a plan of reorganization has expired, any other party in interest) could attempt to formulate a different plan. Such a plan might involve either: (a) a reorganization and continuation of certain of the Debtors’ businesses; or (b) an alternative orderly liquidation of their assets. The Debtors, however, submit that the Plan, as described herein, enables their creditors to realize the

most value under the circumstances and that any alternative plan would likely result in reduced recoveries to the Debtors' creditors.

10.2 Liquidation Under Chapter 7 of the Bankruptcy Code

If no plan can be confirmed, the Chapter 11 Cases may be converted to cases under chapter 7 of the Bankruptcy Code in which a trustee would be elected or appointed to liquidate the assets of the Debtors for distribution to their creditors in accordance with the priorities established by the Bankruptcy Code.

The Debtors believe that liquidation under chapter 7 would result in smaller distributions to creditors than those provided for in the Plan because of, among other things (i) the delay resulting from the conversion of the Chapter 11 Cases and (ii) the additional administrative expenses associated with the appointment of a trustee and the trustee's retention of professionals who would be required to become familiar with the many legal and factual issues in the Debtors' Chapter 11 Cases.

XI. Conclusion and Recommendation

The Debtors and the Creditors' Committee believe the Plan is in the best interests of all stakeholders and urge the holders of Claims in Classes 3-8 to vote in favor of the Plan.

Dated: [], 2019

By: _____

Name:

Title: Authorized Signatory

Insys Therapeutics, Inc.

IC Operations, LLC

Insys Development Company, Inc.

Insys Manufacturing, LLC

Insys Pharma, Inc.

IPSC, LLC

IPT 355, LLC

EXHIBIT A to the Disclosure Statement

The Plan

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

	X		:		
			:		
In re			:		Chapter 11
			:		
INSYS THERAPEUTICS, INC., et al.,			:		Case No. 19-11292 (KG)
			:		
Debtors.¹			:		Jointly Administered
			:		
			:		
			X		

**JOINT CHAPTER 11 PLAN OF LIQUIDATION
OF INSYS THERAPEUTICS, INC. AND ITS AFFILIATED DEBTORS**

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Dated: [●], 2019
Wilmington, Delaware

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are: Insys Therapeutics, Inc. (7886); IC Operations, LLC (9659); Insys Development Company, Inc. (3020); Insys Manufacturing, LLC (0789); Insys Pharma, Inc. (9410); IPSC, LLC (6577); and IPT 355, LLC (0155). The Debtors' mailing address is 410 S. Benson Lane, Chandler, Arizona 85286.

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Each of Insys Therapeutics, Inc.; IC Operations, LLC; Insys Development Company, Inc.; Insys Manufacturing, LLC; Insys Pharma, Inc.; IPSC, LLC; and IPT 355, LLC (each, a “**Debtor**” and collectively, the “**Debtors**”) proposes the following joint chapter 11 plan of liquidation pursuant to section 1121(a) of the Bankruptcy Code. Capitalized terms used herein shall have the meanings set forth in Section 1.1 below.

ARTICLE I DEFINITIONS AND INTERPRETATION.

1.1 Definitions.

The following terms shall have the respective meanings specified below:

Administrative Expense Claim means any Claim for costs and expenses of administration of the Chapter 11 Cases pursuant to sections 327, 328, 330, 365, 503(b), 507(a)(2), or 507(b) of the Bankruptcy Code, including (i) the actual and necessary costs and expenses incurred on or after the Petition Date and through the Effective Date of preserving the Estates and operating the Debtors’ business, (ii) Professional Fee Claims, (iii) all fees and charges assessed against the Estates pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, (iv) all Allowed Claims that are to be treated as Administrative Expense Claims pursuant to a Final Order of the Bankruptcy Court under section 546(c)(2) of the Bankruptcy Code, and (v) Cure Claims.

Administrative Expense Claims Bar Date means the deadline for filing requests for payment of Administrative Expense Claims arising between the Petition Date and September 9, 2019 other than (i) Professional Fee Claims and (ii) Administrative Expense Claims arising in the ordinary course of business after the Petition Date, which shall be October 24, 2019 at 5:00 p.m. (Prevailing Pacific Time), unless otherwise ordered by the Bankruptcy Court.

Allowed means, with respect to any Claim against or Interest in a Debtor, any Claim or Interest (i) the amount of which has been agreed between, as applicable, the Debtors, the Liquidating Debtors, the Liquidating Trustee, the ILT Claims Arbiter, or the VRT Claims Administrator, (ii) that has been determined by Final Order of a court of competent jurisdiction, which may include the Bankruptcy Court, (iii) that is compromised, settled, or otherwise resolved after the Effective Date pursuant to the authority of the Debtors, the Liquidating Debtors, the Liquidating Trustee, the ILT Claims Arbiter, or the VRT Claims Administrator, as applicable, (iv) that is listed in the Schedules as liquidated, non-contingent, and undisputed, (v) arising on or before the Effective Date as to which no objection to allowance has been interposed within the time period set forth in the Plan, and (vi) that is expressly allowed hereunder; *provided, however*, that the Liquidating Debtors and the Liquidating Trustee shall retain all Claims and defenses with respect to Allowed Claims that are reinstated or otherwise Unimpaired pursuant to this Plan.

Allowed DOJ Civil Claim means the DOJ’s Allowed Claim for restitution in the amount of \$243 million pursuant to the DOJ Settlement Order.

Allowed DOJ Claims means, collectively, the Allowed DOJ Civil Claim, the Allowed DOJ Forfeiture Claim, and any other Allowed Claims asserted by the DOJ.

Allowed DOJ Forfeiture Claim means the DOJ's Allowed Claim for forfeiture in the amount of \$30 million.

Asset means all of the rights, title, and interests of a Debtor, a Liquidating Debtor, or a Trust, as applicable, in and to property of whatever type or nature, including real, personal, mixed, intellectual, tangible, and intangible property.

Authorized Acts means those actions that the Liquidating Trustee (through the Trusts, Debtors, the Liquidating Debtors, or otherwise) is authorized to perform in accordance with the applicable Trust Agreement including: (i) wind down, dissolve, and liquidate the Liquidating Debtors and their Estates and the Trust Assets; (ii) prosecute and liquidate Causes of Action, other than those released pursuant to Section 10.5(a) of this Plan; (iii) collect and administer all consideration to be provided to the Debtors or the Liquidating Debtors under the Subsys Asset Purchase Agreement; (iv) if applicable, continue limited operations of the Liquidating Debtors during the Operating Term to the extent reasonably necessary, in the discretion of the Liquidating Trustee, and subject to the approval of the ILT Board, to maximize value; (v) administer, process, settle, resolve, liquidate, satisfy, and pay (from the designated funds therefor), as applicable, Claims against the Debtors; (vi) maintain, administer, and make Distributions from the Priority Reserve to satisfy Allowed (a) Administrative Expense Claims, (b) Secured Claims, and (c) Priority Claims; (vii) maintain, administer, and make Distributions from the Trust Operating Reserves to satisfy Trust Operating Expenses; (viii) maintain, administer, and make distributions from the Disputed Claims Reserves to the Recovery Funds; (ix) maintain, administer, and make Distributions from the Recovery Funds to holders of Allowed General Unsecured Claims as set forth in this Plan; (x) upon expiration of the Operating Term, liquidate all Remaining Assets and make any final Distributions pursuant to Section 6.13 of the Plan; (xi) administer the closing of the Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules; and (xii) carry out the purposes and obligations of the Trusts as set forth in the Trust Agreements.

Available Cash means, collectively, (i) Effective Date Available Cash, (ii) Surplus Reserved Cash, (iii) Post-Effective Date Receipts, and (iv) funds reserved in the Disputed Claims Reserves for Disputed Non-PI General Unsecured Claims to the extent the funds in such Disputed Claims Reserves exceed the amount required to be held in such Disputed Claims Reserves pursuant to Section 6.3 of this Plan. For the avoidance of doubt, Products Liability Insurance Proceeds and Excess Products Liability Insurance Proceeds shall not constitute Available Cash.

Bankruptcy Code means title 11 of the United States Code, as applicable to the Chapter 11 Cases.

Bankruptcy Court means the United States Bankruptcy Court for the District of Delaware having jurisdiction over the Chapter 11 Cases and, to the extent any reference made under section 157 of title 28 of the United States Code is withdrawn or the Bankruptcy Court is determined not to have authority to enter a Final Order on an issue, the unit of such District Court having jurisdiction over the Chapter 11 Cases under section 151 of title 28 of the United States Code.

Bankruptcy Rules means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as amended from time to time, as applicable to the Chapter 11 Cases, and any local rules of the Bankruptcy Court.

Bar Date Order means the order of the Bankruptcy Court, dated July 15, 2019 [Docket No. 959], establishing deadlines by which proofs of Claim must be filed with respect to certain Claims.

Business Day means any day other than a Saturday, a Sunday, or any other day on which banking institutions in Wilmington, Delaware are authorized or required by law or executive order to close.

Cash means legal tender of the United States of America.

Category 1 Distributions means Distributions of the first \$3 million of Estate Distributable Value from the ILT Recovery Fund on account of Allowed Claims, which shall be made only on account of Allowed Trade and Other Unsecured Claims. Category 1 Distributions shall be made in accordance with reallocations resulting from the DOJ Distribution Reallocation.

Category 2 Distributions means (i) with respect to Distributions of the next \$35 million of Estate Distributable Value following the Distribution of \$3 million in Category 1 Distributions to holders of Allowed Trade and Other Unsecured Claims, fifty-five percent (55%) of the Estate Distributable Value composing such Distributions and (ii) with respect to Distributions after \$38 million of Estate Distributable Value has been distributed on account of Allowed Non-PI General Unsecured Claims in the aggregate, twenty percent (20%) of the incremental Estate Distributable Value composing such Distributions. Category 2 Distributions shall be made in accordance with reallocations resulting from the DOJ Distribution Reallocation.

Category 3 Distributions means (i) with respect to Distributions of the next \$35 million of Estate Distributable Value following the payment of \$3 million in Category 1 Distributions to holders of Allowed Trade and Other Unsecured Claims, forty-five percent (45%) of the Estate Distributable Value composing such Distributions and (ii) with respect to Distributions after \$38 million of Estate Distributable Value has been distributed on account of Allowed Non-PI General Unsecured Claims in the aggregate, eighty percent (80%) of the incremental Estate Distributable Value composing such Distributions. Category 3 Distributions shall be made in accordance with reallocations resulting from the DOJ Distribution Reallocation.

Cause of Action means any action, class action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, reimbursement, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license, and franchise of any kind or character whatsoever, known or unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, at law or in equity, or pursuant to any other theory of law. For the

avoidance of doubt, Cause of Action includes: (i) any right of setoff, counterclaim, or recoupment and any claim for breach of contract or for breaches of duties imposed by law or in equity; (ii) the right to object to Claims or Interests; (iii) any claim or cause of action pursuant to section 362 of the Bankruptcy Code or chapter 5 of the Bankruptcy Code; (iv) any claim or defense, including fraud, mistake, duress, and usury and any other defenses set forth in section 558 of the Bankruptcy Code; and (v) any claims under any state or foreign law, including any fraudulent transfer or similar claims.

Chapter 11 Case means, with respect to a Debtor, such Debtor's case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Bankruptcy Court, jointly administered with all other Debtors' cases under chapter 11 of the Bankruptcy Code, and styled *In re Insys Therapeutics, Inc., et al.*, Ch. 11 Case No. 19-11292 (KG).

Claim means a "claim," as defined in section 101(5) of the Bankruptcy Code.

Claims Analysis Protocol means [the general guidelines for the VRT Claims Administrator to consider and follow in determining whether and in what amount to Allow a Personal Injury Claim. The Claims Analysis Protocol will be filed with the Plan Supplement.]

Class means any group of Claims or Interests classified under this Plan pursuant to section 1122(a) of the Bankruptcy Code.

Class 3 Recovery Cap means the greater of (i) \$3 million and (ii) seven percent (7%) of the aggregate amount of Allowed Trade and Other Unsecured Claims.

Class Claims means, collectively, the Insurance Ratepayer Class Claim, the Hospital Class Claim, the NAS Monitoring Class Claim, and the Third Party Payor Class Claim.

Confirmation Date means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order.

Confirmation Hearing means the hearing to be held by the Bankruptcy Court regarding confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

Confirmation Order means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code and approving the Plan Settlement.

Creditors' Committee means the statutory committee of unsecured creditors appointed by the U.S. Trustee on June 19, 2019 pursuant to section 1102(a)(1) of the Bankruptcy Code.

Cure Amount 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 (i) cure a monetary default by the Debtors in accordance with the terms of an executory contract or unexpired lease of the Debtors and (ii) permit the Debtors to assume such executory contract or unexpired lease under section 365(a) of the Bankruptcy Code.

Cure Claim means a Claim for cure in connection with the assumption or assumption and assignment of an executory contract or unexpired lease under section 365(a) of the Bankruptcy Code.

Cure Dispute means an unresolved objection regarding assumption, Cure Amount, “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code), or other issues related to assumption of an executory contract or unexpired lease.

Debtor(s) has the meaning set forth in the introductory paragraph of this Plan.

Disallowed means any Claim, or any portion thereof, that (i) has been disallowed by a Final Order, a settlement, or a final determination of the VRT Claims Administrator, (ii) is Scheduled at zero or as contingent, disputed, or unliquidated and as to which a proof of claim bar date has been established but no proof of claim has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court, including the Bar Date Order, or otherwise deemed timely filed under applicable law, or (iii) is not Scheduled and as to which a proof of claim bar date has been established but no proof of claim has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law.

Disbursing Agent means the Liquidating Trustee acting in its capacity as a disbursing agent under Sections 6.6 and 6.7 hereof to make Distributions pursuant to the Plan.

Disclosure Statement means the disclosure statement for this Plan, as may be amended or supplemented from time to time, prepared and distributed in accordance with sections 1125, 1126(b), and 1145 of the Bankruptcy Code, Bankruptcy Rules 3016 and 3018, and other applicable law, and all exhibits, schedules, supplements, modifications, amendments, annexes, and attachments to such disclosure statement.

Disputed means any Claim that is not yet Allowed or Disallowed.

Disputed Claims Reserves means, collectively, the reserves to be established with respect to each Class of General Unsecured Claims (which may be a single or collective reserve for one or more Classes of Claims), each maintained and administered by the Liquidating Trustee, and each to be held for the benefit of holders of subsequently Allowed Claims in the applicable Class for Distributions in accordance with the procedure set forth in Article VII hereof. The Disputed Claims Reserves with respect to Disputed Non-PI General Unsecured Claims shall be held by the Insys Liquidation Trust and the Disputed Claims Reserve with respect to Disputed Personal Injury Claims shall be held by the Victims Restitution Trust and administered by the Liquidating Trustee. There shall also be considered to be held in the Disputed Claims Reserves an undivided interest in the ILT Assets allocable to Disputed Claims of such Class(es).

Disputed Cure Claim means the amount that a counterparty to a Cure Dispute alleges must be paid in order for an executory contract or unexpired lease to either be assumed by the Debtors or assumed by the Debtors and assigned to the Insys Liquidation Trust.

Disputed Cure Claims Reserve means an amount of Cash held by the Debtors on the Effective Date equal to the Debtors' Disputed Cure Claims to be reserved in a segregated account in the Priority Reserve, in the reasonable discretion of the Debtors, in consultation with the Creditors' Committee, necessary to pay (i) the aggregate amount of Disputed Cure Claims for Assumed and Assigned Contracts or (ii) such lower amount as ordered by the Bankruptcy Court.

Dissolution Date means the date upon which all of the Liquidating Debtors have been dissolved, which is to be no later than thirty (30) days after completion of the acts required by the Plan, or as soon as reasonably practicable thereafter.

Dissolution Date Cash means any Cash in any of the Liquidating Debtors or the Parent Holding Trust remaining upon dissolution of such Liquidating Debtors or the Parent Holding Trust pursuant to this Plan.

Distribution means any initial or periodic payment or transfer of consideration to holders of Allowed Claims and Interests made under this Plan. Distributions are to be made from Cash and Cash equivalents that constitute Estate Distributable Value.

Distribution Date means the Initial Distribution Date or any of the Periodic Distribution Dates.

Distribution Record Date means the record date for purposes of making Distributions under the Plan on account of Allowed Claims, which date shall be the Effective Date.

District Court means the United States District Court for the District of Delaware.

DOJ means the United States Department of Justice.

DOJ Claim means any Claim against the Debtors, including for fines, penalties, judgments, restitution, or other amounts arising out of, or relating to, civil and criminal investigations with respect to any of the Debtors conducted or prosecuted by the DOJ, including any plea agreements, other settlement agreements, restitution orders, or similar documents entered into in connection therewith.

DOJ Distribution Reallocation means (i) before the GUC Recovery Reallocation Threshold is met, Estate Distributable Value will be allocated to holders of Non-PI General Unsecured Claims as if the Allowed DOJ Civil Claim was Allowed (without resulting in funding of a Disputed Claims Reserve for such Claim), but Distributions of Estate Distributable Value that would otherwise have been made from the ILT Recovery Fund on account of the Allowed DOJ Civil Claim shall instead be reallocated between Category 2 Distributions and Category 3 Distributions and made accordingly; and (ii) after the GUC Recovery Reallocation Threshold is met, the Allowed DOJ Civil Claim will share in Distributions like any other Allowed DOJ Claim as otherwise provided herein.

DOJ Settlement Order means an order to be entered by the Bankruptcy Court approving a settlement between the Debtors, the Creditors' Committee, and the DOJ related to the Allowed DOJ Civil Claim.

Effective Date means the date which is the first Business Day on which (i) all conditions precedent to the effectiveness of this Plan as set forth in Section 9.2 of this Plan have been satisfied or waived in accordance with the terms of this Plan and (ii) no stay of the Confirmation Order is in effect.

Effective Date Available Cash means all Cash and Cash equivalents of the Debtors immediately prior to the Effective Date, which shall be used to fund (i) the Priority Reserve, (ii) the estimated amounts of Professional Fee Claims, which shall be transferred to the Professional Fee Escrow Account, and (iii) the initial funding of the Trust Operating Reserves described in Sections 5.8(e) and 5.9(d) of this Plan. Any Effective Date Available Cash not used for the purposes in the previous sentence shall constitute Available Cash.

Entity has the meaning set forth in section 101(15) of the Bankruptcy Code.

Equity Interest means any Interest in Insys Therapeutics, Inc.

Estate(s) means, individually or collectively, the estate or estates of the Debtors created under section 541 of the Bankruptcy Code.

Estate Distributable Value means Available Cash and any other value available for Distribution to holders of Allowed Non-PI General Unsecured Claims from the ILT Recovery Fund. The term "Estate Distributable Value" shall not include (i) Products Liability Insurance Proceeds, (ii) Excess Products Liability Insurance Proceeds, which will be deposited in the ILT Recovery Fund but designated for Distribution to holders of Allowed SMT Group Claims under Section 4.7(a) of this Plan, or (iii) seven percent (7%) of any Preference and Indemnification Proceeds, which will be deposited in the ILT Recovery Fund but designated for Distribution to holders of Allowed Trade and Other Unsecured Claims under Section 4.3(a) of this Plan.

Excess Products Liability Insurance Proceeds means any Products Liability Insurance Proceeds held by the Victims Restitution Trust after all Allowed Personal Injury Claims have been satisfied in full.

Exculpated Parties means[, collectively, (i) the Debtors, (ii) the Creditors' Committee and its members, solely in their capacity as such, and (iii) with respect to each of the foregoing Persons in clauses (i) and (ii), such Persons' (a) predecessors, successors, assigns, subsidiaries, and affiliates, (b) officers and directors, principals, equity holders, members, partners, managers, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, solely to the extent each was employed or engaged on or after the Petition Date, or, in the case of any professional, was retained pursuant to sections 327 or 1102 of the Bankruptcy Code in these Chapter 11 Cases, and (c) respective heirs, executors, estates, and nominees, in each case in their

capacity as such; *provided, however*, that no Person listed on Exhibit A to this Plan, and filed with the Plan Supplement, shall be an Exculpated Party.]²

Final Order means an order of the Bankruptcy Court or any other court of competent jurisdiction (i) as to which the time to appeal shall have expired and as to which no appeal shall then be pending or (ii) if a timely appeal shall have been filed or sought, either (A) (1) no stay of the order shall be in effect and (2) the appeal would not reasonably be expected to prevent or materially impede the consummation of the Trust Formation Transactions or have a material adverse effect on the discharge, releases, injunctions, or exculpations granted under this Plan, or (B) if such a stay shall have been granted, then (1) (x) the stay shall have been dissolved or lifted and (y) the appeal would not reasonably be expected to prevent or materially impede the consummation of the Trust Formation Transactions or have a material adverse effect on the discharge, releases, injunctions, or exculpations granted under this Plan, or (2) a Final Order of the District court, circuit court, or other applicable court having jurisdiction to hear such appeal shall have affirmed the order and the time allowed to appeal from such affirmance or to seek review or rehearing (other than a motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure) thereof shall have expired; *provided, however*, that no order shall fail to be a “Final Order” solely because of the possibility that a motion pursuant to sections 502(j) or 1144 of the Bankruptcy Code or under Rule 60 of the Federal Rules of Civil Procedure or Bankruptcy Rule 9024 or any similar motion brought outside the United States may be filed with respect to such order.

General Unsecured Claim means any Claim in Class 3 (Trade and Other Unsecured Claims), Class 4 (Insurance Related Claims), Class 5 (Hospital and NAS Monitoring Claims), Class 6 (DOJ Claims), Class 7 (SMT Group Claims), or Class 8 (Personal Injury Claims).

Governmental Unit means any governmental unit as defined in section 101(27) of the Bankruptcy Code.

GUC Recovery Reallocation Threshold means the point at which aggregate Distributions on account of Non-PI General Unsecured Claims (including Distributions from the ILT Recovery Fund to holders of Allowed Non-PI General Unsecured Claims and Distributions to Disputed Claims Reserves for Disputed Non-PI General Unsecured Claims) is equal to or greater than \$40.9 million.

Hospital and NAS Monitoring Claim means any Claim held by a private hospital or an NAS Child (other than a Personal Injury Claim of an NAS Child) for damages caused by the Debtors in connection with the opioid crisis.

Hospital Claim means any Hospital and NAS Monitoring Claim held by a private hospital.

Hospital Class Claim means [●].

² As of the date of filing, the Creditors’ Committee and the Settling Creditors do not support this provision, but are still considering.

ILT Agreement means the trust agreement establishing and delineating the terms and conditions for the creation and operation of the Insys Liquidation Trust, as it may be amended from time to time. The ILT Agreement shall be filed with the Plan Supplement and shall be in form and substance reasonably acceptable to the Creditors' Committee.

ILT Assets means, collectively, all Assets of the Liquidating Debtors upon the date of formation of the Insys Liquidation Trust, other than (i) the VRT Operating Reserve, (ii) the Products Liability Insurance Rights, and (iii) any Interests held by Liquidating Debtors in other Liquidating Debtors.

ILT Board means the governing body of the Insys Liquidation Trust to be appointed in accordance with Section 5.8(j) of this Plan.

ILT Claims Arbiter means the individual to be appointed pursuant to this Plan and the ILT Agreement to determine the allocation of recoveries among holders of Allowed Claims within Class 4 and Class 5, as necessary, if such Classes fail to agree with respect to such allocations prior to the Effective Date. The identity of the ILT Claims Arbiter shall be disclosed as part of the Plan Supplement, if the ILT Claims Arbiter has been selected by the time the Plan Supplement is filed. For the avoidance of doubt, with respect to Class 4, the ILT Claims Arbiter will solely be responsible for allocating aggregate recoveries between holders of Third Party Payor Claims, on the one hand, and holders of Insurance Ratepayers Claims, on the other hand, and in Class 5, the ILT Claims Arbiter will solely be responsible for allocating aggregate recoveries between the holders of Hospital Claims, on the one hand, and the NAS Children, on the other.

ILT Insurance Negotiator means the individual as defined in Section 5.8 of this Plan.

ILT Operating Expenses means any and all costs, expenses, fees, taxes, disbursements, debts, or obligations incurred from the operation and administration of the Insys Liquidation Trust, including in connection with the reconciliation and administration of all Claims (other than Personal Injury Claims), working capital, wind-down of the Liquidating Debtors and the Remaining Assets and Causes of Action, recovery of Insurance Proceeds (other than Products Liability Insurance Proceeds), and costs and fees of the Liquidating Trustee, the ILT Claims Arbiter, and the ILT Board. In the first instance, the ILT Operating Expenses are to be satisfied and paid from the ILT Operating Reserve.

ILT Operating Reserve means Cash in an amount estimated to be necessary to fund the ILT Operating Expenses in accordance with Section 5.9(d) of this Plan, which shall be held in a separate account established by the Liquidating Trustee. The ILT Operating Reserve is to be (a) reserved in a segregated account on the Effective Date or as soon as practicable thereafter from the Debtors' Cash and Cash equivalents in the amount of \$[1 million], (b) funded periodically from Available Cash in accordance with Section 5.8(e) of this Plan, as necessary, and (c) funded from Surplus Reserved Cash in accordance with Section 5.16 of this Plan.

ILT Recovery Fund means the fund established pursuant to this Plan to make Distributions on account of Allowed Non-PI General Unsecured Claims and funded periodically

with Available Cash pursuant to Section 5.15 and Surplus Reserved Cash pursuant to Section 5.16 of this Plan. The ILT Recovery Fund shall be held by the Insys Liquidation Trust and administered by the Liquidating Trustee.

