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*Attorneys for the Debtors  
and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:

EIGER BIOPHARMACEUTICALS, INC., *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Jointly Administered)

**NOTICE OF FILING PLAN SUPPLEMENT**

**PLEASE TAKE NOTICE THAT** on July 30, 2024, the United States Bankruptcy Court for the Northern District of Texas (the “Court”) entered an order [Docket No. 473] (the “Disclosure Statement Order”): (a) scheduling a hearing at which the Court will consider the adequacy of the Disclosure Statement (as defined below) on a final basis and confirmation of the Plan (as defined below) (the “Combined Hearing”); (b) conditionally approving the adequacy of the *Amended Disclosure Statement for Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 476-1] (as may be amended, supplemented, or modified from time to time, and including all exhibits thereto, the “Disclosure Statement”); (c) approving the solicitation procedures (the “Solicitation Procedures”) with respect to confirmation of the *Second Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*

<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are: Eiger BioPharmaceuticals, Inc. (1591); EBPI Merger Inc. (9986); EB Pharma LLC (8352); Eiger BioPharmaceuticals Europe Limited (N/A); and EigerBio Europe Limited (N/A). The Debtors’ service address is 2100 Ross Avenue, Dallas, Texas 75201.



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[Docket No. 517-1] (as may be amended, supplemented, or modified from time to time, the “Plan”);<sup>2</sup> (d) scheduling certain dates with respect thereto; (e) approving the forms of notices and ballots in connection therewith; and (f) granting related relief.

**PLEASE TAKE FURTHER NOTICE THAT** as contemplated by the Plan and the Disclosure Statement Order, the Debtors hereby file this Plan Supplement with the Court comprised of the following:

<b>Exhibit</b>	<b>Plan Supplement Document</b>
A	Liquidation Analysis
B	Schedule of Assumed Executory Contracts and Unexpired Leases
C	Schedule of Retained Causes of Action
D	Amended Certificate of Incorporation of Eiger BioPharmaceuticals, Inc.
E	Liquidating Trust Agreement
F	Plan Administrator Agreement
G	Identity of Any Insider to Be Employed by the Plan Administrator

**PLEASE TAKE FURTHER NOTICE THAT** certain documents, or portions thereof, contained in this Plan Supplement remain subject to ongoing review, revision, and further negotiation among the Debtors and interested parties with respect thereto. The Debtors reserve the right to alter, amend, modify, or supplement any document in this Plan Supplement in accordance with the Plan, at any time before the Effective Date of the Plan or any such other date as may be provided for by the Plan or by order of the Court; *provided* that if any document in this Plan Supplement is altered, amended, modified, or supplemented in any material respect prior to the date of the Combined Hearing, the Debtors will promptly file a redline of such document with the Court.

**PLEASE TAKE FURTHER NOTICE THAT** the Combined Hearing will commence on **September 5, 2024 at 9:30 a.m.** prevailing Central Time, before the Honorable Judge Jernigan, in Courtroom 1 of the United States Bankruptcy Court for the Northern District of Texas, 1100 Commerce Street, Dallas, Texas 75242.

**PLEASE TAKE FURTHER NOTICE THAT** that you may participate at the Combined Hearing either in person or by an audio or video connection. Audio communication will be by use of the Court’s dial-in facility. You may access the facility at **(650) 479-3207**. The access code is **2304 154 2638**. Video communication will be by use of the Cisco WebEx platform. Connect via the Cisco WebEx application or click the link on Judge Jernigan’s home page, <https://us-courts.webex.com/meet/jerniga>. The meeting code is **2304 154 2638**. Click the settings icon in the upper right corner and enter your name under the personal information setting. Please be advised that the Combined Hearing may be continued from time to time by the Court or the Debtors without further notice other than by such adjournment being announced in open court or by a notice of adjournment filed with the Court and served on other parties entitled to notice.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Disclosure Statement or Plan, as applicable.

**PLEASE TAKE FURTHER NOTICE THAT** the deadline for filing objections to the confirmation of the Plan or adequacy of the Disclosure Statement is **August 30, 2024 at 4:00 p.m.** prevailing Central Time (the “**Plan Objection Deadline**”). Any objection to the confirmation of the Plan or adequacy of the Disclosure Statement must: (a) be in writing; (b) conform to the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules for the Northern District of Texas, and any orders of the court; (c) state, with particularity, the name and address of the objecting party and the amount and nature of the Claim or Interest beneficially owned by such entity; (d) state, with particularity, the legal and factual basis for such objections and, if practicable, a proposed modification to the Plan or Disclosure Statement that would resolve such objections; and (e) be filed with the Court with proof of service thereof and served upon the Debtors, the Statutory Committees, and the U.S. Trustee so as to be actually received on or before the Plan Objection Deadline.

