IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	**Chapter 11**
TERRAFORM LABS PTE. LTD., *et al.*,	:	**Case No. 24–10070 (BLS)**
	:	**(Jointly Administered)**
Debtors.[1]	:	**Deadline to Object: October 23, 2024 at 4:00 p.m. (ET)** **Hearing: October 30, 2024 at 10:00 a.m. (ET)**

MOTION OF PLAN ADMINISTRATOR FOR ENTRY OF AN ORDER PURSUANT TO BANKRUPTCY RULE 9019 APPROVING SETTLEMENT BY AND AMONG THE DEBTORS, LUNA FOUNDATION GUARD, LTD., DO KWON, AND AVALANCHE (BVI), INC.

The Plan Administrator,[2] on behalf of the Wind Down Trust, by and through his undersigned counsel, respectfully represent as follows in support of this motion (this "**Motion**"):

Relief Requested

1. By this Motion, the Plan Administrator seeks entry of an order in the form attached hereto as **Exhibit A** (the "**Proposed Order**") pursuant to rule 9019 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and section 363 of title 11 of the United States Code (the "**Bankruptcy Code**"), approving a settlement (the "**AVAX Settlement**")[3] by and among the Wind Down Trust, the Luna Foundation Guard, Ltd. ("**LFG**"), Do Hyeong Kwon ("**Mr. Kwon**"), and Avalanche (BVI), Inc. ("**Avalanche**," and together with the Wind Down Trust, LFG, and Mr. Kwon, the "**Settlement Parties**") with respect to (i) certain claims held by and among the

[1] The Debtors in these chapter 11 cases are: Terraform Labs Pte. Ltd. and Terraform Labs Limited. The Debtors' principal offices are located at 10 Anson Road, #10-10 International Plaza, Singapore 079903.

[2] Capitalized Terms used but not defined herein shall have the meanings ascribed to such terms in the Settlement Agreement or the Plan (as applicable), each as defined below.

[3] A settlement agreement detailing the AVAX Settlement is attached to the Proposed Order as **Exhibit 1** (the "**Settlement Agreement**").

Settlement Parties and certain mutual releases set forth in the Settlement Agreement (the "**Releases**," and such claims, the "**Released Claims**"), and (ii) the assignment of the Transferred AVAX Tokens (defined below) to Avalanche in exchange for $45,500,000, payable to the Wind Down Trust in United States dollars (the "**Avalanche Payment**"), free and clear from liens, claims, and encumbrances, pursuant to sections 105 and 363 of the Bankruptcy Code and the Confirmation Order (defined below).

Preliminary Statement

2. On September 20, 2024, the United States Bankruptcy Court for the District of Delaware (the "**Court**") entered an order (Docket No. 734) (the "**Confirmation Order**") confirming the chapter 11 plan of liquidation (Docket No. 765) (the "**Plan**") of Terraform Labs Pte. Ltd. ("**TFL**") and Terraform Labs Limited ("**TLL**," and together with TFL, the "**Debtors**"), which provides significant recoveries to the Debtors' creditors. The Plan incorporates the SEC Settlement (defined below), which requires, among other things, that Mr. Kwon transfer to the Debtors' estates all crypto assets held by LFG, which includes 1,973,554 AVAX tokens (the "**Transferred AVAX Tokens**"). LFG had originally acquired the Transferred AVAX Tokens from Avalanche pursuant to a token sale agreement executed in April 2022 (the "**LFG Token Sale Agreement**"). As further discussed below, Avalanche (a purported creditor of LFG) has asserted that the LFG Token Sale Agreement imposes restrictions on LFG's ability to transfer any AVAX tokens to the Debtors' estates or Wind Down Trust, and that any such transfer potentially constitutes a fraudulent transfer.

3. Although the Debtors disputed these assertions, the Debtors reached a settlement with Avalanche, LFG, and Mr. Kwon resolving these issues in order to secure $45.5 million in cash proceeds for distribution to the holders of Crypto Loss Claims (Class 5) in accordance with the terms of the Plan. Absent entry into the AVAX settlement, the Debtors (and now the Plan

Administrator) face significant potential challenges to monetizing the AVAX tokens by selling them on the open market in light of (i) Avalanche's assertions and threatened litigation, and (ii) the volume of AVAX tokens. The AVAX Settlement ensures that the Wind Down Trust will recover a substantial portion of the assets available to holders of Crypto Loss Claims at a purchase price that is close to the current market value of the Transferred AVAX Tokens.

4. Importantly, the AVAX Settlement also provides for a limited release of all claims by and among the Settlement Parties relating to the AVAX Settlement, including any potential claims seeking to challenge or unwind the transfers contemplated by the AVAX Settlement.

5. Finally, absent the AVAX Settlement, the Plan Administrator would likely be forced to engage in costly and protracted litigation, resulting in the depletion of assets otherwise available for distribution to creditors. Accordingly, the Plan Administrator respectfully requests that the Court enter the Proposed Order and grant the relief requested in this Motion.

Jurisdiction

6. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

7. Pursuant to Rule 9013-1(f) of the Local Rules, the Plan Administrator consents to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

Background

A. General Background

8. On January 21, 2024 and July 1, 2024, respectively, TFL and TLL commenced with the Court voluntary cases under the Bankruptcy Code (the "**Chapter 11 Cases**"). The Debtors were authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

9. The Chapter 11 Cases were jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Bankruptcy Rules and Rule 1015-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**").

10. On February 29, 2024, the United States Trustee for Region 3 (the "**U.S. Trustee**") appointed an official committee of unsecured creditors (the "**Creditors' Committee**"). No trustee or examiner has been appointed in these Chapter 11 Cases.

11. Following entry of the Confirmation Order on September 20, 2024, the Plan became effective on October 1, 2024 (the "**Effective Date**"), and the Debtors filed the *Notice of (I) Entry of Order Confirming Second Amended Chapter 11 Plan of Liquidation of Terraform Labs Pte. Ltd. and Terraforms Labs Limited and (II) Effective Date* (Docket No. 765).

12. Pursuant to section 5.5(a) of the Plan and the Wind Down Trust Agreement, the Wind Down Trust was created for the benefit of holders of claims against the Debtors, and all assets held by the Debtors were transferred to, and vested exclusively in, the Wind Down Trust. The Plan Administrator was appointed to administer the Wind Down Trust, and has the authority to prepare, file, and prosecute any necessary filings or pleadings with the Court in order to administer the Wind Down Trust in accordance with the Plan. *See* Plan § 5.4(b)(vi). In addition, the Confirmation Order provides that all remaining property of the Debtors' estates, including the

SEC Settlement fund, "shall be transferred and vest in the Wind Down Trust free and clear of any liens, claims, encumbrances and interests of any kind." Confirmation Order ¶ 11. It goes on to state that "[t]he Wind Down Trust may sell, transfer, or liquidate the Remaining Assets without further order; *provided*, *however*, that the Wind Down Trust may seek an order to approve the sale, transfer, assumption, assignment or other disposition of any other [remaining assets] . . . at its discretion." *Id.*

B. Facts Relevant to AVAX Settlement

13. As noted, LFG acquired the Transferred AVAX Tokens from Avalanche through the April 2022 LFG Token Sale Agreement. Notably, TLL had a similar (but not identical) token sale agreement (the "**TLL Token Sale Agreement**") with Avalanche, also executed in April 2022, through which TLL acquired an amount of AVAX tokens in exchange for an amount of LUNA tokens, each of which were valued at $100 million at that time.