ILT Termination Date means the date on which the Insys Liquidation Trust is terminated, as determined pursuant to the terms of the ILT Agreement, upon the satisfaction of the purposes for which the Insys Liquidation Trust was established.

ILT Transfer Date means the date upon which the ILT Assets are transferred to the Insys Liquidation Trust.

Impaired means, with respect to a Claim, Interest, or a Class of Claims or Interests, “impaired” within the meaning of such term in section 1124 of the Bankruptcy Code.

Initial Distribution means the first distribution that the Liquidating Trustee makes to holders of Allowed Claims.

Initial Distribution Date means the date selected by the Liquidating Trustee as soon as reasonably practicable after the Effective Date, but in no event more than ninety (90) days after the Effective Date; *provided, however*, that the Initial Distribution Date need not occur until the Initial Distribution to be made can exceed the minimum Distribution set forth in Section 6.13 of this Plan.

Insurance Company means all Entities that are providing or have provided insurance under the Insurance Policies to the Debtors or any such Entity’s parent, subsidiary, affiliate, successor, predecessor, or assign.

Insurance Negotiator(s) means, individually or collectively, the ILT Insurance Negotiator and the VRT Insurance Negotiator. The identity of each Insurance Negotiator shall be disclosed as part of the Plan Supplement, if such Insurance Negotiator has been appointed by the time the Plan Supplement is filed.

Insurance Policies means any insurance policy issued to the Debtors or under which the Debtors have sought or may seek coverage including, without limitation, any such policy for directors’ and officers’ liability, general liability, and any excess or umbrella policy.

Insurance Proceeds means any proceeds recovered under the Insurance Policies for the Insys Liquidation Trust.

Insurance Ratepayer Claim means any Insurance Related Claim held by an insurance ratepayer.

Insurance Ratepayer Class Claim means [●].

Insurance Related Claim means any Claim arising from, or related to, effects of the Debtors’ acts and omissions on participants in the insurance industry, including Insurance Ratepayer Claims and Third Party Payor Claims, for fraud leading to the improper disbursement

and payment of prescription costs for Products of the Debtors or the increase of insurance premium rates related to the Debtors' conduct.

Insurance Rights means any and all rights, titles, privileges, interests, claims, demands, or entitlements of the Debtors to any proceeds, payments, benefits, Causes of Action, choses in action, defense or indemnity arising under, or attributable to, any and all Insurance Policies, now existing or hereafter arising, accrued or unaccrued, liquidated or unliquidated, matured or unmatured, disputed or undisputed, fixed or contingent.

Insurance Rights Transfer means the transfer, assignment, and vesting of the Insurance Policies described in Section 5.8(d) of this Plan.

Insys Liquidation Trust means the trust established to, among other things, (i) hold and make disbursements from the ILT Recovery Fund, the ILT Operating Reserve, and the Priority Reserve, (ii) liquidate the Remaining Assets and the Causes of Action of the Debtors and the Liquidating Debtors, (iii) negotiate with the Insurance Companies (other than the Products Liability Insurance Companies) to recover Insurance Proceeds, and (iv) administer Claims (other than Personal Injury Claims), including through allowance and disallowance of such Claims and making Distributions therefor, but solely within the parameters of this Plan and the distribution scheme contained herein.

Intercompany Claim means any Claim against a Debtor held by another Debtor.

Interest means any equity security (as defined in section 101(16) of the Bankruptcy Code) in a Debtor, or direct or indirect subsidiary of a Debtor, including all shares, common stock or units, preferred stock or units, or other instrument evidencing any fixed or contingent ownership interest in any Debtor or any direct or indirect subsidiary of a Debtor, including any option, warrant, or other right, contractual or otherwise, to acquire any such interest in a Debtor, or direct or indirect subsidiary of a Debtor, whether or not transferable and whether fully vested or vesting in the future, that existed immediately before the Effective Date.

Interim Compensation Order means the *Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals and (II) Granting Related Relief* [Docket No. 329].

Internal Revenue Code means the Internal Revenue Code of 1986, as amended from time to time.

Lien has the meaning set forth in section 101(37) of the Bankruptcy Code.

Liquidating Debtors means, collectively, all of the Debtors on and after the Effective Date, to be liquidated and dissolved upon the Dissolution Date.

Liquidating Debtors' Organizational Documents means, collectively, the amended and restated certificates of incorporation, amended and restated by-laws, or other amended and restated organizational documents of any of the Debtors. The Liquidating Debtors' Organizational Documents shall be filed with the Plan Supplement and shall be in form and substance reasonably acceptable to the Creditors' Committee.

Liquidating Trustee means the Person appointed pursuant to this Plan and Confirmation Order to perform the Authorized Acts under this Plan and the Trust Agreements.

MDL means the multi-district litigation in the Northern District of Ohio against the Debtors for public nuisance, negligence, and fraud related to the Debtors' marketing and sale of Products under the case caption *In re National Prescription Opiate Litigation*, No. 1:17-md-2804.

Mediation means the mediation prescribed for certain parties, including certain of the Settling Parties, pursuant to the order of the Bankruptcy Court related to mediation and the appointment of a mediator [Docket No. 398].

NAS Child means a person in the U.S. under the age of 18 who was diagnosed with neonatal abstinence syndrome and whose birth mother ingested opioids during gestation and who asserts a Claim against the Debtors for, among other things, bodily injury, addiction, wrongful death, and loss of consortium (including a parent of such child, or any other Person that holds a Claim on account of such child).

NAS Monitoring Claim means any Hospital and NAS Monitoring Claim held by an NAS Child.

NAS Monitoring Class Claim means [●].

Non-PI General Unsecured Claim means any General Unsecured Claim other than any Claim in Class 8 (Personal Injury Claims).

Operating Term means the term for the continuation of the Trusts, which shall cease [five (5) years] after the Effective Date; *provided, however*, that the Operating Term will be automatically extended if necessary to implement the terms of the Trust Agreements or any other order by authorities to the extent applicable.

Other Priority Claim means any Claim other than an Administrative Expense Claim or a Priority Tax Claim that is entitled to priority of payment as specified in section 507(a) of the Bankruptcy Code.

Other Unsecured Claim means any unsecured Claim against the Debtors not entitled to priority of payment under section 507(a) of the Bankruptcy Code, other than a Trade Claim, an Insurance Related Claim, a Hospital and NAS Monitoring Claim, a DOJ Claim, an SMT Group Claim, a Personal Injury Claim, or an Intercompany Claim; *provided, however*, that any Claim that satisfies the definition of a Subordinated Claim shall be a Subordinated Claim notwithstanding that such Claim would otherwise be an Other Unsecured Claim.

Parent Equity Interest means a new single share of common stock of Insys Therapeutics, Inc., representing one-hundred percent (100%) of the Interests thereof, to be issued to the Parent Holding Trust on the Effective Date.

Parent Holding Trust means the trust established, solely for administrative purposes, for the benefit of former holders of the common stock of Insys Therapeutics, Inc.

existing immediately prior to the cancellation of such common stock under this Plan, consistent with their former relative priority and economic entitlements, to (i) hold the Parent Equity Interest from and after the Effective Date and (ii) dissolve the Liquidating Debtors on or before the Dissolution Date.

Periodic Distribution Date means periodically as determined by the Liquidating Trustee in its reasonable discretion but, unless otherwise ordered by the Bankruptcy Court, (i) the first Periodic Distribution Date shall be no later than the first Business Day that is one-hundred and eighty (180) days after the Initial Distribution Date, (ii) until the second anniversary of the Effective Date, every subsequent Periodic Distribution Date shall be no later than the date that is the first Business Day one-hundred and eighty (180) days after the immediately preceding Periodic Distribution Date, and (iii) after the second anniversary of the Effective Date, every subsequent Periodic Distribution Date shall be no later than the first Business Day that is three-hundred and sixty-five (365) days after the immediately preceding Periodic Distribution Date; *provided, however*, that the timing of periodic distribution under this definition is subject to the terms of the Trust Agreements.

Person means an individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, limited liability partnership, trust, estate, unincorporated organization, Governmental Unit, or other Entity.

Personal Injury Claim means any Claim for alleged personal injury, wrongful death, or other similar Claim or Cause of Action against the Debtors, including any such Claim held by an NAS Child.

Petition Date means June 10, 2019.

PHT Agreement means the trust agreement establishing and delineating the terms and conditions for the creation and operation of the Parent Holding Trust, as it may be amended from time to time. The PHT Agreement shall be filed with the Plan Supplement and shall be in form and substance reasonably acceptable to the Creditors' Committee.

Plan means this joint chapter 11 plan of liquidation for the Debtors, including all appendices, exhibits, schedules, and supplements hereto, as it may be altered, amended, or modified from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the terms hereof.

Plan Document means any of the documents of the Debtors, other than this Plan, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, including the documents to be included in the Plan Supplement.

Plan Injunction means the injunctions issued pursuant to Section 10.4 of this Plan.

Plan Settlement means the settlement of certain Claims and controversies between and among the Settling Parties pursuant to Section 5.1 of this Plan, and as further described and explained in the Disclosure Statement.

Plan Supplement means the supplement or supplements to this Plan containing certain documents relevant to the implementation of this Plan, to be filed with the Bankruptcy Court no later than fourteen (14) days prior to the deadline set to file objections to confirmation of this Plan, which shall include: (i) an updated post-Effective Date structure for the Liquidating Debtors; (ii) the Liquidating Debtors' Organizational Documents, if any; (iii) the Trust Agreements; (iv) the identity and compensation of each of the Liquidating Trustee, the ILT Claims Arbiter, the VRT Claims Administrator, the Insurance Negotiators, and each member of the Trust Boards, if known; (v) a list of Persons to be excluded from the definition of "Released Party" for all purposes in this Plan; and (vi) the Schedule of Assumed and Assigned Contracts, if necessary. All documents to be included in the Plan Supplement shall be in form and substance reasonably acceptable to the Creditors' Committee.

Post-Effective Date Receipts means value or consideration received by the Liquidating Debtors or the Trusts after the Effective Date from, among other sources: (i) operation, if applicable, and liquidation of the Remaining Assets; (ii) any Insurance Proceeds, other than any Products Liability Insurance Proceeds; and (iii) any proceeds resulting from liquidation of Causes of Action, including any Preference and Indemnification Proceeds (but excluding the seven percent (7%) of Preference and Indemnification Proceeds designated solely for Distribution to holders of Trade and Other Unsecured Claims).

Preference and Indemnification Proceeds means the amount of any value recovered from the prosecution or settlement by the Liquidating Trustee of any and all actual or potential Claims or Causes of Action to (i) avoid a transfer of property or an obligation incurred by any of the Debtors pursuant to any applicable section of the Bankruptcy Code, including sections 502(d), 544, 545, 547, 548, 549, 550, 551, 553(b), and 724(a) of the Bankruptcy Code, or under similar or related state or federal statutes and common law or (ii) recover on theories of contribution or indemnity under state or federal statutes, contract law, and common law, if the recovery of such amounts results in a Claim against the Debtors held by the party from which the recovery of value was obtained. Any Preference and Indemnification Proceeds not designated for Distribution to holders of Allowed Trade and Other Unsecured Claims pursuant to Sections 4.3(a) and 6.2(d) of this Plan shall be allocated to the ILT Recovery Fund and be deemed to be Estate Distributable Value for the benefit of holders of Allowed Non-PI General Unsecured Claims.

Priority Claim means any Priority Tax Claim or Other Priority Claim.

Priority Reserve means the amount of Cash and Cash equivalents of the Debtors necessary to pay, if any, (i) Administrative Expense Claims, (ii) Secured Claims, and (iii) Priority Claims, to be reserved on the Effective Date. The amount to be placed in the Priority Reserve shall be determined by the Debtors and the Creditors' Committee, acting jointly. The Priority Reserve shall be held by the Insys Liquidation Trust and administered by the Liquidating Trustee.

Priority Tax Claim means any Claim of a Governmental Unit of the kind entitled to priority in payment under sections 502(i) and 507(a)(8) of the Bankruptcy Code.

Privilege means any attorney-client privilege, work-product protection, or other privilege or protection of immunity (i) held by any or all of the Debtors, their Estates, or the Liquidating Debtors, (ii) held by the board of directors or any special committee of the board of directors of any of the Debtors or the Liquidating Debtors, and (iii) attaching to any documents, communications, or thing (whether written or oral) including, but not limited to, all electronic information relating to any Insurance Rights or Causes of Action.

Pro Rata means allocated according to the proportion that an Allowed Claim bears to the aggregate amount of Allowed Claims and Disputed Claims within the same Class as such Claim.

Products means any and all products developed, designed, manufactured, marketed, or sold, in research or development, or supported by, the Debtors, whether work in progress or in final form.

Products Liability Insurance Company means any Insurance Company that has issued, or that has any actual, potential, demonstrated, or alleged liabilities, duties, or obligations under, or with respect to, any Products Liability Insurance Policy.

Products Liability Insurance Policies means any insurance policy that was issued or allegedly issued that does or may afford the Debtors rights, benefits, indemnity, or insurance coverage with respect to the Claims related to the Products of the Debtors.

Products Liability Insurance Proceeds means any proceeds recovered under the Products Liability Insurance Policies. The term “Products Liability Insurance Proceeds” shall not include Excess Products Liability Insurance Proceeds.

Products Liability Insurance Rights means any and all rights, titles, privileges, interests, claims, demands, or entitlements of the Debtors to any proceeds, payments, benefits, Causes of Action, choses in action, defense or indemnity arising under, or attributable to, any and all Products Liability Insurance Policies, now existing or hereafter arising, accrued or unaccrued, liquidated or unliquidated, matured or unmatured, disputed or undisputed, fixed or contingent.

Products Liability Insurance Rights Transfer means the transfer of the Products Liability Insurance Rights to the Victims Restitution Trust pursuant to Section 5.9(c) of this Plan.

Professional Fee Claim means a Claim for professional services rendered, or costs incurred, on or after the Petition Date and on or prior to the Effective Date by Professional Persons that is unpaid as of the Effective Date, less any existing amounts held in escrow as security by a Professional Person that such Professional Person is authorized to use to satisfy Allowed Professional Fee Claims pursuant to the Interim Compensation Order.

Professional Fee Escrow Account means an interest-bearing account in an amount equal to the total estimated amount of Professional Fee Claims and funded by the Debtors on the Effective Date.

Professional Person means any Person retained by order of the Bankruptcy Court in connection with these Chapter 11 Cases pursuant to sections 327, 328, 330, 331, 503(b), or 1103 of the Bankruptcy Code, excluding any ordinary course professional retained pursuant to an order of the Bankruptcy Court and including, solely for purposes of Section 2.4 of this Plan, the Creditors' Committee and the Creditors' Committee's members.

Recovery Funds means, collectively, the ILT Recovery Fund and the VRT Recovery Fund.

Released Claims means any Claims released pursuant to Section 10.5 of this Plan.

Released Parties means[, collectively, (i) the Debtors, (ii) the Creditors' Committee and its members, solely in their capacity as such, and (iii) with respect to each of the foregoing Persons in clauses (i) and (ii), such Persons' (a) predecessors, successors, assigns, subsidiaries, and affiliates, (b) officers and directors, principals, equity holders, members, partners, managers, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, solely to the extent each was employed or engaged on or after the Petition Date, or, in the case of any professional, was retained pursuant to sections 327 or 1102 of the Bankruptcy Code in these Chapter 11 Cases, and (c) respective heirs, executors, estates, and nominees, in each case in their capacity as such; *provided, however*, that no Person listed on Exhibit A to this Plan, and filed with the Plan Supplement, shall be a Released Party.]³

Releases means the releases provided for in Section 10.5 of this Plan, including its subparagraphs.

Remaining Assets means, collectively, all Assets of the Debtors, other than Cash and Causes of Action, immediately prior to the Effective Date, including the consideration provided, or to be provided, under the Subsys Asset Purchase Agreement.

Schedule of Assumed and Assigned Contracts means the schedule of executory contracts and unexpired leases to either be assumed by the applicable Debtor or assumed by the applicable Debtor and assigned to the Insys Liquidation Trust. The Schedule of Assumed and Assigned Contracts shall be filed with the Plan Supplement, and shall be in form and substance reasonably acceptable to the Creditors' Committee.

Scheduled means, with respect to any Claim, the status, priority, and amount, if any, of such Claim as set forth in the Schedules.

Schedules means the schedules of assets and liabilities, statements of financial affairs, lists of holders of Claims and Interests and all amendments or supplements thereto filed by the Debtors with the Bankruptcy Court to the extent such filing is not waived pursuant to an order of the Bankruptcy Court.

³ As of the date of filing, the Creditors' Committee and the Settling Creditors do not support this provision, but are still considering.

Secured Claim means a Claim to the extent (i) secured by a Lien on property of a Debtor's Estate, the amount of which is equal to or less than the value of such property (A) as set forth in this Plan, (B) as agreed to by the holder of such Claim and the Debtors, or (C) as determined by a Final Order in accordance with section 506(a) of the Bankruptcy Code or (ii) subject to any setoff right of the holder of such Claim under section 553 of the Bankruptcy Code. "Secured Claim" does not include any Claim that meets the definition of "Priority Tax Claim."

SEC means the United States Securities and Exchange Commission.

Securities Act means the Securities Act of 1933, as amended.

Settling Creditors means, collectively, (i) Aetna, Inc. and Aetna Health Management LLC; Blue Cross of California, Inc., d/b/a Anthem Blue Cross of California; Anthem Blue Cross Life and Health Insurance Company; Rocky Mountain Hospital and Medical Service, Inc. d/b/a Anthem Blue Cross and Blue Shield of Colorado and Anthem Blue Cross and Blue Shield of Nevada; Anthem Health Plans, Inc., d/b/a Anthem Blue Cross and Blue Shield of Connecticut; Blue Cross and Blue Shield of Georgia, Inc.; Blue Cross and Blue Shield Healthcare Plan of Georgia, Inc.; Anthem Insurance Companies, Inc. d/b/a Anthem Blue Cross and Blue Shield of Indiana; Anthem Health Plans of Kentucky, Inc., d/b/a Anthem Blue Cross and Blue Shield of Kentucky; Anthem Health Plans of Maine, Inc., d/b/a Anthem Blue Cross and Blue Shield of Maine; Anthem Health Plans of New Hampshire, Inc., d/b/a Anthem Blue Cross and Blue Shield of New Hampshire; Empire HealthChoice Assurance, Inc., d/b/a Empire Blue Cross and Blue Shield; Community Insurance Company, d/b/a Anthem Blue Cross and Blue Shield of Ohio; Anthem Health Plans of Virginia, Inc., d/b/a Anthem Blue Cross and Blue Shield of Virginia; HMO Healthkeepers, Inc., d/b/a Anthem Blue Cross and Blue Shield of Virginia; Blue Cross Blue Shield of Wisconsin, d/b/a Anthem Blue Cross and Blue Shield of Wisconsin; CompCare Health Services Insurance Corporation d/b/a Anthem Blue Cross and Blue Shield of Wisconsin; Louisiana Health Services & Indemnity Company, d/b/a Blue Cross Blue Shield of Louisiana; HMO Louisiana, Inc.; Horizon Blue Cross Blue Shield of New Jersey; United HealthCare Services, Inc.; MSP Recovery Claims, Series LLC; (ii) Angela Mistrulli Cantone; Philip L. Cantone; Williams Hemmings; Michael P. Kelley; Julie A. Kelley; Robert Markland, Personal Representative of Carolyn S. Markland, deceased; Morgan Michelle Munson; Christopher Edward Munson; Herbert Tisher; James Starling, Jr.; Pamela Starling; Dorrie Lee Wagner; and Cheryl Hartsfield; (iii) Infirmary Health Hospitals, Inc., Mobile, Alabama; St. Vincent Charity Medical Center, at times d/b/a Rosary Hall, Cleveland, Ohio; Southwest Mississippi Regional Medical Center, McComb, Mississippi; Monroe County Healthcare Authority, d/b/a Monroe County Hospital, Monroeville, Alabama; LifePoint hospitals; (iv) Ronald D. Stracener; F. Kirk Hopkins; Jordan Chu; Amel Eiland; Nadja Streiter; Michael Konig; Eli Medina; Barbara Rivers; Marketing Services of Indiana, Inc.; Glenn Golden; Gretta Golden; Michael Christy; Edward Grace; Debra Dawsey; Darcy Sherman; Kimberley Brand; Lou Sardella; Michael Klodzinski; Kevin Wilk; Heather Enders; Jason Reynolds; MSI Corporation; Deborah Green-Kuchta; W. Andrew Fox; Dora Lawrence; Michael Lopez; Zachary R. Schneider; (v) Amanda Hanlon; Walter and Virginia Salmons; Christopher Bardsley; and (vi) City of Prescott, Arizona; City of Surprise, Arizona; County of Carroll, Maryland; County of Henry, Missouri; County of Abbeville, South Carolina; County of Aiken, South Carolina; County of Anderson, South Carolina; County of Bamberg, South Carolina; County of Barnwell, South Carolina; County of Beaufort, South Carolina; County of Calhoun, South Carolina;

County of Cherokee, South Carolina; County of Chesterfield, South Carolina; County of Clarendon, South Carolina; County of Colleton, South Carolina; County of Dillon, South Carolina; County of Dorchester, South Carolina; County of Edgefield, South Carolina; County of Fairfield, South Carolina; County of Greenville, South Carolina; County of Greenwood, South Carolina; County of Hampton, South Carolina; County of Horry, South Carolina; County of Jasper, South Carolina; County of Kershaw, Kershaw County Hospital Board a/k/a KershawHealth d/b/a Health Service District of Kershaw County; County of Lancaster, South Carolina; County of Laurens, South Carolina; County of Lee, South Carolina; County of Marion, South Carolina; County of McCormick, South Carolina; County of Oconee, South Carolina; County of Orangeburg, South Carolina; County of Pickens, South Carolina; County of Saluda, South Carolina; County of Spartanburg, South Carolina; County of Sumter, South Carolina; County of Union, South Carolina; County of Williamsburg, South Carolina; County of York, South Carolina.

Settling Parties means, collectively, (i) the Debtors, (ii) the Creditors' Committee, and (iii) the Settling Creditors.

SMT Group Claim means any Claim against the Debtors, other than a DOJ Claim, held by a public entity or Governmental Unit, including states, municipalities, and Native American Tribes, but not including the U.S. Government, for, among other things, consumer fraud, deceptive practices, false claims, negligence, the Racketeer Influenced and Corrupt Organizations Act, public nuisance, and abatement.

SMT Group Representatives means representatives of holders of SMT Group Claims to take part in negotiations with the Debtors and the Creditors' Committee related to, among things, governance of the Trusts and Distributions from the Trusts, in accordance with Sections 5.6 through 5.9 of this Plan. The SMT Group Representative shall consult in good faith with holders of SMT Group Claims regarding any matter requiring its determination, which consultation shall include consultation with all municipalities that are not part of the MDL.

Solicitation Procedures Motion means a motion of the Debtors, in form and substance reasonably acceptable to the Creditors' Committee, for entry of an order (i) approving the Disclosure Statement, (ii) approving solicitation procedures, distribution of solicitation packages, and establishing a deadline and procedures for temporary allowance of Claims for voting purposes, (iii) approving the form of ballots and voting instructions, (iv) establishing the Voting Deadline, (v) approving the form and manner of notice of the Confirmation Hearing and procedures for objecting this Plan, (vi) establishing procedures for assumption and assignment of executory contracts and unexpired leases under this Plan and the forms of notices related thereto, and (vii) granting related relief.

Solicitation Procedures Order means an order entered by the Bankruptcy Court, in form and substance reasonably acceptable to the Creditors' Committee, approving a Solicitation Procedures Motion.

Stock Restrictions Order means the order of the Bankruptcy Court establishing notification procedures and approving certain restrictions on certain transfers of Interests in the

Debtors and claiming worthless stock deductions [Docket No. 235], as the same may be amended from time to time.

Subordinated Claim means any Claim that is subject to subordination under section 510 of the Bankruptcy Code. For the avoidance of doubt, “Subordinated Claim” includes any 510(a) and 510(b) Subordinated Claim and any 510(c) Subordinated Claim.

Subsys Asset Purchase Agreement means the Asset Purchase Agreement dated as of September 1, 2019 between Insys Therapeutics, Inc. and BTcP Pharma, LLC.

Surplus Reserved Cash means, collectively, (i) any surplus in funding of the Priority Reserve above what is estimated to be necessary to satisfy estimated future (a) Administrative Expense Claims, (b) Secured Claims, and (c) Priority Claims and (ii) any surplus in funding of either of the Trust Operating Reserves above what is estimated to be necessary to satisfy Trust Operating Expenses, each in the discretion of the Liquidating Trustee.

Third Party Payor (or TPP) Class Claim means [●].

Third Party Payor (or TPP) Claim means any Insurance Related Claim held by an insurance provider.

Trade Claim means any Claim held by trade creditors against the Debtors for, among other things, goods and services provided prepetition, indemnification, and rejection damages.

Trust Agreements means, collectively, the ILT Agreement, the VRT Agreement, and the PHT Agreement.

Trust Assets means, collectively, the ILT Assets and the VRT Assets and Equity Interest.

Trust Boards means, collectively, the ILT Board and the VRT Board.