**PLEASE TAKE FURTHER NOTICE THAT** if you would like to obtain a copy of the Disclosure Statement Order, the Plan and Disclosure Statement, the Solicitation Procedures, or related documents, such materials are available free of charge by: (a) accessing the Debtors’ restructuring website at <https://www.veritaglobal.net/Eiger>; (b) writing to Eiger Ballot Processing Center, c/o Kurtzman Carson Consultants, LLC, dba Verita, 222 N. Pacific Coast Highway, Suite 300, El Segundo, California 90245; (c) calling (888) 733-1544 (U.S. and Canada toll free) or (310) 751-2638 (international); or (d) submitting an inquiry via online form at <https://www.veritaglobal.net/Eiger/inquiry>. You may also obtain copies of any pleadings filed in these chapter 11 cases for a fee via PACER at <https://ecf.txnb.uscourts.gov/>.

**ARTICLE IX** OF THE PLAN CONTAINS RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS, AND **ARTICLE IX.B CONTAINS A THIRD-PARTY RELEASE**. **THUS, YOU ARE ADVISED TO REVIEW AND CONSIDER THE PLAN CAREFULLY BECAUSE YOUR RIGHTS MIGHT BE AFFECTED THEREUNDER.**

**THIS NOTICE IS BEING SENT TO YOU FOR INFORMATIONAL PURPOSES ONLY. IF YOU HAVE QUESTIONS WITH RESPECT TO YOUR RIGHTS UNDER THE PLAN OR ABOUT ANYTHING STATED HEREIN OR IF YOU WOULD LIKE TO OBTAIN ADDITIONAL INFORMATION, CONTACT THE NOTICE AND CLAIMS AGENT.**

Dated: August 16, 2024  
Dallas, Texas

**SIDLEY AUSTIN LLP**

*/s/ Thomas R. Califano*

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*Attorneys for the Debtors and Debtors in  
Possession*

**Certificate of Service**

I certify that on August 16, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas.

*/s/ Thomas R. Califano*

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Thomas R. Califano

**Exhibit A**

**Liquidation Analysis**

## **LIQUIDATION ANALYSIS FOR EIGER BIOPHARMACEUTICALS, INC., et al.<sup>1</sup>**

Under the “best interests of creditors” test set forth by section 1129(a)(7) of the Bankruptcy Code, the Bankruptcy Court may not confirm a plan of reorganization unless each holder of an allowed claim or interest in an impaired class either: (a) accepts the plan; or (b) will receive or retain property on account of such claim or interest of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

Accordingly, to demonstrate that the Plan as described in the Disclosure Statement satisfies the “best interests of creditors” test, the Debtors, with the assistance of their advisors, have prepared the following hypothetical liquidation analysis presenting recoveries available to holders of claims and interests assuming a hypothetical chapter 7 liquidation of the Debtors (the “Liquidation Analysis”). In addition, the Debtors, with the assistance of their advisors, have prepared a hypothetical chapter 11 wind-down analysis (the “Chapter 11 Wind-Down Analysis”) to outline the various value drivers that an orderly chapter 11 wind-down provides as compared to a chapter 7 liquidation. The Liquidation Analysis and the Chapter 11 Wind-Down Analysis are based upon certain assumptions detailed in the Disclosure Statement and in the Global Notes and Assumptions set forth below.

This Liquidation Analysis sets forth an estimated range of recovery values for each Class of Claims and Interests that may be realizable upon the disposition of assets pursuant to a hypothetical chapter 7 liquidation of the Debtors’ Estates. Because the net liquidation proceeds would provide for lower recoveries relative to the recoveries under the Plan, as illustrated by this Liquidation Analysis, the Debtors believe that Holders of Allowed Claims or Allowed Interests would receive greater value under the Plan than the amounts such Holders would receive if the Debtors were forced to liquidate under chapter 7, and that, as a result, the Plan satisfies the “best interests” test of section 1129(a)(7) of the Bankruptcy Code.

### **Statement of Limitations**

**THE ILLUSTRATIVE LIQUIDATION ANALYSIS AND CHAPTER 11 WIND-DOWN ANALYSIS PRESENTED HEREIN HAVE BEEN PREPARED SOLELY FOR THE PURPOSES DESCRIBED ABOVE AND MAY NOT BE USED FOR ANY OTHER PURPOSE. THE UNDERLYING FINANCIAL INFORMATION IN THE LIQUIDATION ANALYSIS AND THE CHAPTER 11 WIND-DOWN ANALYSIS WAS NOT COMPILED OR EXAMINED BY INDEPENDENT ACCOUNTANTS IN ACCORDANCE WITH STANDARDS PROMULGATED BY THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS.**

The determination of the costs of and proceeds from the hypothetical liquidation of the Debtors’ assets in a chapter 7 case or, alternatively, a chapter 11 wind-down involves the extensive

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<sup>1</sup> Capitalized terms used but not otherwise defined herein have the meaning ascribed to such terms in the Amended Disclosure Statement for Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code [Docket No. 476-1] (the “Disclosure Statement”).

use of estimates and assumptions that, although considered reasonable by the Debtors based upon their business judgment and input from their advisors, are inherently subject to significant business, economic, and competitive uncertainties and contingencies beyond the control of the Debtors, their management, and their advisors. Inevitably, some assumptions in the Liquidation Analysis and the Chapter 11 Wind-Down Analysis may not materialize in an actual chapter 7 liquidation or chapter 11 wind-down, and unanticipated events and circumstances could materially affect the ultimate results in an actual chapter 7 liquidation or chapter 11 wind-down.