14. Ultimately, TFL sought chapter 11 relief to preserve value and maximize creditor recoveries in light of a judgment in the action the SEC commenced against TFL and its founder, former director, and former Chief Executive Officer, Kwon Do Hyeong ("**Mr. Kwon**") in the District Court of the Southern District of New York (the "**District Court**"), titled *SEC v. Terraform Labs Pte. Ltd., et al.*, Case No. 1:23-cv-013460-JSR S.D.N.Y.) (the "**SEC Enforcement Action**"). Following the District Court's summary judgment ruling in favor of the SEC on certain counts and a jury trial verdict against Mr. Kwon and TFL on other counts, TFL entered into settlement discussions with the SEC, which culminated in a settlement with the SEC (the "**SEC Settlement**") memorialized by a consent agreement signed by TFL (the "**TFL Consent**"), a consent agreement signed by Mr. Kwon (the "**Kwon Consent**"), and the Final Judgment Against Terraform Labs Pte. Ltd. and Do Hyeong Kwon, No. 1:23-cv-1346 (JSR)

(Docket No. 273) (the "**Final Judgment**"), approved and entered by the District Court for the Southern District of New York on June 12, 2024.

15. Pursuant to the terms of the SEC Settlement, Mr. Kwon, as the proprietor of LFG, was required to transfer all crypto assets in LFG's name to the Debtors' estates. The SEC Settlement has subsequently been implemented into the now-effective Plan. The Plan describes the assets to be transferred from LFG to the estates as the "LFG Amount." Plan § 1.76. Among other assets, the LFG Amount comprises the "SEC Settlement Fund," which assets are reserved for distribution solely to holders of Allowed Crypto Loss Claims in Class 5. *See* Plan §§ 1.107, 1.40 (defining Crypto Loss Claim Pool to mean "any remaining funds in the GUC Pool upon the General Unsecured Claim Payment Completion, *plus* the SEC Settlement Fund").

16. The AVAX tokens held by LFG comprise a substantial portion of the total distributable assets held by LFG, and thereby the LFG Amount.

17. In response to the Debtors' motion seeking approval to begin winding down pursuant to the SEC Settlement (Docket No. 435) and the Plan, Avalanche filed two reservations of rights raising issues surrounding the transfer of LFG's assets to the estates.[4] In its filings, Avalanche raised concerns with any such transfer, stating that the transfer would potentially lead to the insolvency of LFG, and cause Avalanche and other LFG creditors to be without a source of recovery. Avalanche further asserted that such transfer to the estate may constitute an avoidable fraudulent transfer.

[4] *See Reservation of Rights of Avalanche (BVI), Inc. to Motion of Debtor for Entry of Order Approving Implementation Steps in Compliance with TFL Consent and Final Judgment in SEC Enforcement Action* (Docket No. 466); *Reservation of Rights of Avalanche (BVI), Inc. to Amended Chapter 11 Plan of Liquidation of Terraform Labs Pte. Ltd. and Terraform Labs Limited* (Docket No. 714).

C. AVAX Settlement

18. In an effort to resolve certain disputes and issues outstanding in these Chapter 11 Cases, the Settlement Parties engaged in arm's-length, good faith negotiations, which ultimately resulted in an agreement among the Settlement Parties, as fully set forth in the Settlement Agreement. Through the AVAX Settlement, the Settlement Parties agreed to the following key terms:[5]

a. Transfer of AVAX Tokens and Payment by Avalanche: Upon receipt of the Transferred AVAX Tokens from LFG, the Wind Down Trust will transfer such tokens to Avalanche, and Avalanche will transfer the Avalanche Payment (*i.e.*, $45.5 million) to the Wind Down Trust. The settlement amount was derived based on the volume-weighted average price (VWAP) of AVAX tokens over the seven-day period in early August.

b. Assignment of Interests: Upon receipt of the Avalanche Payment, the Wind Down Trust shall irrevocably transfer and assign to Avalanche any and all interests they may have in the Transferred AVAX Tokens to Avalanche.

c. Releases: The Settlement Parties agree to the Releases, as set forth in the Settlement Agreement.

19. The Debtors entered into the AVAX Settlement after evaluating all of their alternatives and extensively negotiating the terms of the AVAX Settlement, including the Avalanche Payment and the limited scope of the Debtors' releases under the Settlement Agreement. The Creditors' Committee, which played an active role in negotiations, supported the AVAX Settlement.

[5] The summaries of the AVAX Settlement set forth in this Motion are qualified in their entirety by the provisions of the Settlement Agreement. To the extent there exists any inconsistency between any summary and the Settlement Agreement, the Settlement Agreement shall govern.

Relief Requested Should be Granted

A. To the Extent Applicable, the Settlement Agreement Satisfies the Standards of Bankruptcy Rule 9019 and Should Be Approved.

20. Bankruptcy Rule 9019(a) provides that, on motion and after notice and a hearing, "the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). Settlements and compromises are "a normal part of the process of reorganization." *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 428 (1968). It is well settled that in order to "minimize litigation and expedite the administration of a bankruptcy estate, '[c]ompromises are favored in bankruptcy.'" *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996) (quoting *9 Collier on Bankruptcy* ¶ 9019.03[1] (15th ed. 1993)); *see also Will v. Northwestern Univ. (In re Nutraquest, Inc.)*, 434 F.3d 639, 644 (3d Cir. 2006) (finding that "[s]ettlements are favored [in bankruptcy]"); *In re Adelphia Commc'n Corp.*, 361 B.R. 337, 348 (Bankr. D. Del. 2007) (same). Accordingly, when required, "courts are able to craft flexible remedies that, while not expressly authorized by the [Bankruptcy] Code, affect the result the [Bankruptcy] Code was designed to obtain." *Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery*, 330 F.3d 548, 568 (3d Cir. 2003).

21. Pursuant to Bankruptcy Rule 9019(a), a bankruptcy court may, after appropriate notice and a hearing, approve a compromise or settlement so long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See In re Northwestern Corp.*, 2008 WL 2704341, at *6 (Bankr. D. Del. July 10, 2008) ("[T]he bankruptcy court must determine whether the compromise is fair, reasonable, and in the best interests of the estate.") (citation omitted); *In re Key3Media Group, Inc.*, 336 B.R. 87, 92 (Bankr D. Del. 2005) ("[T]he bankruptcy court has a duty to make an informed, independent judgment that the compromise is fair and equitable."). "Ultimately, the decision whether or not to approve a settlement agreement lies within the sound

discretion of the Court." *In re Nortel Networks, Inc.*, 522 B.R. 491, 510 (Bankr. D. Del. 2014). Importantly, the bankruptcy court's discretion should be exercised "in light of the general public policy favoring settlements." *In re Capmark Fin. Grp. Inc.*, 438 B.R. 471, 515 (Bankr. D. Del. 2010).