Trust Formation Transactions means one or more transactions pursuant to section 1123(a)(5)(D) of the Bankruptcy Code, including any transactions that may be necessary or appropriate to effectuate the actions described in Sections 5.4 through 5.9 of this Plan, which include (i) the establishment of the Trusts, (ii) the issuance and vesting of the Parent Equity Interest in the Parent Holding Trust, (iii) the assignment and vesting of the ILT Assets in the Insys Liquidation Trust, (iv) the assignment and vesting of the VRT Assets in the Victims Restitution Trust, (v) the creation of the Recovery Funds to make Distributions to holders of Allowed Claims, (vi) the creation of the Trust Operating Reserves to satisfy and pay Trust Operating Expenses, and (vii) the execution of the Trust Transfer Agreement(s). The Debtors, the Liquidating Debtors, and the Liquidating Trustee may take all actions consistent with this Plan and the Trust Agreements as may be necessary or appropriate to effect the Trust Formation Transactions.

Trust Interest means a beneficial interest in the Insys Liquidation Trust or in the Victims Restitution Trust.

Trust Operating Expenses means, collectively, the ILT Operating Expenses and the VRT Operating Expenses.

Trust Operating Reserves means, collectively, the ILT Operating Reserve and the VRT Operating Reserve. The Trust Operating Reserves shall be administered by the Liquidating Trustee.

Trust Termination Dates means, collectively, the ILT Termination Date and the VRT Termination Date.

Trust Transfer Agreement(s) means one or more agreements transferring Assets, documents, information, and Privileges from the Debtors and the Liquidating Debtors to be entered into between the Liquidating Trustee, on behalf of the Trusts, and the Debtors, on behalf of themselves and the Liquidating Debtors, the terms of which shall be consistent with this Plan and otherwise reasonably acceptable to the Debtors and the Creditors' Committee.

Trusts means, collectively, the Insys Liquidation Trust and the Victims Restitution Trust.

U.S. Trustee means the United States Trustee for Region 3.

Unimpaired means, with respect to a Claim, Interest, or Class of Claims or Interests, not "impaired" within the meaning of such term in section 1124 of the Bankruptcy Code.

Victims Restitution Trust means the trust established to, among other things, (i) hold and make disbursements from the VRT Recovery Fund and the VRT Operating Reserve, (ii) negotiate with the Products Liability Insurance Companies to recover Products Liability Insurance Proceeds, and (iii) administer the Personal Injury Claims, including through allowance and disallowance of such Claims and making Distributions therefor.

Voting Deadline means the last day for holders of Claims and Interests entitled to vote on the Plan to cast their votes to accept or reject the Plan as may be set by the Bankruptcy Court.

Voting Representative means a representative designated on any Class Claim authorized to exercise the voting power of certain holders of Claims.

VRT Agreement means the trust agreement establishing and delineating the terms and conditions for the creation and operation of the Victims Restitution Trust, as it may be amended from time to time. The VRT Agreement shall be filed with the Plan Supplement and shall be in form and substance reasonably acceptable to the Creditors' Committee.

VRT Assets means, collectively, (i) the VRT Operating Reserve and (ii) the Products Liability Insurance Rights.

VRT Board means the governing body of the Victims Restitution Trust to be appointed in accordance with Section 5.9(l) of this Plan.

VRT Claims Administrator means the individual to be appointed pursuant to the Plan and the VRT Agreement to administer, dispute, object to, compromise, or otherwise resolve Personal Injury Claims subject to the terms of this Plan. The identity of the VRT Claims Administrator shall be disclosed as part of the Plan Supplement, if the VRT Claims Administrator has been selected by the time the Plan Supplement is filed.

VRT Insurance Negotiator means the individual that may be appointed pursuant to this Plan and the VRT Agreement to negotiate with and, if necessary, litigate against the Products Liability Insurance Companies to recover Products Liability Insurance Proceeds for the benefit of holders of Allowed Personal Injury Claims and Allowed SMT Group Claims.

VRT Operating Expenses means any and all costs, expenses, fees, taxes, disbursements, debts, or obligations incurred from the operation and administration of the Victims Restitution Trust including, in connection with the reconciliation and administration of Personal Injury Claims, SMT Group Claims, working capital, recovery of Products Liability Insurance Proceeds, and costs and fees of the VRT Claims Administrator, the VRT Insurance Negotiator, and the VRT Board. The VRT Operating Expenses are to be satisfied and paid from the VRT Operating Reserve.

VRT Operating Reserve means Cash in an amount estimated to be necessary to fund the VRT Operating Expenses in accordance with Section 5.9(d) of this Plan, which shall be held in a separate account established by the Liquidating Trustee. The VRT Operating Reserve is to be reserved in a segregated account on the Effective Date or as soon as practicable thereafter from the Debtors' Cash and Cash equivalents in the amount of \$[1 million].

VRT Recovery Fund means the fund established pursuant to this Plan to make Distributions to holders of Allowed Personal Injury Claims and Allowed SMT Group Claims, subject to the terms of this Plan. The VRT Recovery Fund shall be held by the Victims Restitution Trust and administered by the Liquidating Trustee.

VRT Termination Date means the date on which the Victims Restitution Trust is terminated, as determined pursuant to the terms of the VRT Agreement, upon the satisfaction of the purposes for which the Victims Restitution Trust was established.

1.2 Interpretation; Application of Definitions; Rules of Construction.

Unless otherwise specified, all section or exhibit references in this Plan are to the respective section in, or exhibit to, this Plan, as the same may be amended, waived, or modified from time to time in accordance with the terms hereof. The words "herein," "hereof," or "hereunder," and other words of similar import refer to this Plan as a whole and not to any particular section, subsection, or clause contained therein and have the same meaning as "in this Plan," "of this Plan," and "under this Plan," respectively. The words "includes" and "including" are not limiting. The headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. For purposes herein: (i) in the appropriate context, each term, whether stated in the singular or plural, shall include both the singular and plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (ii) any reference herein to a contract, lease,

instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the reference document shall be substantially in that form or substantially on those terms and conditions; (iii) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (iv) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

1.3 Reference to Monetary Figures.

All references in this Plan to monetary figures shall refer to the legal tender of the United States of America unless otherwise expressly provided.

1.4 Controlling Document.

In the event of an inconsistency between Articles I through XII of this Plan and the Plan Supplement or any other exhibit to this Plan, the terms of the relevant document in the Plan Supplement or such exhibit shall control unless otherwise specified in such Plan Supplement document or exhibit. In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan and of the Confirmation Order shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan and any provision of the Confirmation Order that cannot be reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan.

ARTICLE II ADMINISTRATIVE EXPENSE CLAIMS, PROFESSIONAL FEE CLAIMS, AND PRIORITY TAX CLAIMS.

2.1 Administrative Expense Claims Bar Date.

Except as provided for herein or in any order of the Bankruptcy Court, and subject to section 503(b)(1)(D) of the Bankruptcy Code, holders of Administrative Expense Claims (other than holders of Administrative Expense Claims arising in the ordinary course of business after the Petition Date) must file and serve on the Debtors requests for the payment of such Administrative Expense Claims not already Allowed by a Final Order in accordance with the procedures specified in the Confirmation Order, on or before the Administrative Expense Claims Bar Date or be forever barred, estopped, and enjoined from asserting such Claims against the Debtors or their assets or properties, and such Claims shall be deemed discharged as of the Effective Date.

2.2 Allowance of Administrative Expense Claims.

An Administrative Expense Claim, with respect to which a request for payment has been properly and timely filed pursuant to Section 2.1 of this Plan, shall become an Allowed Administrative Expense Claim if no objection to such request is filed by the Liquidating

Trustee with the Bankruptcy Court on or before one-hundred and twenty (120) days after the Effective Date, or on such later date as may be fixed by the Bankruptcy Court. If an objection is timely filed, the Administrative Expense Claim shall become an Allowed Administrative Expense Claim only to the extent allowed by Final Order or such Claim is settled, compromised, or otherwise resolved by the Liquidating Trustee pursuant to Section 7.5 of this Plan.

2.3 Payment of Allowed Administrative Expense Claims.

Except to the extent that a holder of an Allowed Administrative Expense Claim (other than a Professional Fee Claim) agrees to a different treatment, the holder of such Allowed Administrative Expense Claim shall receive, on account of such Allowed Claim, Cash in an amount equal to the Allowed amount of such Claim from the Priority Reserve within thirty (30) days following the later to occur of (i) the Effective Date and (ii) the date on which such Administrative Expense Claim shall become an Allowed Claim.

2.4 Treatment of Professional Fee Claims.

All Professional Persons seeking awards by the Bankruptcy Court for compensation for services rendered or reimbursement of expenses incurred through and including the Effective Date under sections 327, 328, 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), 503(b)(5), or 1103 of the Bankruptcy Code shall (i) file, on or before the date that is forty-five (45) days after the Effective Date, their respective applications for final allowances of compensation for services rendered and reimbursement of expenses incurred and (ii) be paid in full, in Cash, (a) first, from any existing amounts held in escrow as security or as a retainer by a Professional Person that such Professional Person is authorized to use to satisfy Allowed Professional Fee Claims pursuant to the Interim Compensation Order, and (b) second, from the Professional Fee Escrow Account, in such aggregate amounts as are Allowed by the Bankruptcy Court or authorized to be paid in accordance with the order(s) relating to or allowing any such Professional Fee Claim. On or prior to the Effective Date, the Debtors shall establish the Professional Fee Escrow Account and, on the Effective Date the Debtors will fund the Professional Fee Escrow Account with Cash equal to the Professional Persons' good faith estimates of the Professional Fee Claims, less any existing amounts held in escrow or as security by any Professional Person that such Professional Person is authorized to use to satisfy Allowed Professional Fee Claims pursuant to the Interim Compensation Order. On the date the Insys Liquidation Trust is established or as soon as reasonably practicable thereafter, the Debtors will cause ownership of the Professional Fee Escrow Account to be transferred to the Insys Liquidation Trust. Funds held in the Professional Fee Escrow Account shall not be considered property of the Debtors' Estates, the Liquidating Debtors, or any of the Trusts, and shall only be used for payment of Allowed Professional Fee Claims; *provided, however*, that after all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full and no Professional Person is asserting or entitled to assert additional Professional Fee Claims, then any amounts remaining in the Professional Fee Escrow Account shall revert to the ILT Recovery Fund and constitute Estate Distributable Value. The Professional Fee Escrow Account shall be held in trust for Professional Persons retained by the Debtors and the Creditors' Committee and for no other parties until all Professional Fee Claims Allowed by the Bankruptcy Court have been paid in full and no Professional Person is asserting or entitled to assert additional Professional Fee Claims. Fees owing to the applicable Professional Persons shall be paid in

Cash to such Professional Persons from funds held in the Professional Fee Escrow Account when such Claims are Allowed by an order of the Bankruptcy Court, or authorized to be paid under the Interim Compensation Order or other order approving the retention of a Professional Person; *provided, however*, that the Debtors' and the Liquidating Debtors' obligations with respect to Professional Fee Claims, which shall be transferred to the Insys Liquidation Trust on or as soon as reasonably practicable after the date upon which the Insys Liquidation Trust is established, shall not be limited by, nor deemed limited to, the balance of funds held in the Professional Fee Escrow Account. To the extent that funds held in the Professional Fee Escrow Account and any retainer are insufficient to satisfy the amount of accrued Professional Fee Claims owing to the Professional Persons, such Professional Persons shall have an Allowed Administrative Expense Claim for any such deficiency, which shall be satisfied in accordance with Section 2.3 of this Plan (but for the avoidance of doubt shall not be subject to any Administrative Expense Claims Bar Date). No Claims, Interests, Liens, other encumbrances, or liabilities of any kind shall encumber the Professional Fee Escrow Account in any way. Notwithstanding the foregoing, Professional Persons performing services on behalf of the Debtors or the Creditors' Committees following the Effective Date in connection with the preparation of, or objection to, fee applications (or, in the case of the Creditors' Committee, with respect to any services listed in Section 12.14 of this Plan), are entitled to payment of reasonable fees and reimbursement of reasonable expenses related to such work. Solely with respect to the immediately foregoing sentence, any such Professional Person may seek compensation for such fees and expenses by submitting invoices to the Liquidating Trustee for payment out of Available Cash, and any undisputed invoices shall be paid in the ordinary course of business.

2.5 Treatment of Priority Tax Claims.

Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a different treatment, on the Effective Date or as soon as reasonably practicable thereafter, the holder of such Allowed Priority Tax Claim shall receive, on account of such Allowed Priority Tax Claim, either Cash in an amount equal to the Allowed amount of such Claim from the Priority Reserve or such other treatment as may satisfy section 1129(a)(9) of the Bankruptcy Code.

ARTICLE III CLASSIFICATION OF CLAIMS AND INTERESTS.

3.1 Classification in General.

A Claim or Interest is placed in a particular Class for all purposes, including voting, confirmation, and Distributions under this Plan and under sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Interest is classified in a particular Class for the purpose of receiving Distributions pursuant to this Plan only to the extent such Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or Interest is also classified in a particular Class for the purpose of receiving Distributions hereunder only to the extent such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and such Claim or Interest has not been satisfied, released, or otherwise settled prior to the Effective Date. In no event shall any holder of an Allowed Claim be entitled to receive

payments under this Plan that, in the aggregate, exceed the Allowed amount of such holder's Claim.

3.2 Summary of Classification of Claims and Interests.

The following table designates the Classes of Claims against and Interests in the Debtors and specifies which Classes are (i) Impaired and Unimpaired under this Plan, (ii) entitled to vote to accept or reject this Plan in accordance with section 1126 of the Bankruptcy Code, and (iii) deemed to accept or reject this Plan:

<u>Class</u>	<u>Type of Claim or Interest</u>	<u>Impairment</u>	<u>Entitled to Vote</u>
Class 1	Secured Claims	Unimpaired	No (Presumed to Accept)
Class 2	Other Priority Claims	Unimpaired	No (Presumed to Accept)
Class 3	Trade and Other Unsecured Claims	Impaired	Yes
Class 4	Insurance Related Claims	Impaired	Yes
Class 5	Hospital and NAS Monitoring Claims	Impaired	Yes
Class 6	DOJ Claims	Impaired	Yes
Class 7	SMT Group Claims	Impaired	Yes
Class 8	Personal Injury Claims	Impaired	Yes
Class 9	510(a) and 510(b) Subordinated Claims	Impaired	No (Deemed to Reject)
Class 10	510(c) Subordinated Claims	Impaired	No (Deemed to Reject)
Class 11	Intercompany Claims	Impaired	No (Deemed to Reject)
Class 12	Equity Interests	Impaired	No (Deemed to Reject)

3.3 Voting Classes; Presumed Acceptance by Non-Voting Classes.

With respect to each Debtor, if a Class contained Claims eligible to vote and no holder of Claims eligible to vote in such Class votes to accept or reject this Plan by the Voting Deadline, this Plan shall be presumed accepted by the holders of such Claims in such Class.

3.4 Voting; Presumptions; Solicitation.

(a) **Acceptance by Certain Impaired Classes.** Only holders of Claims in Class 3, Class 4, Class 5, Class 6, Class 7, and Class 8 are entitled to vote to accept or reject this Plan. An Impaired Class of Claims shall have accepted this Plan if (i) the holders, or Voting Representatives thereof, of at least two-thirds (2/3) in amount of Claims actually voting in such Class have voted to accept this Plan and (ii) the holders, or Voting Representatives thereof, of more than one-half (1/2) in number of the Claims actually voting in such Class have voted to accept this Plan. Holders of Claims in Class 3, Class 4, Class 5, Class 6, Class 7, and Class 8 (or, if applicable, the Voting Representatives of such holders) shall receive ballots containing detailed voting instructions.

(b) **Deemed Acceptance by Unimpaired Classes.** Holders of Claims in Class 1 and Class 2 are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Accordingly, such holders are not entitled to vote to accept or reject this Plan.

(c) **Deemed Rejection by Certain Impaired Classes.** Holders of Claims and Interests in Class 9, Class 10, Class 11, and Class 12 are deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code. Accordingly, such holders are not entitled to vote to accept or reject this Plan.

(d) **Individual Creditor Voting Rights.** Notwithstanding anything to the contrary in this Plan, the voting rights of holders of Claims in any Class shall be governed in all respects by any Solicitation Procedures Order.

3.5 Cramdown.

If any Class of Claims is deemed to reject this Plan or is entitled to vote on this Plan and does not vote to accept this Plan, the Debtors may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Interests, or any class of Claims or Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

3.6 No Waiver.

Nothing contained in this Plan shall be construed to waive a Debtor's or other Person's right to object on any basis to any Claim.

ARTICLE IV TREATMENT OF CLAIMS AND INTERESTS.

4.1 Secured Claims (Class 1).

(a) Treatment: The legal, equitable, and contractual rights of the holders of Secured Claims are unaltered by this Plan. Except to the extent that a holder of an Allowed Secured Claim agrees to different treatment, on the Effective Date or as soon as reasonably practicable thereafter, each holder of an Allowed Secured Claim shall receive, on account of such Allowed Claim, (i) payment in full in Cash in accordance with section 506(a) of the Bankruptcy Code, (ii) reinstatement pursuant to section 1124 of the Bankruptcy Code, or (iii) such other treatment as may be necessary to render such Claim Unimpaired.

(b) Impairment and Voting: Secured Claims are Unimpaired. Holders of Secured Claims are conclusively presumed to accept this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Secured Claims are not entitled to vote to accept or reject the Plan, and the votes of such holders will not be solicited with respect to such Secured Claims.

4.2 Other Priority Claims (Class 2).

(a) Treatment: The legal, equitable, and contractual rights of holders of Other Priority Claims are unaltered by this Plan. Except to the extent that a holder of an Allowed Other Priority Claim agrees to different treatment, on the Effective Date or as soon as reasonably practicable thereafter, each holder of an Allowed Other Priority Claim shall receive, on account of such Allowed Claim, (i) payment in full in Cash or (ii) such other treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.

(b) Impairment and Voting: Other Priority Claims are Unimpaired. Holders of Other Priority Claims are conclusively presumed to accept this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Other Priority Claims are not entitled to vote to accept or reject the Plan, and the votes of such holders will not be solicited with respect to such Other Priority Claims.

4.3 Trade and Other Unsecured Claims (Class 3).

(a) Treatment: In accordance with the Plan Settlement as provided in Section 5.1 of this Plan, and as further described and explained in the Disclosure Statement, except to the extent that a holder of an Allowed Trade and Other Unsecured Claim agrees to different treatment, in full and final satisfaction, settlement, release, and discharge of an Allowed Trade and Other Unsecured Claim, each such holder shall receive, from the Insys Liquidation Trust, its Pro Rata share of (i) one-hundred percent (100%) of all Category 1 Distributions; (ii) one half percent (0.5%) of all Category 2 Distributions; and (iii) seven percent (7%) of any Preference and Indemnification Proceeds; *provided, however*, that aggregate Distributions to holders of Trade and Other Unsecured Claims under this Plan shall not exceed the Class 3 Recovery Cap.

(b) Impairment and Voting: Trade and Other Unsecured Claims are Impaired. Holders of Trade and Other Unsecured Claims are entitled to vote to accept or reject the Plan.

4.4 Insurance Related Claims (Class 4).

(a) Treatment: In accordance with the Plan Settlement as provided in Section 5.1 of this Plan, and as further described and explained in the Disclosure Statement, except to the extent that a holder of an Allowed Insurance Related Claim agrees to different treatment, in full and final satisfaction, settlement, release, and discharge of an Allowed Insurance Related Claim, each such holder shall receive, from the Insys Liquidation Trust, its Pro Rata share (based upon the determination by the ILT Claims Arbiter) of sixty-eight and one half percent (68.5%) of all Category 2 Distributions.

(b) Impairment and Voting: Insurance Related Claims are Impaired. Holders of Insurance Related Claims are entitled to vote to accept or reject the Plan.

(c) [All Insurance Related Claims, other than the TPP Class Claim and the Insurance Ratepayer Class Claim, are Disallowed and expunged as duplicative of either the TPP Class Claim or the Insurance Ratepayer Class Claim.]

4.5 Hospital and NAS Monitoring Claims (Class 5).

(a) Treatment: In accordance with the Plan Settlement as provided in Section 5.1 of this Plan, and as further described and explained in the Disclosure Statement, except to the extent that a holder of an Allowed Hospital and NAS Monitoring Claim agrees to different treatment, in full and final satisfaction, settlement, release, and discharge of an Allowed Hospital and NAS Monitoring Claim, each such holder shall receive, from the Insys Liquidation Trust, its Pro Rata share (based upon the determination by the ILT Claims Arbiter) of thirty-one percent (31%) of all Category 2 Distributions.

(b) Impairment and Voting: Hospital and NAS Monitoring Claims are Impaired. Holders of Hospital and NAS Monitoring Claims are entitled to vote to accept or reject the Plan.

(c) [All Hospital Claims and NAS Monitoring Claims, other than the Hospital Class Claim and the NAS Monitoring Class Claim, are Disallowed and expunged as duplicative of either the Hospital Class Claim or the NAS Monitoring Class Claim.]

4.6 DOJ Claims (Class 6).

(a) Treatment: Except to the extent that the DOJ agrees to different treatment, in full and final satisfaction, settlement, release, and discharge of the Allowed DOJ Claims, the DOJ shall receive (as restitution, with respect to the Allowed DOJ Civil Claim and any additional restitution claims) from the Insys Liquidation Trust, thirty-one and four tenths percent (31.4%) of all Category 3 Distributions; *provided, however*, that, pursuant to the DOJ Settlement Order, the DOJ will receive no Distributions on account of the Allowed DOJ Civil Claim until the GUC Recovery Reallocation Threshold is met, after which the Allowed DOJ Civil Claim will share in Category 3 Distributions along with any other Allowed DOJ Claim.

(b) Impairment and Voting: DOJ Claims are Impaired. The DOJ is entitled to vote to accept or reject the Plan.

4.7 SMT Group Claims (Class 7).

(a) Treatment: Except to the extent that a holder of an SMT Group Claim agrees to different treatment or has been paid for such Claim prior to the Effective Date, in full and final satisfaction, settlement, release, and discharge of an Allowed SMT Group Claim, each such holder shall receive, as restitution, from the Insys Liquidation Trust and the Victims Restitution Trust, as applicable, its Pro Rata share (based upon the determination by holders of SMT Group Claims or, if no such agreement can be reached, by the Liquidating Trustee) of (i) sixty-eight and six tenths percent (68.6%) of all Category 3 Distributions, (ii) five percent (5%) of any Products Liability Insurance Proceeds, and (iii) a one-hundred percent (100%) interest in any Excess Products Liability Insurance Proceeds.

No holder of an SMT Group Claim shall receive Distributions that aggregate to more than the amount of such holder's Allowed Claim. Nothing herein shall prejudice the ability of any party in interest to argue that SMT Group Claims are not entitled to any value being provided in the Plan.

(b) Impairment and Voting: SMT Group Claims are Impaired. Holders of SMT Group Claims are entitled to vote to accept or reject the Plan.

4.8 Personal Injury Claims (Class 8).

(a) Treatment: In accordance with the Plan Settlement as provided in Section 5.1 of this Plan, and as further described and explained in the Disclosure Statement, except to the extent that a holder of an Allowed Personal Injury Claim agrees to different treatment, in full and final satisfaction, settlement, release, and discharge of an Allowed Personal Injury Claim, each such holder shall receive, from the Victims Restitution Trust, its Pro Rata share of ninety-five percent (95%) of any Products Liability Insurance Proceeds.

No holder of an Allowed Personal Injury Claim will receive Distributions of Products Liability Insurance Proceeds in excess of each such holder's Allowed Personal Injury Claim.

(b) Impairment and Voting: Personal Injury Claims are Impaired. Holders of Personal Injury Claims are entitled to vote to accept or reject the Plan.

4.9 510(a) and 510(b) Subordinated Claims (Class 9).

(a) Treatment: 510(a) and 510(b) Subordinated Claims are subordinated pursuant to this Plan and sections 510(a) and (b) of the Bankruptcy Code. 510(a) and 510(b) Subordinated Claims shall be deemed expunged, discharged, released, and extinguished without further action by or order of the Bankruptcy Court, and shall be of no further force or effect.

(b) Impairment and Voting: 510(a) and 510(b) Subordinated Claims are Impaired. Holders of 510(a) and 510(b) Subordinated Claims are deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, holders of 510(a) and 510(b) Subordinated Claims are not entitled to vote to accept or reject the Plan, and the votes of such holders will not be solicited with respect to such Subordinated Claims.

4.10 510(c) Subordinated Claims (Class 10).

(a) Treatment: 510(c) Subordinated Claims are subordinated pursuant to this Plan and section 510(c) of the Bankruptcy Code. 510(c) Subordinated Claims shall be deemed expunged, discharged, released, and extinguished without further action by or order of the Bankruptcy Court, and shall be of no further force or effect.

(b) Impairment and Voting: 510(c) Subordinated Claims are Impaired. Holders of Subordinated Claims are conclusively deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, holders of 510(c) Subordinated Claims are not entitled to vote to accept or reject the Plan, and the votes of such holders will not be solicited with respect to such Subordinated Claims.

4.11 Intercompany Claims (Class 11).

(a) Treatment: Holders of Intercompany Claims shall not receive or retain any property under this Plan on account of such Claims. Intercompany Claims shall be deemed expunged, discharged, released, and extinguished without further action by or order of the Bankruptcy Court, and shall be of no further force or effect.