22. The United States Court of Appeals for the Third Circuit has set forth a four-factor balancing test under which bankruptcy courts are to analyze proposed settlements: "(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors." *Martin*, 91 F.3d at 393.

23. In considering a settlement, the court need not find that a settlement is the best possible compromise, but only that the settlement falls "within the reasonable range of litigation possibilities somewhere above the lowest point in the range of reasonableness." *In re Nutritional Sourcing Corp.*, 398 B.R. 816, 833 (Bankr. D. Del. 2008); *see also In re W.R. Grace & Co.*, 475 B.R. 34, 77–78 (Bankr. D. Del. 2012) ("In analyzing the compromise or settlement agreement under the *Martin* factors, courts should not have a 'mini-trial' on the merits, but rather should canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness.") (citations and internal quotation marks omitted); *Nortel*, 522 B.R. at 510 (same).

24. The Plan Administrator respectfully submits that the AVAX Settlement is fair and reasonable, is in the best interests of the Wind Down Trust and the Debtors' creditors, and should be approved pursuant to Bankruptcy Rule 9019. Indeed, the AVAX Settlement is the product of extensive, good-faith discussions and arm's-length bargaining among the Settlement Parties. The Plan Administrator believes that the AVAX Settlement represents a favorable outcome for the Wind Down Trust and falls well within the range of reasonableness under the *Martin* factors.

25. *First*, with respect to the first three *Martin* factors, in the absence of the AVAX Settlement, the Plan Administrator would be forced to litigate the Released Claims on behalf of the Wind Down Trust, which may require the Wind Down Trust to engage in lengthy and costly litigation, and limit the Plan Administrator's ability to maximize recoveries for the holders of the Allowed Crypto Loss Claims in Class 5. Any such litigation would potentially be commenced in one or more foreign jurisdictions, as well as with this Court. Further, the inconvenience necessarily associated with any litigation concerning the Released Claims would distract the Plan Administrator from focusing on maximizing creditor distributions. Moreover, as with any litigation, the Wind Down Trust would face uncertainty as to success of defending and/or pursuing the Released Claims, and would in any event expend significant time, money, and effort to do so.

26. The uncertainty of litigating the Released Claims weighs in favor of compromise under these circumstances. *See In re Capmark Fin. Grp. Inc.*, 438 B.R. 471, 518 (Bankr. D. Del. 2010) (finding uncertainty weighs in favor of settlement); *see also Moren v. Ray & Bergman, et al.*, 2007 WL 953115 (9th Cir. Jan. 29, 2007) ("Given the tremendous uncertainty of success at trial, this factor weighs heavily in favor of approval of the compromise"). Furthermore, any judgment obtained may be subject to appeal, with no guarantee as to the ultimate outcome. On the contrary, the AVAX Settlement allows the Settlement Parties to reach a just, reasonable, and consensual outcome, and avoids the uncertainty of protracted and expensive litigation.

27. *Finally*, the Plan Administrator believes that the AVAX Settlement inures to the benefit of, and is in the paramount interests of, the Debtors' creditors. Approval of the AVAX Settlement would, among other things, allow the Plan Administrator to (i) monetize the Transferred AVAX Tokens, and (ii) progress towards an orderly and value-maximizing wind-down of the Debtors' estates pursuant to the Plan. In addition, the releases granted by the Debtors

and their related parties exclude any claims related to the TLL Token Sale Agreement, which claims the Plan Administrator can investigate and potentially pursue for the benefit of the Debtors' creditors.

B. Consummating the AVAX Settlement is a Sound Exercise of the Plan Administrator's Business Judgment Under Section 363(b)(1) of the Bankruptcy Code.

28. Section 363(b)(1) of the Bankruptcy Code authorizes a debtor in possession to "use, sell, or lease, other than in the ordinary course of business, property of the estate," after notice and a hearing. A settlement of claims and causes of action by a debtor in possession constitutes a use of property of the estate. *See Northview Motors, Inc. v. Chrysler Motors Corp.*, 186 F.3d 346, 350–51 (3d Cir. 1999) ("[t]he scope of [11 U.S.C. § 541] is broad. It includes all kinds of property, including tangible or intangible property, causes of action . . . and all other forms of property currently specified in section 70a of the Bankruptcy Act . . . .") (citation omitted). If a settlement is outside of the ordinary course of business of the debtor, it requires approval of the bankruptcy court pursuant to section 363(b) of the Bankruptcy Code. *See id.*; *see also Martin*, 91 F.3d at 395 n.2 ("Section 363 of the Code is the substantive provision requiring a hearing and court approval; Bankruptcy Rule 9019 sets forth the procedure for approving an agreement to settle or compromise a controversy.").

29. It is well established in this jurisdiction that a debtor may use property of the estate outside of the ordinary course of business under this provision if there is a good business reason for doing so. *See, e.g.*, *In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) ("Under Section 363, the debtor in possession can sell property of the estate . . . if he has an 'articulated business justification' . . . ."); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 175–76 (D. Del. 1991); *In re Trans World Airlines, Inc.*, No. 01-00056 (PJW), 2001 WL 1820326, at *10 (Bankr. D. Del. Apr. 2, 2001). As

a rule, a debtor's decision to use property of the estate out of the ordinary course of business shields a debtor's management decisions from judicial second-guessing and enjoys a strong presumption "that in making a business decision the directors . . . acted on an informed basis, in good faith and in an honest belief that the action taken was in the best interests of the company." *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)); *see also In re Filene's Basement, LLC*, No. 11-13511 (KJC), 2014 WL 1713416, at *12 (Bankr. D. Del. Apr. 29, 2014) ("If a valid business justification exists, then a strong presumption follows that the agreement at issue was negotiated in good faith and is in the best interests of the estate") (citations omitted); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) ("In determining whether to authorize the use, sale or lease of property of the estate under [section 363(b)], courts require the debtor to show that a sound business purpose justifies such actions").

30. As noted above, without approval of the AVAX Settlement, the Plan Administrator would be forced to engage in costly and protracted litigation on behalf of the Wind Down Trust regarding the Transferred AVAX Tokens that the Wind Down Trust is meant to receive under the SEC Settlement. That, in turn, would delay the Wind Down Trust's receipt of a significant portion of the assets, and specifically the LFG Amount, that are available for distributions to holders of Crypto Loss Claims.

31. Moreover, the Avalanche Payment, which was determined using a volume-weighted average market price of AVAX tokens over an agreed period, will result in significant value becoming available to the Debtors' estates in the near future. As with many digital currencies, the market for AVAX tokens is extremely volatile, and the Debtors successfully negotiated a settlement that locked in a set price ($45.5 million) that would not be subject to any

such market volatility. Even without the overhang of Avalanche's assertions and threatened litigation, selling such a substantial volume of AVAX tokens on the open market would likely be challenging for the Plan Administrator. The AVAX Settlement avoids any such issues and guarantees that the Plan Administrator will recover value on account of these assets at a price that is close to the market value of the AVAX tokens.

32. Accordingly, consummation of the AVAX Settlement was a sound exercise of the Debtors' business judgment and is in the best interests of the Wind Down Trust. The Plan Administrator respectfully requests that the AVAX Settlement be approved and the Court authorize the Settlement Parties to effectuate the AVAX Settlement contemplated under the Settlement Agreement and undertake any further actions necessary to perform thereunder.

C. The Assignment of the Transferred AVAX Tokens Should be Free and Clear of Liens, Claims, Interests, and Encumbrances Under Section 363(f) of the Bankruptcy Code.

33. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests, and encumbrances if any one of the following conditions is satisfied: (a) applicable non-bankruptcy law permits sale of such property free and clear of such interest; (b) such entity consents; (c) such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property; (d) such interest is in bona fide dispute; or (e) such entity could be compelled, in legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. § 363(f); *see also In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) ("Section 363(f) is written in the disjunctive, not the conjunctive, and if any of the five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens."); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same).

34. The assignment of the Transferred AVAX Tokens free and clear of all liens, claims, interests, and encumbrances will satisfy one or more of the requirements under section 363(f) of the Bankruptcy Code. Moreover, the Plan Administrator will send notice of the assignment to purported lienholders, if any. If such lienholders do not object to the proposed assignment, then their consent should be presumed. In accordance therewith, the Plan Administrator requests that, unless a party asserting a prepetition lien, claim, or encumbrance on any of the Transferred AVAX Tokens timely objects to this Motion, such party shall be deemed to have consented to the assignment thereof. *See Hargave v. Twp. of Pemberton*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to a sale motion, a creditor "may be deemed to have consented to the sale for purposes of section 363(f)(2)"); *see also In re Christ Hospital*, 502 B.R. 158, 174 (Bankr. D.N.J. 2013) ("Given adequate notice, failure to object to a § 363 sale has been found to constitute *consent* per § 363(f)(2) to a "free and clear" sale of the nonobjector's interests in property being sold.").

35. Here, the Plan Administrator is not aware of any such liens, claims, or encumbrances on the Transferred AVAX Tokens, which are being held by LFG and are set to be transferred to the Wind Down Trust pursuant to the SEC Settlement. Accordingly, the Plan Administrator requests that the Court authorize the transfer and assignment of the Transferred AVAX Tokens free and clear of any liens, claims, interests, and encumbrances, in accordance with section 363(f) of the Bankruptcy Code and the Confirmation Order.

Request for Bankruptcy Rule 6004 Waivers

36. The Plan Administrator requests a waiver of the notice requirements under Bankruptcy Rule 6004(a) and any stay of the order granting the relief requested herein pursuant to Bankruptcy Rule 6004(h), to the extent applicable. The relief requested herein is necessary to avoid immediate and irreparable harm to the Wind Down Trust that could result from further delay.

Accordingly, cause exists to justify the waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent such stay applies.

Reservation of Rights

37. Each of the Plan Administrator, the Wind Down Trust, and Avalanche reserve all rights in connection with the Settlement Agreement, including any claims, equitable remedies, causes of action, or otherwise, and any right of estoppel if the Settlement Agreement is not approved or otherwise does not become effective. Nothing contained in this Motion or any actions taken by the Settlement Parties pursuant to the relief granted is intended or should be construed as: (i) an admission as to the validity of any claim against the Wind Down Trust, or (ii) a waiver or limitation of the Settlement Parties' rights under any preexisting agreements, the Bankruptcy Code, the Plan, or other applicable law, except as agreed to under the Settlement Agreement.

Notice

38. Notice of this Motion will be provided to (a) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington Delaware 19801 (Attn: Linda Richenderfer, Esq. (Linda.Richenderfer@usdoj.gov)); (b) the Internal Revenue Service; (c) the United States Attorney's Office for the District of Delaware; (d) the United States Securities and Exchange Commission; (e) counsel to Mr. Kwon; (f) LFG; (g) counsel to Avalanche; and (h) any other party entitled to notice pursuant to Bankruptcy Rule 2002. The Debtors respectfully submit that no further notice is required.

No Prior Request

39. No previous request for the relief sought in this Motion has been made by the Plan Administrator, Wind Down Trust, or Debtors to this or any other court.

WHEREFORE, the Plan Administrator respectfully requests entry of the Proposed Order granting the relief requested herein and such other relief as the Court deems just and appropriate under the circumstances.

Dated: October 9, 2024
Wilmington Delaware

/s/ Matthew P. Milana

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	**Chapter 11**
TERRAFORM LABS PTE LTD., *et al.*,	:	**Case No. 24-10070 (BLS)**
Debtors.[1]	:	**(Jointly Administered)**
	:	**Obj. Deadline: October 23, 2024 at 4:00 p.m. (ET)** **Hr'g Date: October 30, 2024 at 10:00 a.m. (ET)**

NOTICE OF MOTION AND HEARING

PLEASE TAKE NOTICE that, on October 9, 2024, the Plan Administrator, on behalf of the Wind Down Trust (the "**Plan Administrator**"), filed the *Motion of Plan Administrator for Entry of an Order Pursuant to Bankruptcy Rule 9019 Approving Settlement by and Among the Debtors, Luna Foundation Guard, Ltd., Do Kwon, and Avalanche (BVI), Inc.* (the "**Motion**") with the United States Bankruptcy Court for the District of Delaware (the "**Court**").

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing and filed with the Clerk of the Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before **October 23, 2024 at 4:00 p.m. (prevailing Eastern Time).**

PLEASE TAKE FURTHER NOTICE that if any objections to the Motion are received, the Motion and such objections shall be considered at a hearing before The Honorable Brendan L. Shannon at the Court, 824 North Market Street, 6th Floor, Courtroom 1, Wilmington, Delaware 19801 on **October 30, 2024 at 10:00 a.m. (prevailing Eastern Time).**

[1] The Debtors in these chapter 11 cases are: Terraform Labs Pte. Ltd. and Terraform Labs Limited. The Debtors' principal offices are located at 10 Anson Road, #10-10 International Plaza, Singapore 079903.

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: October 9, 2024
Wilmington, Delaware

/s/ Matthew P. Milana

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Attorneys for the Plan Administrator

Exhibit A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	**Chapter 11**
TERRAFORM LABS PTE. LTD., *et al.*,	:	**Case No. 24–10070 (BLS)**
Debtors.[1]	:	**Re: Docket No. ___**

ORDER APPROVING SETTLEMENT BY AND AMONG THE DEBTORS, LUNA FOUNDATION GUARD, LTD., DO KWON, AND AVALANCHE (BVI), INC.

Upon the motion (the "**Motion**")[2] of the above-captioned debtors (collectively, the "**Debtors**") for entry of this order (this "**Order**"): (a) approving the AVAX Settlement as set forth in the Settlement Agreement by and among the Settlement Parties, a copy of which is attached hereto as **Exhibit 1** and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing, if any, before this Court (the "**Hearing**"); and this Court

[1] The Debtors in these chapter 11 cases are: Terraform Labs Pte. Ltd. and Terraform Labs Limited. The Debtors' principal offices are located at 10 Anson Road, #10-10 International Plaza, Singapore 079903.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.