(b) Impairment and Voting: Intercompany Claims are Impaired. Holders of Intercompany Claims are deemed to reject this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, holders of Intercompany Claims are not entitled to vote to accept or reject the Plan, and the votes of such holders will not be solicited with respect to such Intercompany Claims.

4.12 Equity Interests (Class 12).

(a) Treatment: Holders of Equity Interests shall not receive or retain any property under this Plan on account of such Interests. As of the Effective Date, Equity Interests shall be deemed surrendered, cancelled, and/or redeemed without further action by or order of the Bankruptcy Court, and shall be of no further force or effect. To the extent permitted by applicable law, on or promptly after the Effective Date, Insys Therapeutics, Inc. shall file with the SEC a Form 15 for the purpose of terminating the registration of its Equity Interests and suspending its reporting obligations. For the avoidance of doubt, the Parent Holding Trust maintains Interest holders' relative positions consistent with the absolute priority rule and, accordingly, is not expected to receive, or distribute, any value to its beneficial Interest holders.

(b) Impairment and Voting: Equity Interests are Impaired. Holders of Equity Interests are deemed to reject this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, holders of Equity Interests are not entitled to vote to accept or reject the Plan, and the votes of such holders will not be solicited with respect to such Equity Interests.

4.13 Debtors' Rights with Respect to Unimpaired Claims.

Except as otherwise provided in this Plan, nothing under the Plan shall affect the rights of the Liquidating Debtors or the Liquidating Trustee with respect to an Unimpaired Claim, including all rights with respect to legal and equitable defenses to, or setoffs or recoupments against, any such Unimpaired Claims.

ARTICLE V MEANS FOR IMPLEMENTATION.

5.1 Plan Settlement.

(a) As further described in the Disclosure Statement, the provisions of this Plan (including the release and injunctive provisions contained in Article X of this Plan) and the other documents entered into in connection with this Plan and the Trust Formation Transactions constitute a good faith compromise and settlement among the Settling Parties of Claims and controversies among such parties. The Plan, including the explanation set forth in the Disclosure Statement, shall be deemed a motion to approve the Plan Settlement and the good faith compromise and settlement of all of the Claims and controversies described in the

foregoing sentence pursuant to Bankruptcy Rule 9019, and entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Plan Settlement under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, as well as a finding by the Bankruptcy Court that the Plan Settlement is fair, equitable, reasonable, and in the best interests of the Debtors and their Estates.

(b) This Plan, the Plan Settlement, the Plan Documents, and the Confirmation Order constitute a good faith compromise and settlement of Claims and controversies based upon the unique circumstances of these Chapter 11 Cases (such as cash on hand to run the cases, total value available, and the need for an accelerated resolution without litigation) and none of the foregoing documents, nor any materials used in furtherance of Plan confirmation (including, but not limited to, the Disclosure Statement, notes and drafts), may be offered into evidence, deemed an admission, used as precedent, or used in any context whatsoever beyond the purposes of this Plan, in any other litigation or proceeding except as necessary, and as admissible in such context, to enforce their terms before the Bankruptcy Court or any other court of competent jurisdiction. This Plan, the Plan Settlement, the Plan Documents, and the Confirmation Order will be binding as to the matters and issues described therein, but will not be binding with respect to similar matters or issues that might arise in any other litigation or proceeding in which the Debtors are not a party. Any Person's support of, or position or action taken in connection with, this Plan, the Plan Settlement, the Plan Documents, and the Confirmation Order may differ from his position or testimony in any other litigation or proceeding in which the Debtors are not a party. Further, and as all parties to the Mediation agreed, this Plan Settlement is not intended to be a blueprint for other chapter 11 cases in the opioid space, nor is it intended to be used as precedent by any party.

5.2 Substantive Consolidation of the Debtors.

The Plan shall be implemented through a substantive consolidation of the assets and liabilities of the Debtors with one another. The Confirmation Order shall contain findings supporting the conclusions providing for substantive consolidation for purposes of distribution on the terms set forth in this Section of the Plan. The substantive consolidation of the Assets and liabilities and properties of the Debtors shall have the effects set forth in this Section of the Plan.

(a) The Chapter 11 Cases of the Debtors shall be consolidated into the case of Insys Therapeutics, Inc. as a single consolidated case with respect to Claims against the Debtors. All property of the estate of each Debtor shall be deemed to be property of the consolidated estates with respect to the payment of Claims against the Debtors.

(b) All Claims against each Debtor's Estate shall be deemed to be Claims against the consolidated estates, all proofs of claim filed against one or more of the Debtors shall be deemed to be a single Claim filed against the consolidated estates, and all duplicate proofs of claim for the same Claim filed against more than one Debtor shall be deemed expunged.

(c) As set forth in Section 4.11, no Distributions under the Plan shall be made on account of Intercompany Claims among the Debtors.

(d) For purposes of determining the availability of the right of setoff under section 553 of the Bankruptcy Code, the Debtors shall be treated as one consolidated entity so that, subject to the other provisions of section 553, debts due to any of the Debtors may be set off against the debts of any other of the Debtors.

5.3 Procedures for Class Claims.

- (a) **Insurance Ratepayer Class Claim.** [TBD].
- (b) **Hospital Class Claim.** [TBD].
- (c) **NAS Monitoring Class Claim.** [TBD].
- (d) **Third Party Payor Class Claim.** [TBD].

5.4 Vesting of Assets.

On the Effective Date, and if applicable, pursuant to sections 1141(b) and 1141(c) of the Bankruptcy Code, all Assets shall vest in the Liquidating Debtors for assignment to the Insys Liquidation Trust and the Victims Restitution Trust. The Liquidating Debtors shall own such Assets, as of the Effective Date, free and clear of all Claims, Interests, Liens, other encumbrances, and liabilities of any kind.

5.5 Cancellation of Notes, Interests, Instruments, Certificates, and Other Documents.

Except as otherwise provided herein, on and after the Effective Date, all Equity Interests and all notes, instruments, certificates, agreements, indentures, mortgages, security documents, and other documents evidencing Claims against or Interests in the Debtors or obligations of the Debtors or Liquidating Debtors, as applicable, thereunder or in any way related to the foregoing shall be deemed cancelled, satisfied in full, discharged, and of no further force and effect without any need for further action or approval of the Bankruptcy Court.

5.6 Liquidating Trustee.

(a) **Appointment and Role of Liquidating Trustee.** The Liquidating Trustee will be selected by the mutual agreement of the Creditors' Committee and the SMT Group Representatives prior to the Confirmation Hearing. The appointment of the Liquidating Trustee shall be approved in the Confirmation Order, and such appointment shall be effective as of the date upon which the first Trust is established. In accordance with the Trust Agreements, and in furtherance of, and consistent with, the purposes of the Trusts and this Plan, the Liquidating Trustee shall have the power and authority to act as trustee of the Trusts and perform the Authorized Acts through the earlier of (i) the Operating Term and (ii) the date such Liquidating Trustee resigns, is terminated, or is otherwise unable to serve for any reason.

(b) **Liquidating Trustee's Tax Power for Debtors.** The Liquidating Trustee, in its capacity as the trustee of the Insys Liquidation Trust, shall have full and exclusive authority and responsibility with respect to all taxes of the Debtors (including,

without limitation, as the common parent or other agent of any consolidated, combined, or unitary tax group of which the Debtors were the agent), to the same extent as if the Liquidating Trustee were the debtor-in-possession. Without limiting the foregoing, each of the Debtors shall execute, on or prior to the Effective Date, a power of attorney authorizing the Liquidating Trustee, in its capacity as the trustee of the Insys Liquidation Trust, to correspond with any taxing authority on behalf of such Debtor and to sign, collect, negotiate, settle, and administer tax payments and tax returns. In furtherance of the foregoing:

- (i) Following the Effective Date, the Liquidating Trustee shall prepare and file (or cause to be prepared and filed), on behalf of the Debtors, all tax returns required to be filed or that the Liquidating Trustee otherwise deems appropriate, including the filing of amended tax returns or requests for refunds for all taxable periods.
- (ii) The Insys Liquidation Trust shall be entitled to all tax refunds of the Debtors, and the Insys Liquidation Trust shall bear responsibility for all tax liabilities of the Debtors for all taxable years, to the extent not discharged by the Plan.

(c) **Retention of Professionals by Liquidating Trustee.** The Liquidating Trustee may retain and reasonably compensate counsel and other professionals to assist in its duties as Liquidating Trustee on such terms as the Liquidating Trustee deems appropriate without Bankruptcy Court approval, subject to the provisions of the Trust Agreements. The Liquidating Trustee may retain any professional, including any professional who represented parties in interest in the Chapter 11 Cases. All fees and expenses incurred in connection with the foregoing shall be payable from the applicable Trust Operating Reserve, subject to the terms of the Trust Agreements.

(d) **Exculpation of Liquidating Trustee.** The Liquidating Trustee shall be exculpated (subject, in each case, to exceptions for willful misconduct, bad faith, gross negligence, or fraud) to the fullest extent allowable by applicable law with respect to the liquidation of the Trust Assets and administration of the Trusts.

5.7 Parent Holding Trust.

(a) **Establishment of Parent Holding Trust.** On or before the Effective Date, the Debtors, the Liquidating Debtors, and/or the Liquidating Trustee⁴ shall take all necessary steps to establish the Parent Holding Trust, including executing the PHT Agreement, for the benefit of former holders of the common stock of Insys Therapeutics, Inc. immediately prior to the cancellation of such common stock under this Plan, in accordance with Section 4.12 of this Plan.⁵ Section 5.6 of this Plan sets forth certain of the rights, duties, and

⁴ With respect to actions taken in this Section, the Liquidating Trustee is acting solely in its capacity as trustee of the Parent Holding Trust.

⁵ For the avoidance of doubt, the Parent Holding Trust maintains Interest holders' relative positions consistent with the absolute priority rule and, accordingly, is not expected to receive, or distribute, any value with respect to its beneficial Interest holders.

obligations of the Liquidating Trustee with respect to the Trusts, including the Parent Holding Trust. In the event of any conflict between the terms of this Plan and the terms of the PHT Agreement, the terms of the PHT Agreement shall govern.

(b) Issuance of Parent Equity Interest to Parent Holding Trust.

On the Effective Date, the Liquidating Debtors and/or the Liquidating Trustee shall cause Insys Therapeutics, Inc. to issue the Parent Equity Interest to the Parent Holding Trust. The Parent Equity Interest shall be the only share of common stock of Insys Therapeutics, Inc., representing one-hundred percent (100%) of the capital stock thereof, from and after the Effective Date.

5.8 Insys Liquidation Trust.

(a) Establishment of Insys Liquidation Trust. On the Effective Date or as soon as reasonably practicable thereafter, but no later than [five (5)] Business Days following the Effective Date, the Debtors, or the Liquidating Debtors, and the Liquidating Trustee⁶ shall take all necessary steps to establish the Insys Liquidation Trust for the benefit of holders of Non-PI General Unsecured Claims including executing the ILT Agreement and the Trust Transfer Agreement, and all Privileges held by the Debtors or the Liquidating Debtors shall transfer to, and vest exclusively in, the Trusts. This Section of the Plan sets forth certain of the rights, duties, and obligations of the ILT Board and the ILT Claims Arbiter with respect to the Insys Liquidation Trust. In the event of any conflict between the terms of the Plan and the terms of the ILT Agreement, the terms of the ILT Agreement shall govern.

(b) Purpose of Insys Liquidation Trust. The Insys Liquidation Trust shall be established for the purposes described in this Plan (including, without limitation, to allow the Liquidating Trustee to carry out the Authorized Acts) and any others more fully described in the ILT Agreement. The Insys Liquidation Trust shall retain all rights to commence and pursue all Causes of Action (other than Causes of Action arising from the Products Liability Insurance Policies which shall be reserved for the Victims Restitution Trust) that are not released under the Plan. The Insys Liquidation Trust shall have no objective to continue or engage in the conduct of a trade or business (except to the extent reasonably necessary, in the discretion of the Liquidating Trustee, and subject to the approval of the ILT Board, to maximize value).

The Insys Liquidation Trust shall administer, process, settle, resolve, liquidate, satisfy, and pay (from the designated funds therefor), as applicable, Claims against the Debtors (other than Personal Injury Claims), subject to the terms of the ILT Agreement, this Plan, and the Confirmation Order. All such Claims shall be liquidated and paid in accordance with the ILT Agreement, this Plan, and the Confirmation Order. The Insys Liquidation Trust shall be administered and implemented by the Liquidating Trustee with the oversight of the ILT Board as provided in the ILT Agreement.

(c) Transfer of ILT Assets to Insys Liquidation Trust. On or as soon as reasonably practicable after the date upon which the Insys Liquidation Trust is established, which, for the avoidance of doubt, shall not be earlier than January 1, 2020 or later

⁶ With respect to actions taken in this Section, the Liquidating Trustee is acting solely in its capacity as trustee of the Insys Liquidation Trust.

than [five (5)] Business Days following the Effective Date, the ILT Assets will be transferred to and vest in the Insys Liquidation Trust in accordance with the terms set forth herein (including Sections 5.8(d) and (e) below with respect to the Insurance Rights Transfer and the funding and transfer of the ILT Operating Reserve) and the ILT Agreement; *provided, however*, that to the extent certain assets comprising the ILT Assets, because of their nature or because such assets will accrue or become transferable subsequent to the date upon which the Insys Liquidation Trust is established, and cannot be transferred to, vested in, and assumed by the Insys Liquidation Trust on such date, such Assets shall be automatically, and without further act or deed, transferred to, vested in, or assumed by the Insys Liquidation Trust as soon as reasonably practicable after such date. Notwithstanding anything in this Plan to the contrary, no monies, choses in action, and/or assets comprising the ILT Assets that have been transferred, granted, assigned, or otherwise delivered to the Insys Liquidation Trust shall be used for any purpose other than in accordance with the Plan and the ILT Agreement. Such transfer of the ILT Assets shall be free and clear of all Claims, Interests, Liens, other encumbrances, and liabilities of any kind.

(d) **Insurance Rights Transfer.** In furtherance of the purpose of the Insys Liquidation Trust:

- (i) On the date the Insys Liquidation Trust is established or as soon as reasonably practicable thereafter, the Liquidating Debtors shall irrevocably transfer, grant, and assign to the Insys Liquidation Trust, and the Insys Liquidation Trust shall receive and accept, any and all of the Debtors' Insurance Rights (other than the Products Liability Insurance Rights). To the extent any Insurance Company (other than a Products Liability Insurance Company) consented to a prepetition settlement agreement of a Non-PI General Unsecured Claim, or otherwise has consented to pay such a Claim on behalf of one or more of the Debtors, the Debtors transfer and assign to the Insys Liquidation Trust the right to enforce such Insurance Company's obligation. The Insurance Rights Transfer is made to the Insys Liquidation Trust for the benefit of Persons who have a Non-PI General Unsecured Claim for compensation for damages against the Debtors.
- (ii) The Insurance Rights Transfer is made free and clear of all Claims, Liens, encumbrances, or Causes of Action of any nature whatsoever, except available limits of liability for coverage of certain types of Claims under one or more Insurance Policies that may have been reduced by certain prepetition payments made by an Insurance Company to, or on behalf of, one or more of the Debtors.
- (iii) The Insys Liquidation Trust shall satisfy, to the extent required under applicable law, any retrospective premiums, deductibles, and self-insured retentions arising in any way out of any and all Allowed Non-PI General Unsecured Claims.

- (iv) The Insys Liquidation Trust shall comply with any notice obligations required under the Insurance Policies and applicable law.
- (v) The Insurance Rights Transfer is made to the maximum extent possible under applicable law.
- (vi) The Insurance Rights Transfer is absolute and does not require any further action by the Debtors, the Liquidating Debtors, the Insys Liquidation Trust, the Bankruptcy Court, or any other Entity.
- (vii) The Insurance Rights Transfer is not an assignment of any insurance policy itself.
- (viii) The Insurance Rights Transfer shall be governed by, and construed in accordance with, the Bankruptcy Code and the laws of Delaware, without regard to its conflict of law principles.

(e) **Funding of ILT Operating Reserve.** On the Effective Date, or as soon as reasonably practicable thereafter, the Debtors or the Liquidating Debtors shall reserve from Available Cash the amount of \$[1 million] to initially fund the ILT Operating Reserve. On the date the Insys Liquidation Trust is established, or as soon as reasonably practicable thereafter, the Liquidating Debtors shall assign and transfer ILT Operating Reserve to the Insys Liquidation Trust to satisfy and pay ILT Operating Expenses. [Periodically until the ILT Termination Date, the Liquidating Trustee will replenish the ILT Operating Reserve from Available Cash to the extent deemed necessary by the Liquidating Trustee to satisfy and pay estimated future ILT Operating Expenses.] A separate account will be established by the Liquidating Trustee for the ILT Operating Reserve.

(f) **ILT Operating Expenses.** The Liquidating Trustee, the ILT Claims Arbiter, the ILT Board, and any other professionals engaged by the Insys Liquidation Trust shall be entitled to compensation and reimbursement of costs, expenses, and fees, as provided in the ILT Agreement, which may only be paid pursuant to the terms of this Plan. The Insys Liquidation Trust shall pay the ILT Operating Expenses.

(g) **Administrative Obligations and Assumption of Liabilities.** In furtherance of the purposes of the Insys Liquidation Trust, and subject to the ILT Agreement, the Insys Liquidation Trust shall expressly (i) assume all responsibility and liability for all (A) Non-PI General Unsecured Claims against the Debtors and the Liquidating Debtors, (B) all ILT Operating Expenses and (C) Administrative Expense Claims, Secured Claims, and Priority Claims against the Debtors and the Liquidating Debtors and (ii) undertake to administer and pay the foregoing with funds designated to (A) the ILT Recovery Fund, (B) the ILT Operating Reserve, and (C) the Priority Reserve, respectively. The Insys Liquidation Trust shall have all defenses, cross-claims, offsets, and recoupments regarding Claims that the Debtors or the Liquidating Debtors have, or would have had, under applicable law and solely to the extent consistent with the ILT Agreement; *provided, however*, that no such claims, defenses, or rights may be asserted against the Debtors or the Liquidating Debtors, or in contravention of the Plan Settlement.

(h) ILT Claims Arbiter.

- (i) The ILT Claims Arbiter will be selected by the Creditors' Committee, upon consideration of lists of names provided by representatives of Class 4 and Class 5, and will be identified in the Plan Supplement, if known; *provided, however*, that the ILT Claims Arbiter shall be appointed no later than the Effective Date or as soon as reasonably practicable thereafter. In accordance with the ILT Agreement, the ILT Claims Arbiter shall serve in such capacity through the earlier of (i) sixty (60) days after the Effective Date and (ii) the date such ILT Claims Arbiter resigns, is terminated, or is otherwise unable to serve for any reason.
- (ii) In furtherance of, and consistent with, the purpose of the Insys Liquidation Trust and this Plan, the ILT Claims Arbiter shall have the power and authority to determine the following issues: (1) the appropriate allocation of Estate Distributable Value in Class 4 on account of (a) aggregate Third Party Payor Claims and (b) aggregate Insurance Ratepayer Claims, and (2) the appropriate allocation of Estate Distributable Value in Class 5 on account of (a) aggregate Hospital Claims and (b) aggregate NAS Monitoring Claims (but not allocation of Estate Distributable Value among individual holders of Third Party Payor Claims, Insurance Ratepayer Claims, Hospital Claims, or NAS Monitoring Claims). To reduce ILT Operating Expenses and promote efficiency, and subject to the terms of the ILT Agreement, the ILT Claims Arbiter will attempt in good faith to negotiate a consensual resolution regarding the foregoing allocations prior to making any determination, which determination shall be final and non-appealable.
- (iii) The ILT Claims Arbiter will receive compensation of \$175,000.

(i) Payment of Non-PI General Unsecured Claims. Non-PI General Unsecured Claims will be administered and liquidated pursuant to the ILT Agreement. After Non-PI General Unsecured Claims are Allowed, the Liquidating Trustee shall make Distributions to each holder of an Allowed Non-PI General Unsecured Claim, as applicable in accordance with the treatments set forth in this Plan, its Pro Rata Share of Estate Distributable Value until all Allowed Non-PI General Unsecured Claims are paid in full. Funds for Disputed Claims shall be set aside in Disputed Claims Reserves held by the Insys Liquidation Trust. For the avoidance of doubt, the Liquidating Trustee shall Allow Claims to the extent necessary to carry out the goals of the Plan Settlement.

(j) ILT Board. The ILT Board will be comprised of three (3) members appointed to serve as the board of managers of the Insys Liquidation Trust. Two (2) such members shall be selected by the SMT Group Representatives and one (1) such member shall be selected by the Creditors' Committee. In all cases, the ILT Board members will be selected in good faith consultation with the Debtors. The ILT Board shall have general

governance rights over the Insys Liquidation Trust in accordance with the ILT Agreement. In addition, in its sole discretion, the ILT Board may engage the VRT Insurance Negotiator to assist in liquidating insurance claims (in such capacity, the ILT Insurance Negotiator). The composition of the ILT Board will be set forth in the Plan Supplement.

(k) **Periodic Reporting.** The Liquidating Trustee shall provide periodic reporting to the ILT Board (which shall be filed with the Bankruptcy Court in summary form) of the determination and any re-determination, as applicable, of the total amounts allocated to the Priority Reserve, the Disputed Claims Reserves for Non-PI General Unsecured Claims, the ILT Operating Reserve, the ILT Recovery Fund, and any Dissolution Date Cash in the Insys Liquidation Trust.

(l) **Institution and Maintenance of Legal and Other Proceedings.** As of the date upon which the Insys Liquidation Trust is established, the Insys Liquidation Trust shall be empowered to initiate, prosecute, defend, and resolve all legal actions and other proceedings related to any asset, liability, or responsibility of the Insys Liquidation Trust. The Insys Liquidation Trust shall be empowered to initiate, prosecute, defend, and resolve all such actions in the name of the Debtors and the Liquidating Debtors if deemed necessary or appropriate by the Liquidating Trustee, the ILT Claims Arbiter, or the ILT Insurance Negotiator. The Insys Liquidation Trust shall be responsible for the payment of all damages, awards, judgments, settlements, expenses, costs, fees, and other charges incurred subsequent to the date upon which the Insys Liquidation Trust is established arising from, or associated with, any legal action or other proceeding brought pursuant to this Section of the Plan and shall pay or reimburse all deductibles, retrospective premium adjustments, or other charges which may arise from the receipt of any Insurance Proceeds (other than any Products Liability Insurance Proceeds) by the Insys Liquidation Trust.⁷ For the avoidance of doubt, the Insys Liquidation Trust, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable state corporate law, is appointed as the successor-in-interest to, and representative of, the Debtors and their Estates for the retention, enforcement, settlement, or adjustment of all Claims, other than Personal Injury Claims.

(m) **Dissolution.** The Insys Liquidation Trust shall be dissolved and the Liquidating Trustee, the ILT Claims Arbiter, and the ILT Board shall be discharged from their duties with respect to the Insys Liquidation Trust upon completion of their duties as set forth in this Plan and the ILT Agreement which, for the avoidance of doubt, shall be no earlier than the date on which (i) all Disputed Non-PI General Unsecured Claims have been resolved, (ii) all ILT Assets have been liquidated, and (iii) all Distributions from the Insys Liquidation Trust required to be made by the Liquidating Trustee under the Plan and the ILT Agreement have been made, unless dissolution on an earlier date is authorized pursuant to a Final Order of the Bankruptcy Court.

(n) **Dissolution Date Cash.** Any Dissolution Date Cash in the Insys Liquidation Trust remaining upon dissolution of the Insys Liquidation Trust pursuant to Section 5.8(m) of this Plan shall be allocated: (i) first, to the Priority Reserve to the extent such reserve is insufficiently funded to satisfy the purposes for which it was established, (ii) second,

⁷ For the avoidance of doubt, the Insys Liquidation Trust will not pay premiums for tail coverage of Insurance Policies related to directors' and officers' liability.

to satisfy any outstanding ILT Operating Expenses, (iii) third, to holders of Allowed Non-PI General Unsecured Claims to the extent such Claims have not been satisfied in full, (iv) fourth, to the VRT Recovery Fund for the benefit of holders of Allowed Personal Injury Claims if such Claims have not been satisfied in full, and directly to holders of Allowed SMT Group Claims, on the same Pro Rata basis set forth in Section 4.7(a) of this Plan, and (v) fifth, to a charity to be selected by the Liquidating Trustee.

(o) U.S. Federal Income Tax Treatment of Insys Liquidation Trust. In furtherance of this Section of the Plan, and subject to the next two paragraphs of this Section, (i) the Insys Liquidation Trust shall be structured to qualify as a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d) and in compliance with Revenue Procedure 94-45, 1994-2 C.B. 684 and, thus, as a “grantor trust” within the meaning of sections 671 through 679 of the Internal Revenue Code to the holders of beneficial interests in the Insys Liquidation Trust, consistent with the terms of the Plan; (ii) the sole purpose of the Insys Liquidation Trust shall be the liquidation and distribution of the ILT Assets in accordance with Treasury Regulation Section 301.7701-4(d), including the resolution of Claims (other than Personal Injury Claims) in accordance with this Plan, with no objective to continue or engage in the conduct of a trade or business; (iii) all parties (including the Debtors, their Estates, the Liquidating Debtors, holders of beneficial interests in the Insys Liquidation Trust, and the Liquidating Trustee) shall report consistently with such treatment (including the deemed receipt of the underlying assets, subject to applicable liabilities and obligations, by the holders of beneficial interests in the Insys Liquidation Trust, followed by the deemed transfer of such Assets to the Insys Liquidation Trust); (iv) all parties shall report consistently with the valuation of the ILT Assets transferred to the Insys Liquidation Trust as determined by the Liquidating Trustee (or its designee); (v) the Liquidating Trustee shall be responsible for filing returns for the Insys Liquidation Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a); and (vi) the Liquidating Trustee shall annually send to each holder of beneficial interests in the Insys Liquidation Trust a separate statement regarding the receipts and expenditures of the Trust as relevant for U.S. federal income tax purposes.

Subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary (including the receipt by the Liquidating Trustee of a private letter ruling if the Liquidating Trustee so requests one, or the receipt of an adverse determination by the Internal Revenue Service upon audit if not contested by the Liquidating Trustee), the Liquidating Trustee may timely elect to (i) treat any portion of the Insys Liquidation Trust allocable to, or retained on account of, Disputed Claims (*e.g.*, a Disputed Claims Reserve) as a “disputed ownership fund” governed by Treasury Regulation Section 1.468B-9 (and make any appropriate elections) and (ii) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. If a “disputed ownership fund” election is made, all parties (including the Debtors, their Estates, the Liquidating Debtors, holders of beneficial interests in the Insys Liquidation Trust, and the Liquidating Trustee) shall report, for United States federal, state, and local income tax purposes, consistently with the foregoing. As to any assets allocable to, or retained on account of, Disputed Claims, all distributions thereof shall be net of any costs and expenses, including taxes, relating to the retention or disposition of such assets, and the Liquidating Trustee shall be responsible for payment, out of such assets, of any taxes imposed on or with respect to such assets. All parties (including, without limitation, the Debtors, their Estates, the Liquidating

Debtors, the Insys Liquidation Trust, and the holders of beneficial interests in the Insys Liquidation Trust) will be required to report for tax purposes consistently with the foregoing.

Notwithstanding the preceding paragraphs, all or part of the Insys Liquidation Trust may be treated (now or in the future) as a “qualified settlement fund” within the meaning of, and as required by, Treasury Regulation Section 1.468B-1. If the Insys Liquidation Trust or any portion thereof is treated as a qualified settlement fund, it shall be treated consistently for state and local tax purposes, to the extent applicable. The Liquidating Trustee and all holders of beneficial interests in the Insys Liquidation Trust shall report consistently with the foregoing. The Liquidating Trustee shall be the “administrator,” within the meaning of Treasury Regulations Section 1.468B-2(k)(3), of such qualified settlement fund. The Liquidating Trustee shall be responsible for filing all tax returns of the qualified settlement fund and the payment, out of the assets of the qualified settlement fund, of any taxes due with respect to trust assets or otherwise imposed on the qualified settlement fund (including any tax liability arising in connection with the distribution of trust assets), and shall be permitted to sell any assets of the qualified settlement fund to the extent necessary to satisfy such tax liability (including any tax liability arising in connection with such sale).

(p) **Expedited Determination of Taxes.** The Liquidating Trustee may request an expedited determination of taxes under section 505(b) of the Bankruptcy Code for all tax returns filed by or on behalf of the Insys Liquidation Trust through the ILT Termination Date, and for all tax returns filed by or on behalf of the Debtors or the Liquidating Debtors for all taxable periods of the Debtors and the Liquidating Debtors.

(q) **Exculpation of ILT Claims Arbiter and ILT Board.** The ILT Claims Arbiter and the ILT Board shall be exculpated (subject, in each case, to exceptions for willful misconduct, bad faith, gross negligence, or fraud) to the fullest extent allowable by applicable law with respect to the liquidation of the ILT Assets and administration of the Insys Liquidation Trust.

5.9 Victims Restitution Trust.

(a) **Establishment of Victims Restitution Trust.** On the Effective Date or as soon as reasonably practicable thereafter, but shall not be earlier than January 1, 2020 or later than [five (5)] Business Days following the Effective Date, the Debtors, or the Liquidating Debtors, and the Liquidating Trustee⁸ shall take all necessary steps to establish the Victims Restitution Trust for the benefit of holders of Allowed Personal Injury Claims including executing the VRT Agreement and the Trust Transfer Agreement, and all Privileges held by the Debtors or the Liquidating Debtors shall transfer to, and vest exclusively in, the Trusts. This Section of the Plan sets forth certain of the rights, duties, and obligations of the VRT Board and the VRT Claims Administrator with respect to the Victims Restitution Trust. In the event of any conflict between the terms of the Plan and the terms of the VRT Agreement, the terms of the VRT Agreement shall govern.

⁸ With respect to actions taken in this Section, the Liquidating Trustee is acting solely in its capacity as trustee of the Victims Restitution Trust.

(b) **Purpose of Victims Restitution Trust.** The Victims Restitution Trust shall be established for the purposes described in this Plan and any others more fully described in the VRT Agreement. The Victims Restitution Trust shall administer, process, settle, resolve, liquidate, satisfy, and pay (from the designated funds therefor) Personal Injury Claims and, if applicable, SMT Group Claims against the Debtors, subject to the terms of the VRT Agreement, this Plan, and the Confirmation Order. The Victims Restitution Trust shall be administered and implemented by the Liquidating Trustee with the oversight of the VRT Board as provided in the VRT Agreement.

(c) **Products Liability Insurance Rights Transfer.** In furtherance of the purpose of the Victims Restitution Trust:

- (i) On the date the Victims Restitution Trust is established, the Liquidating Debtors shall irrevocably transfer, grant, and assign to the Victims Restitution Trust, and the Victims Restitution Trust shall receive and accept, any and all of the Products Liability Insurance Rights. To the extent any Products Liability Insurance Company consented to a prepetition settlement agreement of a Personal Injury Claim, or otherwise has consented to pay a Personal Injury Claim on behalf of one or more of the Debtors, the Debtors transfer and assign to the Victims Restitution Trust the right to enforce such Products Liability Insurance Company's obligation. The Products Liability Insurance Rights Transfer is made to the Victims Restitution Trust for the benefit of Persons who have a Claim for compensation for damages against the Debtors.
- (ii) The Products Liability Insurance Rights Transfer is made free and clear of all Claims, Liens, encumbrances, or Causes of Action of any nature whatsoever, except available limits of liability for coverage of certain types of Claims under one or more Products Liability Insurance Policies that may have been reduced by certain prepetition payments made by a Products Liability Insurance Company to, or on behalf of, one or more of the Debtors.
- (iii) The Victims Restitution Trust shall satisfy, to the extent required under applicable law, any retrospective premiums, deductibles, and self-insured retentions arising in any way out of any and all Personal Injury Claims.
- (iv) The Victims Restitution Trust shall comply with any notice obligations required under the Products Liability Insurance Policies and applicable law.
- (v) The Products Liability Insurance Rights Transfer is made to the maximum extent possible under applicable law.

- (vi) The Products Liability Insurance Rights Transfer is absolute and does not require any further action by the Debtors, the Liquidating Debtors, the Victims Restitution Trust, the Bankruptcy Court, or any other Entity.
- (vii) The Products Liability Insurance Rights Transfer is not an assignment of any insurance policy itself.
- (viii) The Products Liability Insurance Rights Transfer shall be governed by, and construed in accordance with, the Bankruptcy Code and the laws of Delaware, without regard to its conflict of law principles.
- (ix) Such transfer of the VRT Assets shall be free and clear of all Claims, Interests, Liens, other encumbrances, and liabilities of any kind.

(d) **Funding of VRT Operating Reserve.** On the Effective Date, or as soon as reasonably practicable thereafter, the Debtors or the Liquidating Debtors shall reserve from Available Cash the amount of \$[1 million] to fund the VRT Operating Reserve. On the date the Victims Restitution Trust is established, or as soon as reasonably practicable thereafter, the Liquidating Debtors shall assign and transfer VRT Operating Reserve to the Victims Restitution Trust to satisfy and pay VRT Operating Expenses.] Such transfer of the VRT Assets shall be free and clear of all Claims, Interests, Liens, other encumbrances, and liabilities of any kind. A separate account will be established by the Liquidating Trustee for the VRT Operating Reserve.

(e) **VRT Operating Expenses.** The VRT Claims Administrator, the VRT Insurance Negotiator, and the VRT Board shall be entitled to compensation as provided in the VRT Agreement. The Victims Restitution Trust shall pay all VRT Operating Expenses, including the costs, expenses, and fees of the VRT Claims Administrator, the VRT Insurance Negotiator, and the VRT Board, and their retained professionals from the VRT Operating Reserve; *provided, however*, that all VRT Operating Expenses shall be capped at \$[1 million]. The Debtors and the Liquidating Debtors shall have no obligation to pay any VRT Operating Expenses.

(f) **Administrative Obligations and Assumption of Liabilities.** In furtherance of the purposes of the Victims Restitution Trust, and subject to the VRT Agreement, the Victims Restitution Trust shall expressly (i) assume all responsibility and liability for all (A) Personal Injury Claims against the Debtors and the Liquidating Debtors and (B) all VRT Operating Expenses (except as otherwise provided in the VRT Agreement), and (ii) undertake to administer and pay the foregoing with the funds designated to (A) the VRT Recovery Fund and (B) the VRT Operating Reserve, respectively. The Victims Restitution Trust shall have all defenses, cross-claims, offsets, and recoupments regarding Personal Injury Claims that the Debtors or the Liquidating Debtors have, or would have had, under applicable law, but solely to the extent consistent with the VRT Agreement and this Plan; *provided, however*, that no such claims, defenses, or rights may be asserted against the Debtors or the Liquidating Debtors.

(g) **Appointment of VRT Claims Administrator.** The VRT Claims Administrator will be selected prior to the Confirmation Hearing and identified in the Plan Supplement. The VRT Claims Administrator will be selected either (i) by mutual agreement between the Creditors' Committee and the SMT Group Representatives and identified in the Plan Supplement, or (ii) by the Liquidating Trustee from a list of potential candidates provided or to be provided by the Creditors' Committee; *provided, however*, that the VRT Claims Administrator shall be appointed no later than the Confirmation Date. In accordance with the VRT Agreement, the VRT Claims Administrator shall serve in such capacity through the earlier of (i) the resolution, settlement, or disallowance of all Personal Injury Claims and (ii) the date such VRT Claims Administrator resigns, is terminated, or is otherwise unable to serve for any reason.

(h) **Role of VRT Claims Administrator.**

- (i) In furtherance of, and consistent with, the purpose of the Victims Restitution Trust and this Plan, the VRT Claims Administrator shall have the power and authority to determine the eligibility, amount, and allowance of Personal Injury Claims. The VRT Claims Administrator shall evaluate proofs of claim submitted by each holder of a Personal Injury Claim for determination of eligibility, amount, and allowance of such Claim [in accordance with the procedures set forth in the Claim Analysis Protocol, to be filed with the Plan Supplement].
- (ii) The VRT Claims Administrator's determination of eligibility, amount, and allowance of each Personal Injury Claim shall be final and binding, and shall not be subject to any challenge or review of any kind, by any court or other person or entity, except as set forth in section [●] of this Plan. For the avoidance of doubt, the VRT Claims Administrator shall not seek to estimate the "settlement value" of Claims, but instead shall finally determine the eligibility, allowance, and amount of Claims, and shall do so based solely on the limited procedures identified herein, applying ordinary substantive tort principles according to the state or federal law applicable to each Claim based on a standard choice of law analysis. The eligibility, amount, and allowance of all Personal Injury Claims shall be determined on or before six (6) months following the date of any resolution between the Victims Restitution Trust and the Products Liability Insurance Companies.

(i) **Payment of Claims.** Personal Injury Claims will be administered and liquidated pursuant to the VRT Agreement. After Personal Injury Claims are Allowed by the VRT Claims Administrator, the Liquidating Trustee shall make Distributions to each holder of an Allowed Personal Injury Claim, and each holder of an Allowed SMT Group Claim, if applicable, in accordance with the treatments set forth in this Plan, from available Products Liability Insurance Proceeds until all Allowed Personal Injury Claims are paid in full. Distributions of Products Liability Insurance Proceeds shall be the sole source of recovery for holders of Allowed Personal Injury Claims (other than any Dissolution Date Cash from the Insys

Liquidation Trust, if applicable, pursuant to Section 5.8(n) of this Plan) and no holder of a Personal Injury Claim shall have any further recourse from the Trust, the Debtors, the Liquidating Debtors, or their Estates.

(j) **Appointment of VRT Insurance Negotiator.** The VRT Insurance Negotiator will be selected prior to the Confirmation Hearing and identified in the Plan Supplement. The VRT Insurance Negotiator will be selected, subject to the terms set forth in the VRT Agreement, either pursuant to a mutual agreement among the Creditors' Committee and the SMT Group Representatives, or otherwise as selected by the Debtors from lists of candidates provided by the Creditors' Committee and the SMT Group Representatives. In accordance with the VRT Agreement, the VRT Insurance Negotiator shall serve in such capacity through the earlier of (i) the VRT Termination Date, (ii) the date upon which all Products Liability Insurance Rights have been liquidated in the good faith determination of the VRT Insurance Negotiator (subject to the approval of the Liquidating Trustee and the VRT Board), and (iii) the date such VRT Insurance Negotiator resigns, is terminated, or is otherwise unable to serve for any reason.

(k) **Role of VRT Insurance Negotiator.** In furtherance of, and consistent with, the purpose of the Victims Restitution Trust and this Plan, the VRT Insurance Negotiator shall be responsible for conducting negotiations with and, if necessary, litigation against the Products Liability Insurance Companies to recover Products Liability Insurance Proceeds.

(l) **VRT Board.** The VRT Board will be comprised of four (4) members appointed to serve as the board of managers of the Victims Restitution Trust. Two (2) such members shall be selected by the SMT Group Representatives and two (2) such members shall be selected by the Creditors' Committee. In all cases, the VRT Board members will be selected in good faith consultation with the Debtors. The VRT Board shall have general governance rights over the Victims Restitution Trust in accordance with the VRT Agreement and shall review and oversee any significant decision-making with respect to the prosecution and liquidation of the Products Liability Insurance Rights. The VRT Claims Administrator shall have the authority to break ties in VRT Board decisions, if and when necessary. The composition of the VRT Board will be set forth in the Plan Supplement.

(m) **Retention of Professionals by VRT Claims Administrator and VRT Insurance Negotiator.** The VRT Claims Administrator may retain and reasonably compensate counsel and other professionals to assist in its duties as VRT Claims Administrator on such terms as the VRT Claims Administrator deems appropriate without Bankruptcy Court approval, subject to the provisions of the VRT Agreement. The VRT Claims Administrator may retain any professional, including any professional who represented parties in interest in the Chapter 11 Cases. All fees and expenses incurred in connection with the foregoing shall be payable from the VRT Operating Reserve, subject to the terms of the VRT Agreement.

(n) **Periodic Reporting.** The Liquidating Trustee shall provide periodic reporting to the VRT Board (which shall be filed with the Bankruptcy Court in summary form) of the determination and any re-determination, as applicable, of the total amounts allocated to the Disputed Claims Reserves for Personal Injury Claims, the VRT

Operating Reserve, the VRT Recovery Fund, and any Dissolution Date Cash in the Victims Restitution Trust.

(o) Institution and Maintenance of Legal and Other Proceedings.

As of the date upon which the Victims Restitution Trust is established, the Victims Restitution Trust shall be empowered to initiate, prosecute, defend, and resolve all legal actions and other proceedings related to any asset, liability, or responsibility of the Victims Restitution Trust. The Victims Restitution Trust shall be empowered to initiate, prosecute, defend, and resolve all such actions in the name of the Debtors and the Liquidating Debtors if deemed necessary or appropriate by the Liquidating Trustee, the VRT Claims Administrator, or the VRT Insurance Negotiator. The Victims Restitution Trust shall be responsible for the payment of all damages, awards, judgments, settlements, expenses, costs, fees, and other charges incurred subsequent to the date upon which the Victims Restitution Trust is established arising from, or associated with, any legal action or other proceeding brought pursuant to this Section of the Plan and shall pay or reimburse all deductibles, retrospective premium adjustments, or other charges which may arise from the receipt of any Products Liability Insurance Proceeds by the Victims Restitution Trust. For the avoidance of doubt, the Victims Restitution Trust, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable state corporate law, is appointed as the successor-in-interest to, and representative of, the Debtors and their Estates for the retention, enforcement, settlement, or adjustment of all Personal Injury Claims.

(p) Dissolution. The Victims Restitution Trust shall be dissolved and the Liquidating Trustee, the VRT Claims Administrator, the VRT Insurance Negotiator, and the VRT Board shall be discharged from their duties with respect to the Victims Restitution Trust upon completion of their duties and the satisfaction of the purposes of the Victims Restitution Trust as set forth in this Plan and the VRT Agreement which, for the avoidance of doubt, shall be no earlier than the date on which (i) all Disputed Personal Injury Claims have been resolved, (ii) all VRT Assets have been liquidated, and (iii) all Distributions from the Victims Restitution Trust required to be made by the Liquidating Trustee under the Plan and the VRT Agreement have been made, unless dissolution on an earlier date is authorized pursuant to a Final Order of the Bankruptcy Court.

(q) Dissolution Date Cash. Any Dissolution Date Cash in the Victims Restitution Trust remaining upon dissolution of the Victims Restitution Trust pursuant to Section 5.9(p) of this Plan shall be allocated: (i) first, to (a) holders of Allowed Personal Injury Claims to the extent such Claims have not been satisfied in full and (b) the ILT Recovery Fund, designated solely for Distribution to holders of Allowed SMT Group Claims, each on the same Pro Rata bases set forth in Sections 4.7(a) and 4.8(a) of this Plan; (ii) second, to the ILT Recovery Fund as Excess Products Liability Insurance Proceeds, designated solely for Distribution to holders of Allowed SMT Group Claims; and (iii) third, to a charity to be selected by the Liquidating Trustee.

(r) U.S. Federal Income Tax Treatment of Victims Restitution Trust. The Victims Restitution Trust is intended to be treated, and shall be reported, as a “qualified settlement fund” for U.S. federal income tax purposes and shall be treated consistently for state and local tax purposes, to the extent applicable. The Liquidating Trustee and all holders of beneficial interests in the Victims Restitution Trust shall report consistently with the

foregoing. The Liquidating Trustee shall be the “administrator,” within the meaning of Treasury Regulations Section 1.468B-2(k)(3), of the Victims Restitution Trust. The Liquidating Trustee shall be responsible for filing all tax returns of the Victims Restitution Trust and the payment, out of the assets of the Victims Restitution Trust, of any taxes due with respect to VRT Assets or otherwise imposed on the Victims Restitution Trust (including any tax liability arising in connection with the distribution of VRT Assets), and shall be permitted to sell any assets of the Victims Restitution Trust to the extent necessary to satisfy such tax liability (including any tax liability arising in connection with such sale).

(s) **Expedited Determination of Taxes.** The Liquidating Trustee may request an expedited determination of taxes under section 505(b) of the Bankruptcy Code for all tax returns filed by or on behalf of the Victims Restitution Trust through the VRT Termination Date.

(t) **Exculpation of VRT Claims Administrator, VRT Insurance Negotiator, and VRT Board.** The VRT Claims Administrator, the VRT Insurance Negotiator, and the VRT Board shall be exculpated (subject, in each case, to exceptions for willful misconduct, bad faith, gross negligence, or fraud) to the fullest extent allowable by applicable law with respect to the liquidation of the VRT Assets and administration of the Victims Restitution Trust.

5.10 Non-Transferability of Trust Interests.

Any and all Trust Interests, rights to receive a Distribution from the Trust, the Priority Reserve, the Trust Operating Reserves, or the Recovery Funds will not constitute “securities” and will not be registered pursuant to the Securities Act or any applicable state or local securities law. However, if it should be determined that any such interests constitute “securities,” the exemption provisions of section 1145 of the Bankruptcy Code will be satisfied and the offer and sale under the Plan of the Trust Interests will be exempt from registration under the Securities Act, all rules and regulations promulgated thereunder, and all applicable state and local securities laws and regulations. Further, any and all Trust Interests, rights to receive a Distribution from the Trust, the Priority Reserve, the Trust Operating Reserves, or the Recovery Funds shall not be certificated, shall be non-transferable other than if transferred by will, intestate succession, or otherwise by operation of law, and shall be subject to certain other restrictions. Moreover, any and all Trust Interests shall neither be listed for trading on any national securities exchange.

5.11 Insurance Neutrality.

(a) Nothing contained in this Plan, the Plan Documents, or the Confirmation Order, including any provision that purports to be preemptory or supervening, shall in any way operate to, or have the effect of, impairing, altering, supplementing, changing, expanding, decreasing, or modifying (a) the rights or obligations of any of the Insurance Companies or (b) any rights or obligations of the Debtors arising out of or under any Insurance Policy. For all issues relating to insurance coverage, the provisions, terms, conditions, and limitations of the Insurance Policies shall control.

(b) For the avoidance of doubt, nothing contained in this Plan, the Plan Documents, or the Confirmation Order shall operate to require any Insurance Company to indemnify or pay the liability of any Debtor or Liquidating Debtor that it would not have been required to pay in the absence of this Plan. This subparagraph (b) in no way modifies, alters or limits the rights and/or obligations set forth in subparagraph (a), above.

(c) None of (i) the Bankruptcy Court's confirmation of the Plan or approval of the Plan Documents, (ii) the Confirmation Order or any findings and conclusions entered with respect to confirmation, nor (iii) any estimation or valuation of any Claims, either individually or in the aggregate in the Chapter 11 Cases shall, with respect to any Insurance Company, constitute a trial or hearing on the merits or an adjudication or judgment with respect to any Claim or Cause of Action.

5.12 Indemnification of Liquidating Trustee.

The Liquidating Trustee shall not be liable for actions taken or omitted in its capacity as, or on behalf of, the Liquidating Trustee, the Trusts, or the Liquidating Debtors, except those acts found by Final Order to be arising out of its willful misconduct, bad faith, gross negligence, or fraud, and shall be entitled to indemnification and reimbursement for fees and expenses in defending any and all of its actions or inactions in its capacity as, or on behalf of, the Liquidating Trustee, the Trusts, or the Liquidating Debtors, except for any actions or inactions found by Final Order to be arising out of its willful misconduct, bad faith, gross negligence, or fraud. Any valid indemnification claim of the Liquidating Trustee shall be satisfied from the ILT Operating Reserve.

5.13 Cooperation; Privilege; Transfer of Books and Records.

(a) In order to effectively investigate, prosecute, compromise, and/or settle the Insurance Rights, the Products Liability Insurance Rights, and Causes of Action on behalf of the Trusts, the Liquidating Trustee, the ILT Claims Arbiter, the VRT Claims Administrator, the Insurance Negotiators, and their counsel and representatives require full access to all documents and information relating to the Insurance Rights, the Products Liability Insurance Rights, and the Causes of Action in the possession of the Debtors and/or the Liquidating Debtors and must be able to obtain such information from the Debtors or the Liquidating Debtors on a confidential basis and in common interest without being restricted by or waiving any applicable work product, attorney-client, or other Privilege. Accordingly, on or prior to the Effective Date, the Liquidating Trustee and Insys Therapeutics, Inc., on behalf of itself, the other Debtors, and the Liquidating Debtors, shall enter into the Trust Transfer Agreement, which shall provide for the Liquidation Trustee's, the ILT Claims Arbiter's, the VRT Claims Administrator's, and the Insurance Negotiators' full access to the Debtors' and the Liquidating Debtors' records and information including, without limitation, electronic records or documents, and for the Debtors and the Liquidating Debtors to transfer and assign, or cause to be transferred and assigned, to the Liquidating Trustee: (i) all of the books and records of the Debtors and the Liquidating Debtors, (ii) a copy of a database or other information as reasonably required to assist the Trusts in identifying the Non-PI General Unsecured Claims against the Insys Liquidation Trust or the Personal Injury Claims against the Victims Restitution Trust, (iii) copies of all Insurance Policies, (iv) information relating to all Claims previously noticed,

tendered, or submitted under the Insurance Policies or paid by any Insurance Company, and (v) any other information necessary to operate the Trusts and preserve, secure, or obtain the benefit of the Insurance Rights. The Trust Transfer Agreement shall also provide that as of the Effective Date, all Privileges held by the Debtors or the Liquidating Debtors (including the board of directors or any committee of the board of directors of any of the Debtors or the Liquidating Debtors) in connection with such documents or information shall transfer to, and vest exclusively in, the Trusts. If, at any time after the Effective Date, the Debtors discover the existence of an Insurance Policy that provides or may provide coverage for General Unsecured Claims, the Entity discovering such policy or evidence of the existence of such policy shall promptly inform the Liquidating Trustee, the ILT Claims Arbiter, the VRT Claims Administrator, and the Insurance Negotiators. On the date(s) upon which each Trust is established or as soon as reasonably practicable thereafter, the Liquidating Trustee shall transfer and assign, or cause to be transferred and assigned, to the ILT Claims Arbiter, the VRT Claims Administrator, and the Insurance Negotiators, the documents and information included in the foregoing clauses (i) through (v).