2. The Debtors and Wind Down Trust are authorized to enter into, perform, execute, and deliver all documents, and take all actions necessary to timely and fully implement and consummate the AVAX Settlement, in accordance with the terms of the Settlement Agreement, attached hereto as **Exhibit 1**.

3. The AVAX Settlement, memorialized in the Settlement Agreement, satisfies the standards of section 363(b)(1) of the Bankruptcy Code and Bankruptcy Rule 9019 and is hereby approved.

4. The Releases contemplated under the Settlement Agreement are hereby approved and shall be immediately effective upon the effective date of the AVAX Settlement.

5. Except as expressly provided for in this Order, pursuant to sections 105(a), 363(b), 363(f), 365(b), and 365(f) of the Bankruptcy Code, the Wind Down Trust is authorized and directed to transfer the Transferred AVAX Tokens to Avalanche, and Avalanche shall have and take title to and possession of the Transferred AVAX Tokens free and clear of and shall have no obligation with respect to all liens, claims, and other encumbrances ("**Claims**") of any kind or nature whatsoever, including, without limitation, rights or claims based on any successor, transferee, derivative, or vicarious liabilities; de facto merger, continuation or continuity, or any similar theories under applicable state or federal law or otherwise. This Order: (a) is and shall be effective as a determination that upon the applicable effective date in accordance with the

Settlement Agreement, all Claims of any kind or nature whatsoever existing as to Transferred AVAX Tokens, and any tax liability, prior to the applicable closing have been unconditionally released, discharged, and terminated, and that the conveyances described herein have been effected; and (b) is and shall be binding upon and shall authorize all entities, including without limitation all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies or unites, governmental departments or units, secretaries of state, federal, state and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Transferred AVAX Tokens conveyed to Avalanche.

6. The total consideration provided by all parties pursuant to the AVAX Settlement constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Voidable Transactions Act, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, and any other applicable law, and may not be avoided under section 363(n) of the Bankruptcy Code or any other applicable law. Effective from and after the Effective Date, each of the Settlement Parties hereby release any claims they may have relating to each of the transfers contemplated by the Settlement Agreement, including but not limited to the transfer of the Transferred AVAX Tokens by LFG to the bankruptcy estates of TFL and/or TLL or the Wind Down Trust.

7. The AVAX Settlement was not entered into for the purpose of hindering, delaying, or defrauding creditors of the Debtors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable

law. None of the Settlement Parties entered into the AVAX Settlement with any fraudulent or otherwise improper purpose.

8. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

9. This Order shall be binding upon any successors and assigns of the Debtors, including any trustee appointed in these Chapter 11 Cases or in any superseding proceeding under chapter 7 of the Bankruptcy Code.

10. The Court retains jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Exhibit 1

Settlement Agreement

Execution Version

SETTLEMENT, RELEASE, AND ASSIGNMENT AGREEMENT

This Settlement, Release, and Assignment Agreement (this "**Agreement**"), dated as of September 27, 2024, is by and among Terraform Labs Pte. Ltd. ("**TFL**"), Terraform Labs Limited ("**TLL**"), Luna Foundation Guard Ltd. ("**LFG**"), Kwon Do-Hyung, in his individual capacity ("**Kwon**," and together with TFL, TLL, LFG, the "**Terra/LFG Parties**") and Avalanche (BVI), Inc. ("**Avalanche**," and together with the Terra/LFG Parties, the "**Parties**").

WHEREAS, Avalanche and LFG previously entered into that certain AVAX Token Sale Agreement, dated as of April 6, 2022 (the "**LFG TSA**");

WHEREAS, Avalanche and TLL previously entered into that certain AVAX Token Sale Agreement, dated as of April 6, 2022 (the "**TLL TSA**," and together with the LFG TSA, the "**AVAX Transaction Documents**");

WHEREAS, (i) pursuant to the AVAX Transaction Documents, Avalanche sold $100,000,000 worth of the native token of the Avalanche public blockchain ("**AVAX Tokens**") to each of LFG and TLL under the terms and conditions set forth therein in exchange for comparably valued TerraUSD and LUNA[1] tokens, respectively, and (ii) pursuant to Section 4.2 of the LFG TSA, LFG agreed to contribute all AVAX Tokens purchased pursuant to the LFG TSA to a certain Terra Reserve Pool (the "**LFG Pool**") to be utilized solely in accordance with publicly disclosed permitted uses;

WHEREAS, on February 16, 2023, the United States Securities and Exchange Commission (the "**SEC**") filed a complaint against TFL and Kwon alleging six (6) claims for violations of the Securities Act of 1933 and the Securities Exchange Act of 1934;

WHEREAS, on December 28, 2023, the U.S. District Court for the Southern District of New York (the "**U.S. District Court**") partially granted a motion for summary judgment filed by the SEC on certain claims, and thereafter held a jury trial on certain other claims, resulting in a verdict against TFL and Kwon in connection with the foregoing;

WHEREAS, on January 21, 2024 and July 1, 2024, TFL and TLL, respectively, filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**") commencing chapter 11 cases (the "**Chapter 11 Cases**") administered as Case No. 24-10070;

WHEREAS, on June 13, 2024, the U.S. District Court entered an order approving consent agreements and a final judgment among the SEC, TFL, and Kwon (the "**SEC Settlement**") whereby, among other things, Kwon would direct LFG to transfer all crypto assets, including the AVAX Tokens purchased pursuant to the LFG TSA, to the bankruptcy estate of TFL (the "**SEC AVAX Transfer**");

WHEREAS, on July 17, 2024, the Bankruptcy Court entered an order approving certain implementation steps in compliance with the SEC Settlement;

WHEREAS, on September 17, 2024, the Debtors filed the *Second Amended Chapter 11 Plan of Liquidation of Terraform Labs Pte. Ltd. and Terraform Labs Limited*, filed as Docket No. 700 in the Chapter 11 Cases, as may be amended or otherwise modified (the "**Chapter 11 Plan**").

[1] LUNA tokens transferred pursuant to the AVAX Transaction Documents are now referred to as Terra Luna Classic tokens.

WHEREAS, the Parties wish to fully and finally resolve certain disputes, causes of action and claims which have been or could have been alleged as against each other arising from or relating to the SEC AVAX Transfer, without admitting any liability or wrongdoing, so as to avoid the burden, expense, and inconvenience of litigation between them; and

NOW, THEREFORE, in consideration of the foregoing premises, and the Parties entering into this Agreement in reliance on the representations, warranties, mutual covenants and obligations hereinafter contained, and other good and valuable consideration, the receipt, validity and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Transfer of AVAX Tokens and Payment by Avalanche**

Promptly upon and not prior to entry of the Bankruptcy Court Approval Order (as defined below), LFG shall transfer the Transferred AVAX Tokens (as defined below) to the bankruptcy estates of TFL and/or TLL or the Wind Down Trust (as defined in the Chapter 11 Plan), as applicable. Upon receipt of the 1,973,554 AVAX Tokens pursuant to the SEC AVAX Transfer, (i) TFL and/or TLL or the Wind Down Trust, as applicable, shall transfer a fractional amount of AVAX Tokens (such transfer, the "**Test Transaction**") to an Avalanche owned and/or controlled wallet address which shall be communicated to TFL and TLL by Avalanche in writing prior to the execution of the Test Transaction (the "**Avalanche Wallet Address**"), and (ii) once TFL and TLL or the Wind Down Trust, as applicable, have received written confirmation from Avalanche of receipt of the Test Transaction (email being sufficient), TFL and TLL or the Wind Down Trust, as applicable, shall transfer 1,973,554 AVAX Tokens (the "**Terra Payment**," and such AVAX Tokens, the "**Transferred AVAX Tokens**") to Avalanche at the Avalanche Wallet Address. Promptly upon receipt of the Terra Payment, Avalanche shall transfer to the bankruptcy estates of TFL and/or TLL or the Wind Down Trust, as applicable, an aggregate amount equal to $45,500,000, payable in United States dollars (the "**Avalanche Payment**"). TFL and TLL or the Wind Down Trust, as applicable, shall provide wire instructions for the Avalanche Payment in advance of the consummation of such payment. Each of TFL and/or TLL or the Wind Down Trust (as applicable) and Avalanche, as applicable, shall provide prompt written confirmation that the Avalanche Payment and Terra Payment have been received, respectively.

2. **Assignment of the Transferred AVAX Token Interests**

As of the Effective Date (as defined in Section 6), TFL and/or TLL or the Wind Down Trust, as applicable, shall irrevocably transfer and assign to Avalanche any and all rights, titles, and interests, including legal, equitable and beneficial or otherwise, it may have, if any, in the Transferred AVAX Tokens (collectively, the "**Transferred AVAX Token Interests**"), together with all rights and benefits associated therewith. In furtherance of the foregoing, TFL and/or TLL or the Wind Down Trust, as applicable, and Avalanche are delivering, simultaneously with the execution hereof, the assignment agreement substantially in the form attached hereto as **Exhibit A** (the "**Assignment Agreement**") and TFL and/or TLL or the Wind Down Trust, as applicable, shall execute any additional documents reasonably needed to effectuate the assignment contemplated by the Assignment Agreement.

3. **Reasonably Equivalent Value**

Each Party affirms that the release obtained by such other Parties, the payments and transfers set forth herein and the assignment of the Transferred AVAX Token Interests constitute reasonably equivalent value in consideration for satisfaction of the claims being released by such Parties hereto. Each Party agrees that no such transfer by it is or may be voidable or subject to avoidance

under any state law, section of Title 11 of the United States Code, or the law of any other jurisdiction. For the avoidance of doubt, effective from and after the Effective Date, the parties hereto hereby release any claims they may have relating to each of the transfers contemplated by this Agreement, including but not limited to the transfer of the Transferred AVAX Tokens by LFG to the bankruptcy estates of TFL and/or TLL or the Wind Down Trust.

4. Release of Claims by the Terra/LFG Parties

Effective from and after the Effective Date, and notwithstanding anything to the contrary in this Agreement or any AVAX Transaction Document or any other agreement, and in recognition that this Agreement does not constitute an admission by any Party of any wrongdoing, each of the Terra/LFG Parties on behalf of themselves and their affiliates, officers, directors, employees, agents, successors, assignees and any legal representative or other party acting on its behalf (collectively, "**Representatives**"), FOREVER RELEASES, ACQUITS, HOLDS HARMLESS, AND DISCHARGES Avalanche and its successors, affiliates, and assignees, their current and former officers, directors, members, managers, partners, owners, employees, volunteers, servants, agents and attorneys (each, including Avalanche, an "**Avalanche Released Party**"), of and from any and all Claims (as such term is defined below) to the extent accrued on or prior to the Effective Date that arise from or relate in any way to the SEC AVAX Transfer, this Agreement, and any transactions contemplated by this Agreement (the "**Avalanche Released Claims**"); *provided*, *however*, for the avoidance of doubt, that the Avalanche Released Claims shall not include any other claims that the Terra/LFG Parties and their Representatives may hold against Avalanche. "**Claims**" shall mean existing or contingent claims, demands, actions, causes of action, liabilities, damages, contracts, expenses, costs, accounts, duties, obligations, rights, covenants and promises of every kind and character, in each case, whether sounding in contract or tort. Notwithstanding anything to the contrary herein, this release does not apply to any breach of the Agreement and/or the Assignment Agreement themselves.

5. Release of Claims by Avalanche

Effective from and after the Effective Date, and notwithstanding anything to the contrary in this Agreement or any AVAX Transaction Document or any other agreement, and in recognition that this Agreement does not constitute an admission by any Party of any wrongdoing, Avalanche, on behalf of itself and its Representatives, FOREVER RELEASE, ACQUIT, HOLD HARMLESS, AND DISCHARGE the Terra/LFG Parties and their respective successors, affiliates, and assignees, their current and former officers, directors, members, managers, partners, owners, employees, volunteers, servants, agents and attorneys (each, including the Terra/LFG Parties, a "**Terra/LFG Released Party**," and, together with the Avalanche Released Parties, the "**Released Parties**"), of and from any and all Claims to the extent accrued on or prior to the Effective Date that arise from or relate in any way to the SEC AVAX Transfer, this Agreement, any transactions contemplated by this Agreement, and any claims for breaches, anticipatory or otherwise, of Section 4.2 of the LFG TSA (the "**Terra/LFG Released Claims**"); *provided*, *however*, for the avoidance of doubt, that the Terra/LFG Released Claims shall not include (i) any Crypto Loss Claims (as defined in the Chapter 11 Plan), with respect to which the Terra/LFG Parties and their Representatives, including the Wind Down Trustee and the Plan Administrator, each as defined in and appointed pursuant to the Chapter 11 Plan, retain and reserve any and all rights to object to and otherwise contest and litigate any Crypto Loss Claims asserted by Avalanche; and/or (ii) any other claims that Avalanche may hold against LFG, including those arising under, out of or in connection with the LFG TSA, but excluding any claims for breaches, anticipatory or otherwise, of Section 4.2 the LFG TSA. The Terra/LFG Released Claims and the Avalanche Released Claims are referred to collectively in this

Agreement as the "**Released Claims**." For the avoidance of doubt, this release does not apply to any breach of the Agreement and/or the Assignment Agreement themselves.

6. Conditions Precedent to Effectiveness of Agreement

Notwithstanding anything to the contrary herein, this Agreement shall not be effective until the following conditions have been satisfied in full (the "**Effective Date**"):

(i) Execution and delivery of this Agreement and the Assignment Agreement by the applicable Parties;

(ii) Entry of an order (reasonably satisfactory to Avalanche) by the Bankruptcy Court approving this Agreement and the Assignment Agreement (the "**Bankruptcy Court Approval Order**"), which shall include mutually agreeable language approving the transactions contemplated by this Agreement and the Assignment Agreement free and clear of all liens, claims, and other encumbrances; and

(iii) Consummation and receipt of the Terra Payment and the Avalanche Payment, as described in Section 1 of this Agreement.