(b) The transfer or assignment of information to the Liquidating Trustee in accordance with this Section of this Plan shall not result in the destruction or waiver of any applicable Privileges. Further, with respect to any Privileges: (i) they are transferred to or contributed for the sole purpose of enabling the Liquidating Trustee to perform its duties to administer the Trusts and for no other reason, (ii) they are vested solely in the Liquidating Trustee, the ILT Claims Arbiter, the VRT Claims Administrator, the Insurance Negotiators, and the Trusts and not in the Trust Boards or any other Person, committee, or subcomponent of the Trusts, or any other Person (including counsel and other professionals) who has been engaged by, represents, or has represented any holder of a Claim or any Person that alleges or may allege a Claim, directly or indirectly, relating to, or arising from, the Debtors' Products or operations, (iii) they shall be preserved and not waived (except as the Liquidating Trustee, the ILT Claims Arbiter, the VRT Claims Administrator, the Insurance Negotiators, or the Trusts, as applicable, may elect to waive such Privileges), (iv) for the avoidance of doubt, any such transfer shall have no effect on any right, Claim, or Privilege of any Person other than the Debtors or the Liquidating Debtors (including the board of directors or any committee of the board of directors of any of the Debtors or Liquidating Debtors), and (v) no information subject to a Privilege shall be publicly disclosed by the Liquidating Trustee, the ILT Claims Arbiter, the VRT Claims Administrator, the Insurance Negotiators, or the Trusts or communicated to any Person not entitled to receive such information or in a manner that would diminish the protected status of any such information. Notwithstanding the foregoing, nothing herein shall preclude the Liquidating Trustee or the Insurance Negotiators from providing information received pursuant to this Section to any applicable Insurance Company as necessary to preserve, secure, or obtain the benefit of the applicable Insurance Rights.

5.14 Releases of Liabilities to Holders of Claims.

Except as provided in this Plan, the transfer to, vesting in, and assumption by the Trusts of the Trust Assets as contemplated by this Plan shall, as of the date of such transfer and assumption, bar recovery or any action against the Debtors, the Liquidating Debtors, and the Debtors' estates, affiliates, and subsidiaries, for, or with respect to, all Claims. The Trusts shall, as of the date(s) upon which each Trust is established, assume sole and exclusive

responsibility and liability for all Claims against the Debtors and the Liquidating Debtors, and such Claims shall be liquidated, resolved, or paid by the Trusts from the Recovery Funds or Trust Operating Reserves, as applicable.

5.15 Available Cash.

On the Effective Date, Effective Date Available Cash shall be allocated to (i) first, to the Professional Fee Escrow Account in an amount necessary to satisfy Professional Fee Claims in accordance with Section 2.4 of this Plan; (ii) second, the Priority Reserve to the extent necessary to satisfy estimated Allowed (a) Administrative Expense Claims, (b) Secured Claims, and (c) Priority Claims; (iii) third, the ILT Operating Reserve and the VRT Operating Reserve in the amounts set forth in Sections 5.8(e) and 5.9(d) of this Plan to cover the respective Trust Operating Expenses; and (iv) fourth, the ILT Recovery Fund to become Estate Distributable Value and made available for Distribution to holders of Allowed Non-PI General Unsecured Claims. Any funds that become Available Cash after the Effective Date shall be allocated to (i) first, the ILT Operating Reserve to the extent necessary to satisfy estimated ILT Operating Expenses, and (ii) second, the ILT Recovery Fund to become Estate Distributable Value and made available for Distribution to holders of Allowed Non-PI General Unsecured Claims.

5.16 Surplus Reserved Cash.

(a) **Surplus Reserved Cash from Priority Reserve.** The Liquidating Trustee shall determine, on each six-month anniversary of the Effective Date, whether the amounts available in the Priority Reserve are in excess of the amount necessary to satisfy the purpose for which such reserve was established. If the Liquidating Trustee determines that, in the discretion of the Liquidating Trustee, a surplus exists in the Priority Reserve as of the date of such determination, such Surplus Reserved Cash shall (i) first, be allocated to the ILT Operating Reserve to the extent such reserve is insufficiently funded to satisfy the purpose for which such reserve was established, with such allocation of Surplus Reserved Cash to be in the discretion of the Liquidating Trustee in consultation with the VRT Claims Administrator and (ii) second, become Available Cash and be deposited into the ILT Recovery Fund. Following the dissolution of the Priority Reserve, any Cash that was held in the Priority Reserve shall be deemed Available Cash and be allocated in accordance with Section 5.15 of the Plan.

(b) **Surplus Reserved Cash from Trust Operating Reserves.** Prior to the dissolution of the Insys Liquidation Trust and the Victims Restitution Trust, the Liquidating Trustee shall determine, on each six (6) month anniversary of the Effective Date, whether the amounts available in the Trust Operating Reserves are in excess of the amounts necessary to satisfy the purpose for which such reserves were established. If the Liquidating Trustee, in consultation with the VRT Claims Administrator, and the Insurance Negotiators, determines that a surplus exists in either Trust Operating Reserve as of the date of such determination, such Surplus Reserved Cash shall be allocated (1) first, to the Priority Reserve to the extent such reserve is insufficiently funded to satisfy the purpose for which such reserve was established, with such allocation of Surplus Reserved Cash to be in the discretion of the Liquidating Trustee, and (2) second, contributed to the ILT Recovery Fund (if the surplus relates

to the Insys Liquidation Trust) or to the VRT Recovery Fund (if the surplus relates to the Victims Restitution Trust). Following the dissolution of the Insys Liquidation Trust or the Victims Restitution Trust, any Surplus Reserved Cash and any other Cash in the applicable Trust Operating Reserve shall be allocated in accordance with Section 5.8(n) or Section 5.9(q) of the Plan, as applicable.

5.17 Charters; By-Laws.

To the extent necessary or appropriate, the charters, by-laws, and other organizational documents of the Debtors shall be amended, or amended and restated as necessary, in a manner consistent with section 1123(a)(6) of the Bankruptcy Code, if applicable, and the terms of this Plan.

5.18 Merger; Dissolution; Consolidation; Discharge.

On or after the date(s) upon which the Trusts are established, the Liquidating Debtors or the Liquidating Trustee may, subject to the terms of the Plan and the Liquidating Debtors' Organizational Documents, cause any or all of the Liquidating Debtors to be merged into one or more of the Liquidating Debtors, dissolved, or otherwise consolidated, and engage in any other transaction in furtherance of the Plan. Notwithstanding the foregoing, on the Dissolution Date, each Liquidating Debtor shall be deemed dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of each Liquidating Debtor; *provided, however*, that each Liquidating Debtor, or the Liquidating Trustee, as applicable, shall file with the office of the Secretary of State, or other appropriate office for the state of its organization, a certificate of cancellation or dissolution. Upon the liquidation and dissolution of any Liquidating Debtor, any proceeds thereof shall be treated as Available Cash and allocated (i) first to the Priority Reserve, to the extent necessary, (ii) second, to the Trust Operating Reserves, to the extent necessary, and (iii) third, to the ILT Recovery Fund.

5.19 Closing of Chapter 11 Cases.

After a Debtor's Estate has been fully administered, the Liquidating Trustee shall seek authority from the Bankruptcy Court to close the applicable Chapter 11 Case in accordance with the Bankruptcy Code and Bankruptcy Rules.

5.20 Equitable Subordination under Bankruptcy Code 510(c).

The Plan will be deemed to constitute a motion to equitably subordinate, under Section 510(c) of the Bankruptcy Code, to the extent such Claims are not Disallowed, the 510(c) Subordinated Claims, being those of those Persons who engaged in, or aided and abetted, or whose claim arises from, any act or omission that constitutes criminal conduct, fraud, willful misconduct, or other wrongful or inequitable conduct in connection with the sale, distribution, and marketing of SUBSYS® (or on behalf of such persons, including Claims for indemnification, repayment or advancement of fees and expenses, including legal defense fees and expenses). The Confirmation Order shall contain findings supporting the conclusions providing for equitable subordination of such Claims for the purposes of Distribution on the terms set forth in Sections 4.9(a) and 4.10(a) of this Plan. Subject to any Solicitation Procedures Order, each holder a 510(c) Subordinated Claim shall be provided a notice informing each such

holder of the proposed treatment under the Plan of his or her Claim and affording him or her the opportunity to object to such treatment.

ARTICLE VI DISTRIBUTIONS.

6.1 Distributions Generally.

The Disbursing Agent shall make all Distributions to the appropriate holders of Allowed Claims and in accordance with the terms of this Plan. Except as otherwise provided herein, Distributions under this Plan shall be made only to the holders of Allowed Claims.

6.2 Periodic Distributions from Recovery Funds to Holders of Allowed Claims.

The Disbursing Agent shall make periodic Distributions, as applicable:

(a) of Cash in the Priority Reserve to holders of Allowed (i) Administrative Expense Claims, (ii) Secured Claims, and (iii) Priority Claims;

(b) of Cash in the ILT Operating Reserve to pay ILT Operating Expenses;

(c) of Cash in the VRT Operating Reserve to pay VRT Operating Expenses;

(d) on the Periodic Distribution Dates, of Cash in the ILT Recovery Fund in the form of Category 1 Distributions solely on account of Trade and Other Unsecured Claims, and Category 2 Distributions and Category 3 Distributions on account of Non-PI General Unsecured Claims in accordance with Sections 4.3 through 4.7 of this Plan (net of any costs and expenses, including taxes, of the ILT Recovery Fund); *provided, however*, that (i) any Products Liability Insurance Proceeds or Excess Products Liability Insurance Proceeds in the ILT Recovery Fund shall be designated for holders of Allowed SMT Group Claims (and distributed pursuant to a separate agreement among the holders of SMT Group Claims) and (ii) seven percent (7%) of any Preference and Indemnification Proceeds shall be designated for holders of Allowed Trade and Other Unsecured Claims; and

(e) on the Periodic Distribution Dates, of (i) Products Liability Insurance Proceeds in the VRT Recovery Fund to holders of Allowed Personal Injury Claims and to the ILT Recovery Fund, designated solely for Distribution to holders of Allowed SMT Group Claims, on the Pro Rata bases set forth in Sections 4.7(a) and 4.8(a) of this Plan and (ii) any Excess Products Liability Insurance Proceeds in the VRT Recovery Fund to the ILT Recovery Fund for the benefit of holders of Allowed SMT Group Claims, in accordance with Section 4.7(a) herein.

6.3 Periodic Distributions to Disputed Claims Reserves.

From and after the date(s) upon which each Trust is established or as soon as reasonably practicable thereafter, and until such time as all Disputed Claims have been compromised and settled or determined by a Final Order of the Bankruptcy Court, the applicable Liquidating Trustee shall, consistent with and subject to section 1123(a)(4) of the Bankruptcy Code, with respect to each Class of General Unsecured Claims, retain from the applicable Recovery Fund an aggregate amount equal to the Pro Rata share of each Distribution that would have been made to holders of Disputed Claims in each applicable Class and allocate such amount to the Disputed Claims Reserve for each applicable Class as if such Disputed Claims were Allowed Claims, for each Claim in an amount equal to the least of (i) the filed amount of such Disputed Claim, (ii) the amount determined by a Final Order of the Bankruptcy Court for purposes of fixing the amount to be retained for such Disputed Claim, and (iii) such other amount as may be agreed upon by the holder of such Disputed Claim and the Liquidating Trustee.

6.4 Periodic Distributions from Disputed Claims Reserves.

The Liquidating Trustee shall make distributions on the Periodic Distribution Dates from the Disputed Claims Reserves to the applicable Recovery Fund for holders of Allowed Claims against such Recovery Fund to the extent that, as a result of resolving Disputed Claims, the funds in such Disputed Claims Reserve are greater than the total amounts required for such Disputed Claims Reserves pursuant to Section 6.3 of this Plan. The Liquidating Trustee shall make Distributions on the Periodic Distribution Dates from the applicable Recovery Fund to the holders of Allowed Claims in accordance with Article IV of this Plan.

6.5 Date of Distributions.

In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

6.6 Disbursing Agent.

All Distributions under the Plan by the Insys Liquidation Trust or the Victims Restitution Trust shall be made by the Disbursing Agent on and after the Effective Date as provided herein. The Disbursing Agent shall be deemed to hold all property to be distributed under this Plan in trust for the Persons entitled to receive the same. The Disbursing Agent shall not hold an economic or beneficial interest in the property to be distributed under this Plan. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties.

6.7 Rights and Powers of Disbursing Agent.

The Disbursing Agent shall be empowered to (i) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under

the Plan, (ii) make all Distributions contemplated by the Plan, (iii) employ professionals to represent it with respect to its responsibilities, and (iv) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions of the Plan.

The Disbursing Agent shall only be required to act and make Distributions in accordance with the terms of the Plan and the applicable Trust Agreement and shall have no liability for actions taken in accordance with the Plan and the applicable Trust Agreement or in reliance upon information provided to it in accordance with the Plan or obligation or liability for Distributions under the Plan to any party who does not hold an Allowed Claim at the time of Distribution or who does not otherwise comply with the terms of the Plan; *provided, however*, that the foregoing shall not affect the liability that otherwise would result from any such act or omission to the extent such act or omission is determined by a Final Order to have constituted willful misconduct, gross negligence, intentional fraud, or criminal conduct of any such Person.

6.8 Expenses of Disbursing Agent.

Except as otherwise ordered by the Bankruptcy Court, any reasonable fees and expenses incurred by the Disbursing Agent on or after the Effective Date shall be paid in Cash by the Insys Liquidation Trust from the ILT Operating Reserve.

6.9 Delivery of Distributions.

Subject to Bankruptcy Rule 9010, all distributions to any holder of an Allowed Claim shall be made at the address of such holder (i) as set forth on the Schedules filed with the Bankruptcy Court or (ii) on the books and records of the Debtors or their agents, as applicable, unless the Debtors or the Liquidating Trustee has been notified in writing of a change of address, including, without limitation, by filing of a proof of Claim by such holder that contains an address for such holder that is different than the address of such holder as set forth in the Schedules.

6.10 Undeliverable and Unclaimed Distributions.

In the event that any Distribution to any holder of an Allowed Claim is returned as undeliverable, no distribution to such holder shall be made unless and until the Disbursing Agent has been notified of the then-current address of such holder, at which time or as soon as reasonably practicable thereafter such distribution shall be made to such holder without interest; *provided, however*, that all Distributions under the Plan that are unclaimed for a period of six (6) months after the Distribution thereof shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and revert in either the Insys Liquidation Trust or the Victims Restitution Trust, as applicable, and any entitlement of any holder of any Claims to such Distributions shall be extinguished and forever barred.

6.11 Distribution Record Date.

As of the close of business on the Distribution Record Date, the Claims register shall be closed. The Liquidating Trustee shall have no obligation to recognize any

transfer of any such Claims occurring after the close of business on the Distribution Record Date and shall instead be entitled to recognize and deal, for all purposes under the Plan, with only those holders of record as of the close of business on the Distribution Record Date.

6.12 Manner of Payment under Plan.

At the option of the Disbursing Agent, any Cash payment to be made pursuant to the Plan may be made by a check or wire transfer or as otherwise required or provided in the applicable Trust Agreement.

6.13 Minimum Cash Distributions.

The Disbursing Agent shall not be required to make any Distributions of Cash less than \$100, or such lower amount as determined by the Disbursing Agent in accordance with the applicable Trust Agreement, to any holder of an Allowed Claim; *provided, however*, that if any Distribution is not made pursuant to this Section, such Distribution shall be added to any subsequent Distribution to be made on behalf of the holder's Allowed Claims. The Disbursing Agent shall not be required to make any final Distribution of Cash less than \$25 to any holder of an Allowed Claim. If the amount of any final Distribution to any holder of Allowed Claims would be \$25 or less, then such Distribution shall be made available for distribution to all holders of Allowed Claims receiving final Distributions of at least \$25. Estate Distributable Value in the ILT Recovery Fund and Products Liability Insurance Proceeds in the VRT Recovery Fund after all final Distributions to holders of the applicable Allowed Claims have been made in accordance with the Plan shall be distributed to a charity to be selected by the Liquidating Trustee in accordance with *cy pres* principles.

6.14 Setoffs and Recoupment.

Subject to Section 2.2 and Sections 10.4 through 10.7 of the Plan, the Liquidating Trustee may, but shall not be required to, setoff against, or recoup from, any Claim and from any payments to be made pursuant to the Plan with respect to such Claim any claims of any nature whatsoever (to the extent permitted by applicable law) that the Debtors or the Liquidating Debtors may have against the claimant, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors, the Liquidating Debtors, or the Liquidating Trustee of any such Claim it may have against such claimant.

6.15 Distributions after Effective Date.

Distributions made after the Effective Date to holders of Disputed Claims that are not Allowed Claims as of the Effective Date, but which later become Allowed Claims, shall be deemed to have been made on the Effective Date.

6.16 Interest and Penalties on Claims.

Unless otherwise provided for in the Plan, the Confirmation Order, or required by applicable bankruptcy law, no holder of a Claim shall be entitled to interest accruing on or after the Petition Date or penalties on any Claim. Any such interest or penalty component

of any such Claims, if Allowed, shall be paid only in accordance with section 726(b) of the Bankruptcy Code.

6.17 Allocation of Distributions between Principal and Interest.

Except as otherwise required by law (as reasonably determined by the Liquidating Trustee), distributions with respect to any Allowed Claims shall be allocated first to the principal amount of such Allowed Claims (as determined for U.S. federal income tax purposes) and, thereafter, to the remaining portion of such Allowed Claim, if any.

6.18 No Distribution in Excess of Amount of Allowed Claim.

Notwithstanding anything to the contrary in this Plan, no holder of an Allowed Claim shall receive, on account of such Allowed Claim, Distributions in excess of the Allowed amount of such Claim when combined with amounts received by such holders from other sources.

6.19 Satisfaction of Claims.

Unless otherwise provided herein, the Distributions and deliveries to be made on account of Allowed Claims under this Plan shall, in the aggregate, be in complete and final satisfaction, settlement, and discharge of, and exchange for, such Allowed Claims.

6.20 Withholding and Reporting Requirements.

(a) **Withholding Rights.** In connection with the Plan, and all instruments or Interests issued in connection therewith and in consideration thereof, any party issuing any instrument or making any distribution described in the Plan shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all distributions pursuant to the Plan and all related agreements shall be subject to any such withholding or reporting requirements. In the case of a non-Cash distribution that is subject to withholding, the distributing party may withhold an appropriate portion of such distributed property and either (i) sell such withheld property to generate Cash necessary to pay over the withholding tax (or reimburse the distributing party for any advance payment of the withholding tax), or (ii) pay the withholding tax using its own funds and retain such withheld property. Any amounts withheld pursuant to the preceding sentence shall be deemed to have been distributed to, and received by, the applicable recipient for all purposes of the Plan. Notwithstanding the foregoing, each holder of an Allowed Claim or any other Person that receives a distribution pursuant to the Plan shall have responsibility for any taxes imposed by any Governmental Unit, including, without limitation, income, withholding, and other taxes, on account of such distribution. In the event that any party issues any instrument or makes any non-Cash distribution pursuant to the Plan that is subject to withholding tax and such issuing or distributing party has not sold such withheld property to generate Cash to pay the withholding tax, or paid the withholding tax using its own funds and retains such withheld property as described above, such issuing or distributing party has the right, but not the obligation, to not make a distribution until such holder has made arrangements reasonably satisfactory to such issuing or disbursing party for payment of any such tax obligations.

(b) **Forms.** Any party entitled to receive any property as an issuance or Distribution under the Plan shall, upon request, deliver to the Disbursing Agent or such other Person designated by the Liquidating Debtors, the Liquidating Trustee, the ILT Claims Arbiter, or the VRT Claims Administrator (which Person shall subsequently deliver to the Disbursing Agent or such other Person any applicable IRS Form W-8 or Form W-9 received) an appropriate Form W-9 or Form W-8, as applicable, and any other forms or documents reasonably requested by the Liquidating Debtors, the Liquidating Trustee, the ILT Claims Arbiter, or the VRT Claims Administrator to reduce or eliminate any withholding required by any federal, state, or local taxing authority. If any such request is made by the Liquidating Debtors, the Liquidating Trustee, the ILT Claims Arbiter, or the VRT Claims Administrator, the Disbursing Agent, or such other Person designated by the Liquidating Debtors, the Liquidating Trustee, the ILT Claims Arbiter, or the VRT Administrator, and the holder fails to comply before the date that is three hundred sixty-five (365) calendar days after the request is made, the amount of such Distribution shall irrevocably revert to the applicable Trust and any Claim with respect to such Distribution shall be discharged and forever barred from assertion against the applicable Trust or its property.

(c) **Obligation.** Notwithstanding the above, each holder of an Allowed Claim that is to receive a Distribution under this Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such holder by any Governmental Unit, including income, withholding, and other tax obligations, on account of such distribution.

ARTICLE VII PROCEDURES FOR DISPUTED CLAIMS.

7.1 Claim Objections.

On or after the Effective Date, objections to Claims against the Debtors may be interposed and prosecuted only by the Liquidating Trustee, the ILT Claims Arbiter, or the VRT Claims Administrator, as applicable. Except as otherwise provided in Section 2.2 of this Plan with respect to Administrative Expense Claims, any objections to Claims shall be served on the respective Claim holder and filed with the Bankruptcy Court (i) on or before one hundred twenty (120) days following the later of (a) the Effective Date and (b) the date that a proof of Claim is filed or amended or a Claim is otherwise asserted or amended in writing by or on behalf of a holder of such Claim, or (ii) on such later date as may be fixed by the Bankruptcy Court. Notwithstanding the remainder of this Section, the VRT Claims Administrator shall resolve Personal Injury Claims in accordance with [the Claims Analysis Protocol and] this Plan.

7.2 No Distribution Pending Allowance.

Notwithstanding any other provision in the Plan, if any portion of a Claim is Disputed, no payment or Distribution provided under the Plan shall be made on account of such Claim unless and until such Disputed Claim becomes an Allowed Claim.

7.3 Estimation of Claims.

The Liquidating Trustee may, at any time, request that the Bankruptcy Court estimate, pursuant to section 502(c) of the Bankruptcy Code, any Disputed Claim, other

than a Personal Injury Claim or a Claim subject to determination by the ILT Claims Arbiter, that the Bankruptcy Court has jurisdiction to estimate in accordance with the Bankruptcy Code or other applicable law regardless of whether an objection was previously filed with the Bankruptcy Court with respect to such Claim, or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. If the Bankruptcy Court estimates a Disputed Claim, that estimated amount shall constitute either the Allowed amount of such Claim, the amount used to determine the Disputed Claims Reserve, or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Liquidating Trustee may elect to pursue any supplemental proceeding to object to any ultimate Distribution on account of such Claim.

7.4 Distribution after Allowance.

On the first Distribution Date following the date on which a Disputed Claim becomes an Allowed Claim against a Debtor, the Disbursing Agent shall remit to the respective Recovery Fund, for Distribution to the holder of such Allowed Claim, the Cash or Cash equivalents retained in the applicable Disputed Claims Reserve in an amount equal to the amount that would have been distributed to the holder of such Claim from the Effective Date through and including the Distribution Date had such Claim been Allowed as of the Effective Date (net of any costs and expenses, including taxes, of the applicable Disputed Claims Reserve).

7.5 Resolution of Claims.

Except as expressly provided herein or in any order entered in the Chapter 11 Cases before the Effective Date, including the Confirmation Order, the Trusts, Liquidating Trustee, the ILT Claims Arbiter, and the VRT Claims Administrator (on or after the date(s) upon which each Trust is established) shall have and retain any and all rights and defenses held by the Debtors with respect to any Claim as of the Petition Date. On and after the date(s) upon which the Trusts are established, in accordance with the Plan and the Trust Agreements, the Liquidating Trustee shall have the authority to compromise, settle, otherwise resolve, or withdraw any objections to Claims (other than Personal Injury Claims) against the Debtors and the Liquidating Debtors and to compromise, settle, or otherwise resolve any Disputed Claims (other than Personal Injury Claims) without approval of the Bankruptcy Court. The VRT Claims Administrator shall have the sole authority to resolve Personal Injury Claims [in accordance with the Claims Analysis Protocol], without approval of the Bankruptcy Court. If the Liquidating Trustee and a holder of a Disputed Claim are unable to reach a settlement on the Disputed Claim, such Disputed Claim shall be submitted to the Bankruptcy Court for resolution. If any holder of a Personal Injury Claim disputes the decision made by the VRT Claims Administrator with respect to the allowance of its Claim, such holder shall have thirty (30) days to submit any new facts, information, or evidence to the VRT Claims Administrator, and the VRT Claims Administrator shall consider any such new facts, information, or evidence, after which the VRT Claims Administrator will make a final determination, which shall be binding.

7.6 Property Held in Disputed Claims Reserves.

Each holder of a Disputed Claim that ultimately becomes an Allowed Claim shall have recourse only to the undistributed applicable Available Cash held in the Disputed Claims Reserves for satisfaction of the Distributions to which holders of Allowed Claims are entitled under the Plan (net of any costs and expenses, including taxes, of the applicable Disputed Claims Reserve), and not against the Debtors, the Liquidating Debtors, their property (including reserves), or any assets previously distributed on account of any Allowed Claim.

7.7 Claims Resolution Procedures Cumulative.

All of the objection, estimation, settlement, and resolution procedures set forth in this Plan are intended to be cumulative and not exclusive of one another. Claims may be established and subsequently settled, compromised, withdrawn, or resolved in accordance with this Plan by any mechanism approved by the Bankruptcy Court.

7.8 No Postpetition Interest.

Unless otherwise specifically provided for in the Plan, the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claims, and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. Interest shall not accrue or be paid upon any Disputed Claim with respect to the period from the Effective Date to the date a Distribution is made thereon, on and after such Disputed Claim becomes an Allowed Claim.

ARTICLE VIII EXECUTORY CONTRACTS AND UNEXPIRED LEASES.

8.1 Assumption and Rejection of Executory Contracts and Unexpired Leases.

(a) As of and subject to the occurrence of the Effective Date, except as otherwise provided in the Plan, each executory contract and unexpired lease of the Debtors not previously assumed, rejected, or assumed and assigned by the Debtors during the Chapter 11 Cases shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such executory contract or unexpired lease: (i) is listed on the Schedule of Assumed and Assigned Contracts, (ii) as of the Effective Date is subject to a pending motion to assume, reject, or assume and assign such executory contract or unexpired lease, or (iii) is a contract, instrument, release, or other agreement or document entered into in connection with the Plan.

(b) Subject to the occurrence of the Effective Date, the payment of any applicable Cure Amount, and the resolution of any Cure Dispute, the entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of the rejections, assumptions, and assumptions and assignments provided for in any Solicitation Procedures Order and in this Plan pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Unless otherwise indicated or provided in a separate order of the Bankruptcy Court, rejections or assumptions or assumptions and assignments of executory contracts and unexpired leases pursuant to any

Solicitation Procedures Order and this Plan are effective as of the Effective Date. Each executory contract and unexpired lease assumed pursuant to this Plan or by order of the Bankruptcy Court shall be assigned to a Trust on the date such Trust is established or as soon as reasonably practicable thereafter, and shall vest in, and be fully enforceable by, the applicable Trust in accordance with its terms, except as modified by the provisions of this Plan, any order of the Bankruptcy Court authorizing and providing for its assumption, or applicable law.

(c) Unless otherwise provided herein or by separate order of the Bankruptcy Court, each executory contract and unexpired lease that is assumed or assumed and assigned shall include any and all modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects such executory contract or unexpired lease, without regard to whether such agreement, instrument, or other document is listed in the Schedule of Assumed and Assigned Contracts.

(d) Except as otherwise expressly set forth on the Schedule of Assumed and Assigned Contracts, any contracts, engagement letters, retention agreements, and similar arrangements, in each case between the Debtors and any attorneys, accountants, financial advisors, investment bankers, or similar professionals, representatives, or advisors, have not been included on the Schedule of Assumed and Assigned Contracts and shall not be treated under the Plan as executory contracts subject to assumption, assumption and assignment, or rejection. Counterparties to any such contracts, engagement letters, retention agreements, and similar arrangements were required to file proofs of claim by the General Bar Date (as defined in the Bar Date Order) and any Allowed Claims relating thereto shall be treated as Allowed Trade and Other Unsecured Claims in Class 3.

8.2 Determination of Cure Disputes and Deemed Consent.

(a) The Debtors shall file and serve on all required parties, in accordance with any Solicitation Procedures Order, the Schedule of Assumed and Assigned Contracts no later than thirty (30) days prior to the Confirmation Hearing. If a counterparty to an executory contract or unexpired lease is not listed on such Schedule of Assumed and Assigned Contracts, the proposed Claim Cure for such executory contract or unexpired lease shall be deemed to be zero dollars (\$0); *provided, however*, that the foregoing shall not apply to those counterparties not listed on the Schedule of Assumed and Assigned Contracts that otherwise file a proof of Claim with the Bankruptcy Court.

(b) Any counterparty to an executory contract or unexpired lease shall have the time prescribed by any Solicitation Procedures Order to object to the Cure Claims listed on the notice and to adequate assurance of future performance by the applicable Trust.

(c) To the extent a Cure Dispute is asserted in an objection filed in accordance with any Solicitation Procedures Order, such Cure Dispute shall be scheduled for a hearing by the Bankruptcy Court. Following resolution of a Cure Dispute by Final Order of the Bankruptcy Court, the applicable contract or lease shall be deemed assumed effective as of the Effective Date; *provided, however*, if any Claim subject to a Cure Dispute is Allowed in an amount greater than the Cure Amount for such Claim listed on the Schedule of Assumed and

Assigned Contracts, the Debtors reserve the right to reject such executory contract or unexpired lease for a period of seven (7) Business Days following entry of a Final Order of the Bankruptcy Court resolving the applicable Cure Dispute by filing a notice indicating such rejection with the Bankruptcy Court.

(d) To the extent any Cure Dispute with respect to an Assumed and Assigned Contract has not been resolved prior to the Effective Date, the Debtors shall establish the Disputed Cure Claims Reserve. Any amounts remaining in the Disputed Cure Claims Reserve after the resolution and payment, if applicable, of all Disputed Cure Claims with respect to the Assumed and Assigned Contracts, shall be included in the Priority Reserve.

(e) To the extent an objection is not timely filed and properly served on the Debtors with respect to a Cure Dispute, then the counterparty to the applicable contract or lease shall be deemed to have assented to (i) the Cure Amount proposed by the Debtors and (ii) the assumption of such contract or lease, notwithstanding any provision thereof that (a) prohibits, restricts, or conditions the transfer or assignment of such contract or lease, or (b) terminates or permits the termination of a contract or lease as a result of any direct or indirect transfer or assignment of the rights of the Debtors under such contract or lease or a change in the ownership or control as contemplated by the Plan, and shall forever be barred and enjoined from asserting such objection against the Debtors or terminating or modifying such contract or lease on account of transactions contemplated by the Plan.

(f) With respect to payment of any Cure Amounts or Cure Disputes, neither the Debtors, the Trusts, nor the Disbursing Agent shall have any obligation to recognize or deal with any party other than the non-Debtor party to the applicable executory contract or unexpired lease, even if such non-Debtor party has sold, assigned, or otherwise transferred its Cure Claim.

8.3 Payments Related to Assumption of Contracts and Leases.

(a) Subject to resolution of any Cure Dispute, any monetary amounts by which any Assumed and Assigned Contract is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtors or the Trusts, as the case may be, upon assumption thereof.

(b) Assumption and assignment of any Assumed and Assigned Contract pursuant to the Plan, or otherwise, shall result in the full release and satisfaction of any Claims or defaults, subject to satisfaction of the Cure Amount, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed executory contract or unexpired lease at any time before the effective date of assumption and/or assignment. Any proofs of Claim filed with respect to an executory contract or unexpired lease that has been assumed shall be deemed Disallowed and expunged, without further notice, or action, order or approval of the Bankruptcy Court or any other Person.

8.4 Rejection Claims.

In the event that the rejection of an executory contract or unexpired lease by any of the Debtors herein results in damages to the other party or parties to such contract or lease, any Claim for such damages, if not heretofore evidenced by a timely filed proof of Claim, shall be forever barred and shall not be enforceable against the Debtors or their Estates, properties or interests in property, unless a proof of Claim is filed with the Bankruptcy Court and served upon the Debtors no later than thirty (30) days after the later of (i) the Confirmation Date and (ii) the effective date of the rejection of such executory contract or unexpired lease. Any such Claims, to the extent Allowed, shall be classified as Trade and Other Unsecured Claims in Class 3. The Confirmation Order shall constitute the Bankruptcy Court's approval of the rejection of all the leases and contracts that are rejected as of the Effective Date.

8.5 Survival of Debtors' Indemnification Obligations.

Any obligations of the Debtors pursuant to their corporate charters, by-laws, limited liability company agreements, memorandum and articles of association, or other organizational documents and agreements to indemnify officers, directors, agents, or employees of the Debtors as of the Effective Date with respect to all present and future actions, suits, and proceedings against the Debtors or such officers, directors, agents, or employees based upon any act or omission for, or on behalf of, the Debtors shall not be discharged, impaired, or otherwise affected by this Plan; *provided, however*, that the Debtors shall not indemnify any Person for any Claims or Causes of Action alleging any act or omission that would constitute a criminal act or fraud, gross negligence, breach of fiduciary duty, or willful misconduct. All such obligations that are assumed and assigned to the Insys Liquidation Trust shall be deemed and treated as Assumed and Assigned Contracts under this Plan. Any Claim based on the Debtors' obligations herein shall not be a Disputed Claim or subject to any objection, in either case, by reason of section 502(e)(1)(B) of the Bankruptcy Code.

8.6 Compensation and Benefit Plans.

Except with respect to any benefit plans, policies, or programs (i) for which the Debtors have received approval of the Bankruptcy Court to reject or terminate on or before the Effective Date or (ii) that are subject to a pending motion to reject or terminate as of the Confirmation Hearing, all employment and severance policies, and all compensation and benefit plans, policies, and programs of the Debtors applicable to their respective employees, and non-employee directors, including all savings plans, retirement plans, healthcare plans, disability plans, severance benefit plans, incentive and bonus plans, and life and accidental death and dismemberment insurance plans, are deemed to be, and shall be treated as, executory contracts under this Plan and, on the Effective Date, shall be rejected by the Debtors pursuant to sections 365 and 1123 of the Bankruptcy Code.

Any employment and severance policies; compensation and benefit plans, policies, and programs; or life and accidental death and dismemberment insurance plans relating or provided to a former employee of the Debtors who is retired as of the Effective Date shall be rejected with respect to such former employee except to the extent prohibited by section 1114 of the Bankruptcy Code.

8.7 Insurance Policies.

On or prior to the Effective Date, the Debtors may fund an upfront premium payment to purchase “tail insurance” to continue the Debtors’ existing directors’ and officers’ insurance. All insurance policies to which any Debtor is a party as of the Effective Date shall be deemed to be and treated as Assumed and Assigned Contracts, and shall vest in the Insys Liquidation Trust (other than the Products Liability Insurance Policies, which will vest in the Victims Restitution Trust) and continue in full force and effect thereafter in accordance with their respective terms.

8.8 Reservation of Rights.

(a) Neither the exclusion nor the inclusion by the Debtors of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Supplement, nor anything contained in this Plan, shall constitute an admission by the Debtors that any such contract or lease is or is not an executory contract or unexpired lease or that the Debtors have any liability thereunder.

(b) Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtors under any executory or non-executory contract or unexpired lease.

(c) Nothing in this Plan shall increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtors under any executory or non-executory contract or unexpired or expired lease, including the Insurance Policies.

(d) If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of its assumption under this Plan, the Debtors shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

ARTICLE IX CONDITIONS PRECEDENT TO CONFIRMATION OF THE PLAN AND THE OCCURRENCE OF THE EFFECTIVE DATE.

9.1 Conditions Precedent to Confirmation.

Confirmation of the Plan shall not occur unless all of the following conditions precedent have been satisfied:

(a) the Court shall have entered the Confirmation Order in form and substance reasonably acceptable to the Debtors and the Creditors’ Committee;

(b) the Confirmation Order shall include a finding by the Bankruptcy Court that the Trust Assets shall be vested in the applicable Trust free and clear of all Claims, Interests, Liens, other encumbrances, and liabilities of any kind, including rights or claims based on any successor or transferee liabilities; and

(c) the Plan and the Plan Supplement, including any schedules, documents, supplements and exhibits thereto, shall (i) be in form and substance reasonably acceptable to the Debtors and the Creditors' Committee and (ii) consistent with the other provisions of this Plan.

9.2 Conditions Precedent to Effective Date.

The Effective Date shall not occur unless all of the following conditions precedent have been satisfied:

(a) entry of the Confirmation Order by the Bankruptcy Court and such Confirmation Order has not been stayed, modified, or vacated on appeal;

(b) all conditions precedent to the consummation of the Trust Formation Transactions (other than effectiveness of the Plan) have been satisfied or waived by the party or parties entitled to waive them in accordance with the terms of the Trust Agreements;

(c) the Trust Agreements shall become effective in accordance with the terms of this Plan;

(d) the Priority Reserve, the Professional Fee Escrow Account, and the Trust Operating Reserves shall be fully funded;

(e) the Debtors shall have obtained all authorizations, consents, regulatory approvals, ruling, or documents that are necessary to implement and effectuate the Plan;

(f) all actions, documents, and agreements necessary to implement and effectuate the Plan shall have been effected or executed; and

(g) all professional fees and expenses approved by the Bankruptcy Court shall have been paid in full or amounts sufficient to pay such fees and expenses after the Effective Date have been placed in the Professional Fee Escrow Account, or otherwise contained in a professional fee retainer, pending approval by the Bankruptcy Court;

9.3 Waiver of Conditions Precedent.

(a) Each of the conditions precedent to confirmation of the Plan and the occurrence of the Effective Date may be waived subject to the written consent, which shall not be unreasonably withheld, of the Debtors or the Liquidating Debtors (as applicable) and the Creditors' Committee. If any such condition precedent is waived pursuant to this Section and the Effective Date occurs, each party agreeing to waive such condition precedent shall be estopped from withdrawing such waiver after the Effective Date or otherwise challenging the occurrence of the Effective Date on the basis that such condition was not satisfied, and the waiver of such condition precedent shall benefit from the "equitable mootness" doctrine.

(b) The stay of the Confirmation Order pursuant to Bankruptcy Rule 3020(e) shall be deemed waived by and upon entry of the Confirmation Order, and the Confirmation Order shall take effect immediately upon its entry.

ARTICLE X EFFECT OF CONFIRMATION.

10.1 Binding Effect.

Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code, and subject to the occurrence of the Effective Date, on and after the entry of the Confirmation Order, the provisions of this Plan shall bind every holder of a Claim against or Interest in any Debtor and inure to the benefit of, and be binding on, such holder's respective successors and assigns, regardless of whether the Claim or Interest of such holder is impaired under this Plan and whether such holder has accepted this Plan.

10.2 Pre-Confirmation Injunctions and Stays.

Unless otherwise provided in this Plan, all injunctions and stays arising under or entered during the Chapter 11 Cases, whether under sections 105 or 362 of the Bankruptcy Code or otherwise, and in existence on the date of entry of the Confirmation Order, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay. The restrictions imposed by the Stock Restrictions Order shall remain in full force and effect following the Effective Date, and for periods on and after the Effective Date, the term Common Stock as used therein shall also include the Parent Equity Interest.

10.3 Injunction against Interference with Plan.

Upon entry of the Confirmation Order, all holders of Claims and Interests shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

10.4 [Plan Injunction].⁹

(a) Except as otherwise provided in this Plan or in the Confirmation Order, as of the entry of the Confirmation Order but subject to the occurrence of the Effective Date, to the maximum extent permitted under applicable law, all Persons who have held, hold, or may hold Claims or Interests are, with respect to any such Claim or Interest, permanently enjoined after the entry of the Confirmation Order from: (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative, or other forum) against or affecting, directly or indirectly, a Debtor or an Estate or the property of any of the foregoing, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Parties mentioned in this Subsection (i) or any property of any such transferee or successor; (ii) enforcing, levying, attaching (including any prejudgment

⁹ As of the date of filing, the Creditors' Committee and the Settling Creditors do not support this provision, but are still considering.

attachment), collecting, or otherwise recovering in any manner or by any means, whether directly or indirectly, any judgment, award, decree, or order against a Debtor or an Estate or its property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Parties mentioned in this Subsection (ii) or any property of any such transferee or successor; (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against a Debtor or an Estate or any of its property, or any direct or indirect transferee of any property of, or successor in interest to, any of the foregoing Persons mentioned in this Subsection (iii) or any property of any such transferee or successor; (iv) acting or proceeding in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of this Plan; and (v) commencing or continuing, in any manner or in any place, any action that does not comply, or is inconsistent, with the provisions of this Plan; *provided, however*, that nothing contained herein shall preclude such Parties who have held, hold, or may hold Claims against or Interests in a Debtor or an Estate from exercising their rights, or obtaining benefits, pursuant to, and consistent with, the terms of this Plan and the Plan Documents.

(b) All Persons, including all governmental, tax, and regulatory authorities, lenders, trade creditors, dealers, customers, employees, litigation claimants, and other creditors, holding Claims, Liens, Interests, charges, encumbrances, and other interests of any kind or nature whatsoever, including rights or Claims based on any successor or transferee liability, against or in a Debtor or the Trust Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, known or unknown), arising under or out of, in connection with, or in any way relating to the Debtors, the Trust Assets, the operation of the Trust Assets prior to the Effective Date, or the Trust Formation Transactions, are forever barred, estopped, and permanently enjoined from asserting against the Released Parties, their respective successors and assigns, their property or the Trust Assets, such Person's Claims, Interests, Liens, charges, encumbrances, and other interests (including rights or Claims based on any successor or transferee liability), including, without limitation, by: (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative, or other forum) against or affecting, directly or indirectly, a Released Party, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Persons mentioned in this Subsection (i) or any property of any such transferee or successor; (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering in any manner or by any means, whether directly or indirectly, any judgment, award, decree, or order against a Released Party, or any direct or indirect transferee of any property of, or direct or indirect successor-in-interest to, any of the foregoing Persons mentioned in this Subsection (ii) or any property of any such transferee or successor; (iii) creating, perfecting, or otherwise enforcing any encumbrance of any kind or asserting any Released Claims in any manner, directly or indirectly, against a Released Party or any of its property, or any direct or indirect transferee of any property of, or successor in interest to, any of the foregoing Persons mentioned in this Subsection (iii) or any property of any such transferee or successor; (iv) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of this Plan; and (v) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of this Plan.

(c) By accepting Distributions pursuant to this Plan, each holder of an Allowed Claim or Allowed Interest shall be bound by this Plan, including the injunctions set forth in this Section.]

10.5 [Releases.

(a) Releases by Debtors.¹⁰

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, including, without limitation, the service of the Released Parties before and during the Chapter 11 Cases to facilitate the liquidation of the Debtors and the implementation of the Trust Formation Transactions, and except as otherwise explicitly provided in the Plan or in the Confirmation Order, the Released Parties shall be deemed conclusively, absolutely, unconditionally, irrevocably and forever released and discharged, to the maximum extent permitted by law, as such law may be extended subsequent to the Effective Date, by the Debtors and the Estates from any and all Claims, counterclaims, disputes, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, Liens, remedies, losses, contributions, indemnities, costs, liabilities, attorneys' fees and expenses whatsoever, including any derivative claims, asserted or assertable on behalf of the Debtors or their Estates (including any Causes of Action arising under chapter 5 of the Bankruptcy Code), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, existing or hereinafter arising, whether in law or equity, whether sounding in tort or contract, whether arising under federal or state statutory or common law, or any other applicable international, foreign, or domestic law, rule, statute, regulation, treaty, right, duty, requirement or otherwise, that the Debtors or their Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, their Estates, the Chapter 11 Cases, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party (including the exercise of any common law or contractual rights of setoff or recoupment by any Released Party at any time on or prior to the Effective Date), the Trust Formation Transactions, the restructuring of any Claim or Interest before or during the Chapter 11 Cases, the Disclosure Statement, the Plan, and related agreements, instruments, and other documents, and the negotiation, formulation, preparation or implementation thereof, the solicitation of votes with respect to the Plan, or any other act or omission, other than Claims or Causes of Action arising out of, or related to, any act or omission of a Released Party that is a criminal act or constitutes fraud, gross negligence, or willful misconduct; *provided, however*, that the Debtors do not release, and the Insys Liquidation Trust shall retain, Causes of Action against current or former employees of the Debtors related to breaches, if any, of key employee retention plan agreements entered into between the Debtors and certain of their employees prior to the Petition Date. The Debtors, the Trusts, and any other newly-formed entities that shall be continuing the Debtors'

¹⁰ As of the date of filing, the Creditors' Committee and the Settling Creditors do not support this provision, but are still considering.

businesses after the Effective Date shall be bound, to the same extent the Debtors are bound, by the releases and discharges set forth in this Section.

(b) Releases by Holders of Claims and Interests.¹¹

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, including, without limitation, the service of the Released Parties before and during the Chapter 11 Cases to facilitate the liquidation of the Debtors and the implementation of the Trust Formation Transactions, and except as otherwise explicitly provided in the Plan or in the Confirmation Order, the Released Parties shall be deemed conclusively, absolutely, unconditionally, irrevocably and forever released and discharged, to the maximum extent permitted by law, as such law may be extended subsequent to the Effective Date, except as otherwise explicitly provided herein, by (i) the holders of all Claims who vote to accept the Plan, (ii) the holders of all Claims that are Unimpaired under the Plan, (iii) the holders of all Claims whose vote to accept or reject the Plan is solicited but who do not vote either to accept or to reject the Plan, (iv) the holders of all Claims or Interests who vote, or are deemed, to reject the Plan but do not opt out of granting the releases set forth herein, (v) the holders of all Claims and Interests who were given notice of the opportunity to opt out of granting the releases set forth herein but did not opt out, and (vi) all other holders of Claims and Interests to the maximum extent permitted by law, in each case from any and all Claims, counterclaims, disputes, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, Liens, remedies, losses, contributions, indemnities, costs, liabilities, attorneys' fees and expenses whatsoever, including any derivative claims, asserted or assertable on behalf of the Debtors or their Estates (including any Causes of Action arising under chapter 5 of the Bankruptcy Code), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, existing or hereinafter arising, whether in law or equity, whether sounding in tort or contract, whether arising under federal or state statutory or common law, or any other applicable international, foreign, or domestic law, rule, statute, regulation, treaty, right, duty, requirement or otherwise, that such holders or their estates, affiliates, heirs, executors, administrators, successors, assigns, managers, accountants, attorneys, representatives, consultants, agents, and any other Persons or parties claiming under or through them would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtors or their Estates, the Chapter 11 Cases, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements or interactions between any Debtor and any Released Party (including the exercise of any common law or contractual rights of setoff or recoupment by any Released Party at any time on or prior to the Effective Date), the Trust Formation Transactions, the restructuring of any Claim or Interest before or during the Chapter 11 Cases, the Disclosure Statement, the Plan and related agreements, instruments, and other documents, and the negotiation, formulation, preparation or implementation thereof, the solicitation of votes with respect to the Plan, or any other act or

¹¹ As of the date of filing, the Creditors' Committee and the Settling Creditors do not support this provision, but are still considering.

omission, other than Claims or Causes of Action arising out of, or related to, any act or omission of a Released Party that constitutes fraud, gross negligence or willful misconduct.]

10.6 [Exculpation].¹²

To the maximum extent permitted by applicable law, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from, any Claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for any Claim in connection with, or arising out of, the administration of the Chapter 11 Cases; the negotiation and pursuit of the Disclosure Statement (including any information provided, or statements made, in the Disclosure Statement or omitted therefrom), the Trust Formation Transactions, the Plan, and the solicitation of votes for, and confirmation of, the Plan; the funding of the Plan; the occurrence of the Effective Date; the administration of the Plan and the property to be distributed under the Plan; the wind-down of the Debtors; the issuance of securities under or in connection with the Plan; and the transactions in furtherance of any of the foregoing; other than Claims or Causes of Action arising out of, or related to, any act or omission of an Exculpated Party that is a criminal act or constitutes fraud, gross negligence, or willful misconduct. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, and any other applicable law or rules protecting such Exculpated Parties from liability.]

10.7 [Injunction Related to Releases and Exculpation].¹³

To the maximum extent permitted under applicable law, the Confirmation Order shall permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively, or otherwise, of any Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, losses, or liabilities released pursuant to this Plan, including, without limitation, the Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, and liabilities released or exculpated in this Plan and the Claims, Interests, Liens, charges, and encumbrances.]

10.8 Subordinated Claims.

The allowance, classification, and treatment of all Allowed Claims and Allowed Interests and the respective distributions and treatments thereof under this Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, sections 510(a), 510(b), or 510(c) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors reserve the right to reclassify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

¹² As of the date of filing, the Creditors' Committee and the Settling Creditors do not support this provision, but are still considering.

¹³ As of the date of filing, the Creditors' Committee and the Settling Creditors do not support this provision, but are still considering.

10.9 Preservation of Causes of Action and Reservation of Rights.

The Insys Liquidation Trust shall have the right to prosecute any and all Causes of Action that have not been waived pursuant to this Plan or purchased by any of the purchasers of the Debtors' Assets. Except as expressly provided in Sections 10.4 through 10.7 of this Plan, nothing contained in this Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, Claims, Causes of Action, rights of setoff or recoupment, or other legal or equitable defenses that the Debtors had immediately before the Effective Date on behalf of the Estates or of themselves in accordance with any provision of the Bankruptcy Code or any applicable nonbankruptcy law. Subject to Sections 10.4 through 10.7 of this Plan, all such Claims, Causes of Action, rights of setoff or recoupment, or other legal or equitable defenses shall be transferred to the Insys Liquidation Trust, which shall have, retain, reserve, and be entitled to assert all such Claims, Causes of Action, rights of setoff, or recoupment, [and other legal or equitable defenses]¹⁴ as fully as if the Chapter 11 Cases had not been commenced, and all of the Debtors' and the Liquidating Debtors' legal and equitable rights with respect to an Unimpaired Claim may be asserted after the Effective Date to the same extent as if the Chapter 11 Cases had not been commenced.

10.10 Ipso Facto and Similar Provisions Ineffective.

Any term of any policy, contract, or other obligation applicable to a Debtor shall be void and of no further force or effect with respect to any Debtor to the extent such policy, contract, or other obligation is conditioned on, creates an obligation of the Debtor as a result of, or gives rise to a right of any Person based on any of the following: (i) the insolvency or financial condition of a Debtor; (ii) the commencement of the Chapter 11 Cases; (iii) the confirmation or consummation of this Plan, including any change of control that shall occur as a result of such consummation; or (iv) the Trust Formation Transactions.