7. No Admission

The Parties covenant and agree that the language of this Agreement is contractual and not merely recitals, and that the agreements herein and consideration paid are to compromise disputed claims, to avoid the expenses, burdens, and uncertainties of litigation, and allow the Parties to refocus on their current and other interests. The Parties agree that no statement or consideration given in this Agreement or the execution of this Agreement by any party is intended to or will constitute any evidence of wrongdoing or liability by any of them, any such admission being expressly denied.

8. Representations and Warranties.

Each Party represents and warrants to the other Party that:

a. it is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation or incorporation (as the case may be);

b. it has all necessary authority to enter into, and to perform and observe the terms and conditions of, and has taken all necessary corporate, limited liability company, or other action to authorize the entry into, performance of, and delivery of this Agreement and the actions contemplated by this Agreement;

c. it has duly authorized the execution and delivery of this Agreement and the performance and observance by it of the terms and conditions of this Agreement, and its respective obligations under this Agreement will constitute its legal, valid, and binding obligations, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or law);

d. the entry into and performance by such party of, and the transactions contemplated by this Agreement do not and will not (i) conflict with any existing applicable laws binding upon

it, (ii) conflict with its constitutional, formation, organizational or charter documents, or (iii) conflict with or result in default under any agreement or instrument which is binding upon it or any of its assets, nor result in the creation of any lien over any of its assets;

e. such Party (i) has carefully read this Agreement, (ii) has had sufficient time to consider this Agreement before the execution and delivery of it, and to consider its terms, (iii) has been advised, and hereby is advised in writing to discuss this Agreement with an attorney of his or its choice and he or it has had adequate opportunity to do so prior to executing this Agreement, (iv) fully understands the final and binding effect of this Agreement, understands that he or it is signing this Agreement knowingly, voluntarily, and of his or its own free will, and understands and agrees to each of the terms of this Agreement, and (v) has not received tax or legal advice from any other Party and has had an adequate opportunity to receive sufficient tax and legal advice from advisor of his or its own choosing such that he or it enters into this Agreement with full understanding of the tax and legal implications; and

f. such Party has not made any assignment, sale, delivery, transfer, or conveyance of any rights it has asserted or may have against any of the Released Parties with respect to any Released Claim.

9. Covenant Not to Sue

Upon the occurrence of the Effective Date, each Party acknowledges and agrees that this Agreement will be effective as a bar to any and all of the Released Claims of such Party. In furtherance of the foregoing, each Party agrees not to, and shall cause each of its Representatives not to, commence or voluntarily participate in any claim, action, or proceeding with respect to or based upon any Released Claim of such Party.

10. Amendments and Waivers

No amendment or waiver of any provision of this Agreement shall be valid unless the same shall be in writing and identified as an amendment or waiver, as the case may be, and executed by all Parties whose interests are materially adversely affected by the amendment or waiver. No waiver by any Party of any default, misrepresentation or breach of representation, warranty, covenant, or agreement hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation or breach of representation, warranty, covenant, or agreement hereunder, or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

11. Notices.

All notices, requests, demands, claims and other communications hereunder shall be in writing. Any notice, request, demand, claim or other communication hereunder shall be deemed duly given if personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid, or by reputable overnight courier, by email, or by facsimile and addressed to the intended recipient as set forth below:

<u>if to TFL and TLL</u>, to:

Weil, Gotshal & Manges LLP
767 Fifth Avenue

New York, NY 10153
Attn: Ronit Berkovich
(ronit.berkovich@weil.com)
Clifford Carlson
(clifford.carlson@weil.com)
F. Gavin Andrews
(f.gavin.andrews@weil.com)
Taylor Jones
(taylor.jones@weil.com)

if to LFG, to:

David Patton
Michael Ferrara
350 Fifth Avenue, 63rd Floor
New York, New York 10118
dpatton@heckerfink.com
mferrara@heckerfink.com

if to Kwon, to:

David Patton
Michael Ferrara
350 Fifth Avenue, 63rd Floor
New York, New York 10118
dpatton@heckerfink.com
mferrara@heckerfink.com

if to Avalanche, to:

Dennis Twomey
Ryan Fink
1 S Dearborn St
Chicago, IL 60603
dtwomey@sidley.com
ryan.fink@sidley.com

or to such other address as any party hereto may have furnished to the other parties by a notice in writing in accordance with this Section. Any Party may send any notice, request, demand, claim, or other communication hereunder to the intended recipient at the address set forth above using any other means (including messenger service, telecopy, telex, ordinary mail or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless and until it actually is received by the intended recipient. Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Parties notice in the manner set forth herein.

12. Successors and Assignment

No Party shall assign this Agreement or any part hereof without the prior written consent of the other Parties (email being sufficient). Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns. Any purposed assignment in violation of this Section 12 shall be deemed null and void in all respects. Notwithstanding the forgoing, TFL and TLL may freely assign this Agreement to the Wind Down Trust (as defined in the Chapter 11 Plan) or such other entity in which property of the TFL and TLL bankruptcy estates vests as a result of the Chapter 11 Plan going effective.

13. Governing Law; Specific Performance

This Agreement is subject to, and will be governed by and interpreted in accordance with, the laws of the State of Delaware, excluding conflicts of laws principles, and of the United States of America. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may only be brought in the Bankruptcy Court or the United States District Court for the District of Delaware (or, if such court does not accept jurisdiction, such action or proceeding may only be brought in any Delaware state court) and each of the Parties irrevocably consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives, to the fullest extent permitted by law, any objection to venue laid therein. Notwithstanding the preceding sentence, process in any action or proceeding referred to therein may be served by appropriate means on the other Parties, as applicable, outside of the District of Delaware (or the State of Delaware, as applicable). Each Party further agrees to waive any right to a trial by jury. Because a breach of the provisions of this Agreement could not adequately be compensated by money damages, any Party shall be entitled to an injunction restraining such breach or threatened breach and to specific performance of any provision of this Agreement and, in either case, no bond or other security shall be required in connection therewith, and the parties hereby consent to the issuance of such injunction and to the ordering of specific performance upon a finding of a breach of this Agreement by any court with jurisdiction over this Agreement pursuant to this Section 13. In the event of a breach of this Agreement, each non-breaching Party may seek, among other remedies, monetary damages and/or an order compelling specific performance, including an order compelling any payments set forth hereunder. Notwithstanding anything to the contrary in this Agreement, no Party shall be liable to the other Parties for any indirect, incidental, consequential, special, punitive, or exemplary damages, including but not limited to loss of profits, revenue, goodwill, or business opportunities, arising out of or relating to this Agreement, whether based on breach of contract, tort, or any other legal theory, even if such party has been advised of the possibility of such damages.

14. Interpretation

Headings and subheadings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties, and shall not in any way affect the meaning or interpretation of this Agreement. All references to "$" shall be deemed references to United States dollars and, unless otherwise specified, shall be deemed references to then-current United States dollar amounts and are not intended to be adjusted for inflation or otherwise. The Parties acknowledge and agree that this Agreement and all contents herein were jointly drafted by the Parties, and neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against any Party, whether under any rule of construction or otherwise. The words "includes" or "including" shall mean "including without limitation," the words "hereof," "hereby," "herein," "hereunder," "herefrom," and similar terms in this Agreement shall refer to this Agreement as a whole and not any particular Section or Article in which such words appear. The word "or" is not exclusive. The

word "extent" in the phrase "to the extent" means the degree to which a subject or other theory extends and such phrase shall not mean "if." If a term is defined as one part of speech (such as a noun), it shall have a corresponding meaning when used as another part of speech (such as a verb). Unless the context of this Agreement clearly requires otherwise, words importing the masculine gender shall include the feminine and neutral genders and vice versa.

15. Entire Agreement; No Third-Party Beneficiaries

This Agreement is intended by the Parties as a complete statement of the entire agreement and understanding of the Parties with respect to the subject matter hereof and all matters between the Parties related to the subject matter herein set forth. This Agreement supersedes any other agreements, representations, warranties, covenants, communications, or understandings, whether oral or written (including, but not limited to, e-mail and other electronic correspondence), that may have been made or entered into by or between the Parties or any of their respective affiliates, representatives, employees or agents relating in any way to any of the transactions contemplated by this Agreement. This Agreement is made among, and for the benefit of, the Parties hereto, and the Parties do not intend to create any third-party beneficiaries hereby other than the Avalanche Released Parties or the Terra/LFG Released Parties, solely with respect to the releases granted in Sections 4 and 5 of this Agreement, and no other person shall have any rights arising under, or interests in or to, this Agreement.

16. Severability

If any provision of this Agreement is held or determined to be illegal, invalid or unenforceable under any present or future law by an arbitrator or court of competent jurisdiction: (a) such provision will be fully severable; (b) this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance herefrom; and (d) in lieu of such illegal, invalid, or unenforceable provision, the Parties agree to negotiate in good faith a legal, valid, and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible.

17. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile, scanned pages, or email shall be effective as delivery of a manually executed counterpart to this Agreement.

18. Fees and Expenses

To the extent any Party is in breach of any of its obligations contained in this Agreement and/or the Assignment Agreement, such Party shall pay all reasonable costs and fees of the non-breaching Parties, including, without limitation, attorney's fees, in connection with the non-breaching Parties' enforcement of their rights pursuant to the Agreement and/or Assignment Agreement.

[*Remainder of page intentionally left blank*.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date set forth above by their respective and duly authorized officers.

AVALANCHE (BVI), INC.

Name: _____

Title: _____

TERRAFORM LABS PTE. LTD.

DocuSigned by:
94094D2C3EAF4A0...

Name: Chris Amani

Title: Head of Company Operations

TERRAFORM LABS LIMITED

DocuSigned by:
94094D2C3EAF4A0...

Name: Chris Amani

Title: Head of Company Operations of Terraform Labs Pte. Ltd., Director of TLL

LUNA FOUNDATION GUARD LTD.

Name: _____

Title: _____

KWON DO-HYUNG

Name: _____

Title: _____

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date set forth above by their respective and duly authorized officers.

AVALANCHE (BVI), INC.

Name: Signed by: Aytunç Yildizli 6A3A1AE9EFA8400...

Title: Director

TERRAFORM LABS PTE. LTD.

Name: _____

Title: _____

TERRAFORM LABS LIMITED

Name: _____

Title: _____

LUNA FOUNDATION GUARD LTD.

Name: Do Hyeong Kwon

Title: Director

KWON DO-HYUNG

Name: Do Hyeong Kwon

Title: _____

Exhibit A

Assignment Agreement

This Assignment Agreement, dated as of September 23, 2024 (this "**Assignment Agreement**"), is by and between Terraform Labs Pte. Ltd. ("**TFL**"), Terraform Labs Limited ("**TLL**" and together with TFL, "**Assignor**"), and Avalanche (BVI), Inc. ("**Assignee**," and together with Assignor, the "**Parties**").

WHEREAS, simultaneously with the execution and delivery of this Assignment Agreement, Assignor and Assignee, among others, are entering into that certain Settlement, Release, and Assignment Agreement (the "**Settlement, Release, and Assignment Agreement**");[2] and

WHEREAS, as contemplated by the Settlement, Release, and Assignment Agreement, the Parties have agreed that Assignor will transfer the Transferred AVAX Token Interests (as defined below) upon the satisfaction of certain conditions precedent.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and obligations hereinafter contained, and other good and valuable consideration (including without limitation the execution and delivery of the Settlement, Release, and Assignment Agreement), the receipt, validity and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Transfer to Assignee. As of the Effective Date of the Settlement, Release, and Assignment Agreement, the Assignor shall assign, transfer, and deliver unto Assignee any and all rights and interests, including legal, equitable, and beneficial or otherwise, it may have, if any, in the Transferred AVAX Tokens transferred by Assignor to the Assignee pursuant to the Settlement, Release, and Assignment Agreement (collectively, the "**Transferred AVAX Token Interests**"), together with all rights and benefits associated therewith.

2. Settlement, Release, and Assignment Agreement. Nothing contained herein is meant to enlarge, diminish or otherwise alter the terms and conditions of the Settlement, Release, and Assignment Agreement, or the Parties' duties and obligations contained therein.

3. Acceptance and Assumption. As of the date hereof, the Assignee hereby accepts any and all rights and interests, including legal, equitable and beneficial or otherwise, Assignor may have, if any, in the Transferred AVAX Tokens Interests, together with all rights and benefits associated therewith.

4. Successors and Assigns. No Party shall assign this Assignment Agreement or any part hereof without the prior written consent of the other Party (email being sufficient). Subject to the foregoing, this Assignment Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns. Any purposed assignment in violation of this Section 4 shall be deemed null and void in all respects. Notwithstanding the forgoing, TFL and TLL may freely assign this Agreement to the Wind Down Trust (as defined in the Chapter 11 Plan) or such other entity in which property of the TFL and TLL bankruptcy estates vests as a result of the Chapter 11 Plan going effective.

5. Deed; Bill of Sale; Assignment. To the extent required and permitted by applicable law, this Assignment Agreement shall also constitute a "deed," "bill of sale," or an "assignment" of the Transferred AVAX Token Interests.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Settlement, Release, and Assignment Agreement.

6. Incorporation by Reference. All of the provisions of the Settlement, Release, and Assignment Agreement are hereby incorporated by reference *mutatis mutandis*.

IN WITNESS WHEREOF, the Parties hereto have caused this Assignment Agreement to be executed as of the date first set forth above by their respective and duly authorized officers.

AVALANCHE (BVI), INC.

Name: Signed by: Aytunç Yildizli 6A3A1AE9EFA8400...

Title: Director

TERRAFORM LABS PTE. LTD.

DocuSigned by: 94094D2C3EAF4A0...

Name: Chris Amani

Title: Head of Company Operations

TERRAFORM LABS LIMITED

DocuSigned by: 94094D2C3EAF4A0...

Name: Chris Amani

Title: Head of Company Operations of Terraform Labs Pte. Ltd., Director of TLL