10.11 No Successor Liability.

Except as otherwise expressly provided in this Plan and the Confirmation Order, each of the Trusts (i) is not, and shall not be deemed to assume, agree to perform, pay, or otherwise have any responsibilities for any liabilities or obligations of the Debtors or any other Person relating to or arising out of the operations or the assets of the Debtors on or prior to the Effective Date; (ii) is not, and shall not be, a successor to the Debtors by reason of any theory of law or equity or responsible for the knowledge or conduct of any Debtor prior to the Effective Date; and (iii) shall not have any successor or transferee liability of any kind or character.

10.12 Special Provisions for Governmental Units.

(a) Notwithstanding anything to the contrary herein, nothing in this Plan shall release, bar, or discharge any liability of the Trusts to any Governmental Unit, including any Claim by any state attorney general or similar Governmental Unit enforcing consumer protection laws or any other statutory or common law or principles of equity for any Claim against the Debtors, whenever arising, and nothing in this Plan shall stay or enjoin any

¹⁴ Subject to continuing review.

state attorney general or similar Governmental Unit from enforcing consumer protection laws or any statutory or common law or principles of equity for any Claim, whenever arising, against a Trust. Further, notwithstanding any provision of this Plan, the Trusts are not relieved from any obligations to address or comply with requests or inquiries from any state attorney general or similar Governmental Unit enforcing consumer protection laws. Nothing in the Plan shall be a waiver or other limitation of any Trust's rights, Claims, and defenses with respect to any Claims or other Causes of Action by a Governmental Unit.

(b) Notwithstanding anything to the contrary herein, nothing in the Plan or the Plan Documents:

- (i) discharges, releases, precludes, or enjoins (1) any liability to any Governmental Unit that is not a "claim" as defined in 11 U.S.C. § 101(5); (2) except as otherwise agreed to by a Governmental Unit, any claim of a Governmental Unit arising on or after the Effective Date; (3) any liability to a Governmental Unit under police and regulatory statutes or regulations that any entity would be subject to as the owner or operator of property after the Effective Date; or (4) any liability to a Governmental Unit on the part of any Entity other than the Debtors. Nor shall anything in this Plan enjoin or otherwise bar a Governmental Unit from asserting or enforcing, outside of the Bankruptcy Court, any liability described in the preceding sentence; *provided, however*, that all parties' rights and defenses under non-bankruptcy law with respect to (1)–(4) above are fully preserved;
- (ii) authorizes the transfer or assignment of any governmental (a) license, (b) permit, (c) registration, (d) authorization, or (e) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements and approvals under police or regulatory law;
- (iii) affects any valid setoff or recoupment rights of any Governmental Unit against any of the Debtors; *provided, however*, that the Debtors and the Trusts reserve all of their rights and defenses under applicable nonbankruptcy law with respect thereto; for the avoidance of doubt, nothing in the Plan, the Plan Documents, or the Confirmation Order shall bar the IRS from exercising its nonbankruptcy rights to offset any request for a tax refund for a tax year ending prior to the Petition Date against any prepetition claim of the United States government against any of the Debtors;
- (iv) divests any tribunal of any jurisdiction it may have under police or regulatory law to interpret the Confirmation Order or the Plan or to adjudicate any defense asserted under the Confirmation Order or the Plan; *provided, however*, that the Bankruptcy Court retains jurisdiction as set forth in and pursuant to the terms of the Plan including jurisdiction, but not exclusive jurisdiction, to determine whether

liabilities asserted by any Governmental Unit are discharged or otherwise barred by the Confirmation Order, the Plan, or the Bankruptcy Code;

- (v) shall be interpreted to deem the Trusts the successors to the Debtors under any state or federal law successor liability doctrine with respect to any liabilities under police or regulatory statutes, laws, or regulations, except solely as set forth in Sections 5.8(g) and 5.9(f) of this Plan, or be construed as a waiver by any party of any applicable rights or defenses under non-bankruptcy law or be construed to create, for any Governmental Unit, any substantive right that does not already exist under law.

(c) Notwithstanding anything to the contrary contained herein, nothing in the Plan or Plan Documents shall: (i) grant any relief to any Entity that the Bankruptcy Court is prohibited from granting by the Declaratory Judgment Act, 28 U.S.C. § 2201(a), or the Tax Anti-Injunction Act, 26 U.S.C. § 7421(a); (ii) release or discharge any claim for federal taxes against any Entity other than the Debtors, or enjoin the collection or assessment of such taxes; or (iii) grant the Debtors a release or discharge of any claims for federal taxes except as provided by 11 U.S.C. §§ 524 and 1141(d), or enjoin the collection or assessment of such taxes except as provided by those provisions. Notwithstanding the reservation of rights in the preceding sentence, the Trusts are acquiring the Trust Assets free and clear of all Claims and Interests of creditors, including, without limitation, the IRS and including, for the avoidance of doubt, taxes of the Debtors.

ARTICLE XI RETENTION OF JURISDICTION.

11.1 Retention of Jurisdiction.

(a) The Bankruptcy Court shall retain exclusive jurisdiction of all matters arising under, arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

- (i) to hear and determine applications for the assumption or rejection of executory contracts or unexpired leases and any disputes over Cure Amounts resulting therefrom;
- (ii) to determine any motion, adversary proceeding, application, contested matter, and other litigated matter pending on, or commenced after, entry of the Confirmation Order;
- (iii) to hear and resolve any disputes arising from or related to (i) any orders of the Bankruptcy Court granting relief under Bankruptcy Rule 2004 or (ii) any protective orders entered by the Bankruptcy Court in connection with the foregoing;

- (iv) to ensure that Distributions to holders of Allowed Claims are accomplished as provided in this Plan and the Confirmation Order;
- (v) to consider Claims or the allowance, classification, priority, compromise, estimation, or payment of any Claim, including any Administrative Expense Claim;
- (vi) to enter, implement, or enforce such orders as may be appropriate in the event that the Confirmation Order is, for any reason, stayed, reversed, revoked, modified, or vacated;
- (vii) to issue and enforce injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person with the consummation, implementation, or enforcement of this Plan, the Confirmation Order, or any other order of the Bankruptcy Court;
- (viii) to hear and determine any application to modify this Plan in accordance with section 1127 of the Bankruptcy Code to remedy any defect or omission or reconcile any inconsistency in this Plan, the Disclosure Statement, or any order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof;
- (ix) to hear and determine all Professional Fee Claims;
- (x) to resolve disputes concerning any reserves with respect to Disputed Claims or the administration thereof;
- (xi) to hear and resolve disputes related to the Insurance Rights Transfer, the Insurance Rights, the Products Liability Insurance Rights Transfer, and the Products Liability Insurance Rights to the extent permitted under applicable law;
- (xii) to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Plan, the Confirmation Order, any transactions or payments in furtherance of either, or any agreement, instrument, or other document governing, or related to, any of the foregoing;
- (xiii) to take any action and issue such orders, including any such action or orders as may be necessary after entry of the Confirmation Order or the occurrence of the Effective Date, as may be necessary to construe, enforce, implement, execute, and consummate this Plan, including any release, exculpation, or injunction provisions set forth in this Plan, or to maintain the integrity of this Plan following the occurrence of the Effective Date;

- (xiv) to determine such other matters, and for such other purposes, as may be provided in the Confirmation Order;
- (xv) to hear and determine any other matters related to the Chapter 11 Cases and not inconsistent with the Bankruptcy Code or title 28 of the United States Code;
- (xvi) to resolve any disputes concerning whether a Person had sufficient notice of the Chapter 11 Cases, the Disclosure Statement, any solicitation conducted in connection with the Chapter 11 Cases, any bar date established in the Chapter 11 Cases, or any deadline for responding or objecting to a Cure Amount, in each case, for the purpose for determining whether a Claim or Interest is discharged hereunder or for any other purpose;
- (xvii) to recover all Assets of the Debtors and property of the Estates, wherever located;
- (xviii) to hear and determine all matters relating to the Plan Settlement, to the extent permitted under applicable law; and
- (xix) to enter a final decree closing each of the Chapter 11 Cases.

(b) The Bankruptcy Court shall retain jurisdiction of all matters arising under, arising out of, or related to the Chapter 11 Cases and the Plan to, among other things, hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code (including the expedited determination of taxes under section 505(b) of the Bankruptcy Code).

To the extent that the Bankruptcy Court is not permitted under applicable law to preside over any of the forgoing matters, the reference to the “Bankruptcy Court” in this Article shall be deemed to be replaced by the “District Court.” Notwithstanding anything in this Article to the contrary, the resolution of Non-PI General Unsecured Claims against the Debtors and the forum in which such resolution shall be determined shall be governed by, and in accordance with, the ILT Agreement, and the resolution of Personal Injury Claims against the Debtors and the forum in which such resolution shall be determined shall be governed by, and in accordance with, the VRT Agreement. Nothing contained in this Section shall expand the exclusive jurisdiction of the Bankruptcy Court beyond that provided by applicable law.

ARTICLE XII MISCELLANEOUS PROVISIONS.

12.1 Exemption from Certain Transfer Taxes.

To the maximum extent permitted pursuant to section 1146(a) of the Bankruptcy Code, the assignment or surrender of any lease or sublease, or the delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including any deeds, bills of sale, or assignments, or assignments executed in connection with any disposition of assets contemplated by the Plan (including transfers of assets to and by the

Insys Liquidation Trust and the Victims Restitution Trust) shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales or use tax, mortgage recording tax, or other similar tax or governmental assessment.

12.2 Dates of Actions to Implement Plan.

In the event that any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on or as soon as reasonably practicable after the next succeeding Business Day but shall be deemed to have been completed as of the required date.

12.3 Amendments.

(a) **Plan Modifications.** This Plan may be amended, modified, or supplemented by the Debtors in the manner provided for by section 1127 of the Bankruptcy Code or as otherwise permitted by law, without additional disclosure pursuant to section 1125 of the Bankruptcy Code, except as otherwise ordered by the Bankruptcy Court; *provided, however*, that any such amendments, modifications, or supplements shall be made in accordance with the terms of the Plan Settlement, and shall not be made without the reasonable consent of the Creditors' Committee. In addition, after the Confirmation Date, as long as such action does not materially and adversely affect the treatment of holders of Allowed Claims pursuant to this Plan, the Debtors may remedy any defect or omission or reconcile any inconsistencies in this Plan or the Confirmation Order with respect to such matters as may be necessary to carry out the purposes or effects of this Plan, and any holder of a Claim or Interest that has accepted this Plan shall be deemed to have accepted this Plan as amended, modified, or supplemented.

(b) **Certain Technical Amendments.** Prior to the Effective Date, the Debtors, with the reasonable consent of the Creditors' Committee, may make appropriate technical adjustments and modifications to this Plan without further order or approval of the Bankruptcy Court; *provided, however*, that such technical adjustments and modifications do not adversely affect in a material way the treatment of holders of Claims or Interests under this Plan.

12.4 Revocation or Withdrawal of Plan.

The Debtors reserve the right to revoke or withdraw this Plan prior to the Effective Date as to any or all of the Debtors. If, with respect to a Debtor, this Plan has been revoked or withdrawn prior to the Effective Date, or if confirmation or the occurrence of the Effective Date as to such Debtor does not occur on the Effective Date, then, with respect to such Debtor: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount any Claim or Interest or Class of Claims or Interests), assumption or rejection of executory contracts or unexpired leases affected by this Plan, and any document or agreement executed pursuant to this Plan shall be deemed null and void; and (iii) nothing contained in this Plan shall (a) constitute a waiver or release of any Claim by or against, or any Interest in, such Debtor or any other Person; (b) prejudice in any manner the rights of such Debtor or any other Person; or (c) constitute an admission of any sort by any Debtor or any other Person.

12.5 Payment of Statutory Fees.

All fees payable under section 1930 of chapter 123 of title 28 of the United States Code shall be paid on or before the Effective Date by the Debtors. Quarterly fees owed to the U.S. Trustee shall be paid when due in accordance with applicable law and the Debtors and Liquidating Trustee shall continue to file reports to show the calculation of such fees for the Debtors' Estates until the Chapter 11 Cases are closed under section 350 of the Bankruptcy Code. Each and every one of the Debtors shall remain obligated to pay quarterly fees to the U.S. Trustee until the earliest of that particular Debtor's case is closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

12.6 Severability.

If, prior to entry of the Confirmation Order, any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors (with the reasonable consent of the Creditors' Committee), shall have the power 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 by the Bankruptcy Court, 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 and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with this Section, is valid and enforceable pursuant to its terms.

12.7 Governing Law.

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent that a Plan Document provides otherwise, the rights, duties, and obligations arising under this Plan and the Plan Documents shall be governed by, and construed and enforced in accordance with, the internal laws of the State of New York, without giving effect to the principles of conflicts of laws thereof (other than section 5-1401 and section 5-1402 of the New York General Obligations Law).

12.8 Immediate Binding Effect.

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), 7062, or otherwise, upon the occurrence of the Effective Date, the terms of this Plan and the Plan Documents shall be immediately effective and enforceable and deemed binding upon and inure to the benefit of the Debtors, the holders of Claims and Interests, the Released Parties, and each of their respective successors and assigns.

12.9 Successors and Assigns.

The rights, benefits, and obligations of any Person named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or permitted assign, if any, of each such Person.

12.10 Entire Agreement.

On the Effective Date, this Plan, the Plan Supplement, and the Confirmation Order shall supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations concerning such documents, all of which have become merged and integrated into this Plan.

12.11 Computing Time.

In computing any period of time prescribed or allowed by this Plan, unless otherwise set forth in this Plan or determined by the Bankruptcy Court, the provisions of Bankruptcy Rule 9006 shall apply.

12.12 Exhibits to Plan.

All exhibits, schedules, supplements, and appendices to this Plan (including the Plan Supplement) are incorporated into and are part of this Plan as if set forth in full herein.

12.13 Notices.

All notices, requests, and demands to or upon the Debtors or the Liquidating Debtors, as applicable, shall be in writing (including by facsimile transmission) and, unless otherwise provided herein, shall be deemed to have been duly given or made only when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

INSYS THERAPEUTICS, INC.
410 S. Benson Lane
Chandler, Arizona 85286
Attn: Robert Schwimmer, Esq.

– and –

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Attn: Gary T. Holtzer, Esq., Ronit J. Berkovich, Esq., Candace M. Arthur, Esq.,
and Brenda L. Funk, Esq.
Telephone: (212) 310-8000
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*Attorneys for the Debtors
and Debtors in Possession*

– and –

RICHARDS, LAYTON & FINGER, P.A.
920 N. King Street
Wilmington, Delaware 19801
Attn: John H. Knight (No. 3848) and Paul N. Heath (No. 3704)
Telephone: (302) 651-7700
Facsimile: (302) 651-7701

*Attorneys for the Debtors
and Debtors in Possession*

All notices, requests, and demands to or upon the Creditors' Committee, shall be in writing (including by facsimile transmission) and, unless otherwise provided herein, shall be deemed to have been duly given or made only when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

AKIN GUMP STRAUSS HAUER & FELD LLP
One Bryant Park
New York, NY 10036
Attn: Arik Preis and Mitchell P. Hurley
Email: apreis@akingump.com
Email: mhurley@akingump.com

Attorneys for the Creditors' Committee

– and –

BAYARD, P.A.
600 N. King Street, Suite 400
Wilmington, Delaware 19801
Attn: Justin R. Alberto (No. 5126) and Erin R. Fay (No. 5268)
Email: jalberto@bayardlaw.com
Email: efay@bayardlaw.com

Attorneys for the Creditors' Committee

After the occurrence of the Effective Date, the Liquidating Debtors and the Liquidating Trustee have authority to send a notice to entities providing that to continue to receive documents pursuant to Bankruptcy Rule 2002, such entities must file a renewed request to receive documents pursuant to Bankruptcy Rule 2002; *provided, however*, that the U.S. Trustee need not file such a renewed request and shall continue to receive documents without any further action being necessary. After the occurrence of the Effective Date, the Debtors and the Liquidating Trustee are authorized to limit the list of entities receiving documents pursuant to Bankruptcy Rule 2002 to the U.S. Trustee and those entities that have filed such renewed requests.

12.14 Dissolution of the Creditors' Committee.

On the Effective Date, the Creditors' Committee will dissolve; *provided, however*, that following the Effective Date, the Creditors' Committee shall continue in existence and have standing and a right to be heard for the following limited purposes: (a) for purposes of assisting the Trusts for a limited transitional period of time; (b) applications, and any relief related thereto, for compensation by Professionals and requests for allowance of Administrative Expense Claims; and (c) any appeals of the Confirmation Order or other appeal to which the Creditors' Committee is a party. Upon the dissolution of the Creditors' Committee, the Creditors' Committee and its respective Professionals will cease to have any duty, obligation, or role arising from, or related to, the Chapter 11 Cases and shall be released and discharged from all rights and duties from, or related to, the Chapter 11 Cases.

12.15 Reservation of Rights.

Except as otherwise provided herein, this Plan shall be of no force or effect unless the Bankruptcy Court enters the Confirmation Order. None of the filing of this Plan, any statement or provisions of this Plan, or the taking of any action by the Debtors with respect to this Plan shall be, or deemed to be, an admission or waiver of any rights of the Debtors with respect to any Claim or Interests prior to the Effective Date.

Dated: [●], 2019

By: _____

Name:

Title: Authorized Signatory

**INSYS THERAPEUTICS, INC.
IC OPERATIONS, LLC
INSYS DEVELOPMENT COMPANY, INC.
INSYS MANUFACTURING, LLC
INSYS PHARMA, INC.
IPSC, LLC
IPT 355, LLC**

EXHIBIT B to the Disclosure Statement

Settling Creditors

In re INSYS THERAPEUTICS, INC., et al.
Settling Creditors

Certain Holders of Third Party Pavor Claims and Representatives of All

Holders of Third Party Pavor Claims

Aetna, Inc. and Aetna Health Management LLC
Blue Cross of California, Inc., d/b/a Anthem Blue Cross of California
Anthem Blue Cross Life and Health Insurance Company
Rocky Mountain Hospital and Medical Service, Inc. d/b/a Anthem Blue Cross and Blue Shield of Colorado and Anthem Blue Cross and Blue Shield of Nevada
Anthem Health Plans, Inc., d/b/a Anthem Blue Cross and Blue Shield of Connecticut
Blue Cross and Blue Shield of Georgia, Inc.
Blue Cross and Blue Shield Healthcare Plan of Georgia, Inc.
Anthem Insurance Companies, Inc. d/b/a Anthem Blue Cross and Blue Shield of Indiana
Anthem Health Plans of Kentucky, Inc., d/b/a Anthem Blue Cross and Blue Shield of Kentucky
Anthem Health Plans of Maine, Inc., d/b/a Anthem Blue Cross and Blue Shield of Maine
Anthem Health Plans of New Hampshire, Inc., d/b/a Anthem Blue Cross and Blue Shield of New Hampshire
Empire HealthChoice Assurance, Inc., d/b/a Empire Blue Cross and Blue Shield
Community Insurance Company, d/b/a Anthem Blue Cross and Blue Shield of Ohio
Anthem Health Plans of Virginia, Inc., d/b/a Anthem Blue Cross and Blue Shield of Virginia
HMO Healthkeepers, Inc., d/b/a Anthem Blue Cross and Blue Shield of Virginia
Blue Cross Blue Shield of Wisconsin, d/b/a Anthem Blue Cross and Blue Shield of Wisconsin
Compcare Health Services Insurance Corporation d/b/a Anthem Blue Cross and Blue Shield of Wisconsin
Louisiana Health Services & Indemnity Company, d/b/a Blue Cross Blue Shield of Louisiana
HMO Louisiana, Inc.
Horizon Blue Cross Blue Shield of New Jersey
United HealthCare Services, Inc.

MSP Recovery Claims, Series LLC

Holders of Personal Injury Claims

Angela Mistrulli Cantone
Philip L. Cantone
Cheryl Hartsford
Williams Hemmings
Michael P. Kelley
Julie A. Kelley
Robert Markland
Personal Representative of Carolyn S. Markland, deceased
Morgan Michelle Munson
Christopher Edward Munson
Herbert Tisher
James Starling, Jr.
Pamela Starling
Dorrie Lee Wagner

Representatives of Holders of Hospital Claims

Infirmity Health Hospitals, Inc., Mobile, Alabama
St. Vincent Charity Medical Center, at times d/b/a Rosary Hall, Cleveland, Ohio
Southwest Mississippi Regional Medical Center, McComb, Mississippi
Monroe County Healthcare Authority, d/b/a Monroe County Hospital, Monroeville, Alabama
LifePoint hospitals

Representatives of Holders of Ratepayer Claims

Ronald D. Stracener
F. Kirk Hopkins
Jordan Chu
Amel Eiland
Nadja Streiter
Michael Konig
Eli Medina
Barbara Rivers
Marketing Services of Indiana, Inc.
Glenn Golden
Gretta Golden
Michael Christy
Edward Grace
Debra Dawsey
Darcy Sherman
Kimberley Brand
Lou Sardella
Michael Klodzinski
Kevin Wilk
Heather Enders
Jason Reynolds
MSI Corporation

Deborah Green-Kuchta
W. Andrew Fox
Dora Lawrence
Michael Lopez
Zachary R. Schneider

Representatives of Holders of NAS Child Claims

Amanda Hanlon
Walter and Virginia Salmons
Christopher Bardsley

Certain Holders of SMT Group Claims

City of Prescott, Arizona
City of Surprise, Arizona
County of Carroll, Maryland
County of Henry, Missouri
County of Abbeville, South Carolina
County of Aiken, South Carolina
County of Anderson, South Carolina
County of Bamberg, South Carolina
County of Barnwell, South Carolina
County of Beaufort, South Carolina
County of Calhoun, South Carolina
County of Cherokee, South Carolina
County of Chesterfield, South Carolina
County of Clarendon, South Carolina
County of Colleton, South Carolina
County of Dillon, South Carolina
County of Dorchester, South Carolina
County of Edgefield, South Carolina
County of Fairfield, South Carolina
County of Greenville, South Carolina
County of Greenwood, South Carolina
County of Hampton, South Carolina
County of Horry, South Carolina
County of Jasper, South Carolina
County of Kershaw, Kershaw County Hospital Board a/k/a KershawHealth d/b/a Health Service District of Kershaw County
County of Lancaster, South Carolina
County of Laurens, South Carolina
County of Lee, South Carolina
County of Marion, South Carolina
County of McCormick, South Carolina
County of Oconee, South Carolina
County of Orangeburg, South Carolina
County of Pickens, South Carolina
County of Saluda, South Carolina
County of Spartanburg, South Carolina
County of Sumter, South Carolina
County of Union, South Carolina
County of Williamsburg, South Carolina
County of York, South Carolina

File a Plan:[19-11292-KG Insys Therapeutics, Inc.](#)

Type: bk	Chapter: 11 v	Office: 1 (Delaware)
Assets: y	Judge: KG	Case Flag: MEGA, LEAD, DsclsDue, STANDOrder, CLMSAGNT

U.S. Bankruptcy Court**District of Delaware**

Notice of Electronic Filing

The following transaction was received from Christopher Michael De Lillo entered on 9/17/2019 at 1:25 AM EDT and filed on 9/17/2019

Case Name: Insys Therapeutics, Inc.**Case Number:** [19-11292-KG](#)**Document Number:** [613](#)**Docket Text:**

Disclosure Statement for *Joint Chapter 11 Plan of Liquidation Proposed by Insys Therapeutics, Inc. and its Affiliated Debtors* (related document(s)[612]) Filed by Insys Therapeutics, Inc. (Attachments: # (1) Exhibit A # (2) Exhibit B) (De Lillo, Christopher)

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**W:\BJW\Insys - Disclosure Statement.PDF**Electronic document Stamp:**

[STAMP bkecfStamp_ID=983460418 [Date=9/17/2019] [FileNumber=15974375-0]
] [4028bc1e8696422cb05f3d90f35f703dd3c33d23623232848399b5e7388aea377ee
51bcbfa522d11e1b1d410b1aaa6aa8f57c82d6dfd3a392cfa088e80746d85]]

Document description:Exhibit A**Original filename:**W:\BJW\Insys - Ex A re Disclosure Statement.pdf**Electronic document Stamp:**

[STAMP bkecfStamp_ID=983460418 [Date=9/17/2019] [FileNumber=15974375-1]
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Document description:Exhibit B**Original filename:**W:\BJW\Insys - Ex B re Disclosure Statement.pdf**Electronic document Stamp:**

[STAMP bkecfStamp_ID=983460418 [Date=9/17/2019] [FileNumber=15974375-2]
] [23b5fe7e241c4c56f7dbdca8544c22fa69795293fbf1c13d684dc03c7b59afb2a8b
832de581e55d11d6af232af8c3bfa089dafc6d4623ebb714b0cc5611934ca]]

19-11292-KG Notice will be electronically mailed to:

Justin R. Alberto on behalf of Creditor Committee Official Committee of Unsecured Creditors
jalberto@bayardlaw.com, bankserve@bayardlaw.com;lmorton@bayardlaw.com;cdavis@bayardlaw.com

Andrew S. Behlmann on behalf of Interested Party Clark Miller
aBehlmann@lowenstein.com

Ryan Bounds on behalf of Creditor State of Maryland
rbounds@oag.state.md.us

Ryan Bounds on behalf of Defendant STATE OF MARYLAND
rbounds@oag.state.md.us

Morton R. Branzburg on behalf of Interested Party AmerisourceBergen Drug Company
mbranzburg@klehr.com, jtaylor@klehr.com