The Liquidation Analysis and Chapter 11 Wind-Down Analysis include estimates for Claims as part of the Debtors' chapter 11 cases that could be asserted and allowed in a chapter 7 liquidation, including unpaid chapter 11 Administrative Claims, and chapter 7 administrative claims such as wind-down cost and fees owed to the chapter 7 trustee (the "Trustee"). To date, the Court has not estimated or otherwise fixed the total amount of Allowed Claims used for purposes of preparing the Liquidation Analysis or Chapter 11 Wind-Down Analysis. Therefore, the Debtors' estimate of Allowed Claims set forth in the Liquidation Analysis and Chapter 11 Wind-Down Analysis should not be relied on for any other purpose, including the value of any distribution to be made on account of Allowed Claims and Interests under the Plan. **THE ACTUAL AMOUNT OF ALLOWED CLAIMS IN THE DEBTORS' CHAPTER 11 CASES COULD MATERIALLY DIFFER FROM THE ESTIMATED AMOUNTS SET FORTH IN THE LIQUIDATION ANALYSIS.**

NEITHER THE DEBTORS NOR THEIR ADVISORS MAKE ANY REPRESENTATION OR WARRANTY THAT THE ACTUAL RESULTS WOULD OR WOULD NOT APPROXIMATE THE ESTIMATES AND ASSUMPTIONS REPRESENTED IN THE LIQUIDATION ANALYSIS OR CHAPTER 11 WIND-DOWN ANALYSIS. ACTUAL RESULTS COULD VARY MATERIALLY.

THE LIQUIDATION ANALYSIS AND THE CHAPTER 11 WIND-DOWN ANALYSIS ARE HYPOTHETICAL EXERCISES THAT HAVE BEEN PREPARED FOR THE SOLE PURPOSE OF PRESENTING A REASONABLE GOOD FAITH ESTIMATE OF THE NET PROCEEDS THAT WOULD BE REALIZED IF THE DEBTORS WERE LIQUIDATED IN ACCORDANCE WITH CHAPTER 7 OF THE BANKRUPTCY CODE OR IN A CHAPTER 11 WIND-DOWN AS OF THE CONVERSION DATE (DEFINED BELOW). THE LIQUIDATION ANALYSIS AND THE CHAPTER 11 WIND-DOWN ANALYSIS ARE NOT INTENDED AND SHOULD NOT BE USED FOR ANY OTHER PURPOSE. THE LIQUIDATION ANALYSIS AND THE CHAPTER 11 WIND-DOWN ANALYSIS DO NOT PURPORT TO BE A VALUATION OF THE DEBTORS' ASSETS AS A GOING CONCERN, AND THERE MAY BE A SIGNIFICANT DIFFERENCE BETWEEN THE LIQUIDATION ANALYSIS AND THE CHAPTER 11 WIND-DOWN ANALYSIS AND THE VALUES THAT MAY BE REALIZED OR CLAIMS GENERATED IN AN ACTUAL LIQUIDATION OR WIND-DOWN.

NOTHING CONTAINED IN THE LIQUIDATION ANALYSIS OR CHAPTER 11 WIND-DOWN ANALYSIS IS INTENDED TO BE, OR CONSTITUTES, A CONCESSION, ADMISSION, OR ALLOWANCE OF ANY CLAIM BY THE DEBTORS. THE ACTUAL AMOUNT OR PRIORITY OF ALLOWED CLAIMS IN THE CHAPTER 11 CASES COULD MATERIALLY DIFFER FROM THE ESTIMATED AMOUNTS SET FORTH HEREIN. THE



DEBTORS RESERVE ALL RIGHTS TO SUPPLEMENT, MODIFY, OR AMEND THE ANALYSES SET FORTH HEREIN.

### **Key Assumptions Underlying the Hypothetical Liquidation**

The following general assumptions were considered by the Debtors and their advisors as assumptions that would be applicable in any hypothetical chapter 7 liquidation.

Based on the foregoing, and the Global Notes and Assumptions below, the Debtors believe the following Liquidation Analysis reflects the likely results of a chapter 7 liquidation as compared to an orderly wind-down of the debtors' estates pursuant to a liquidating chapter 11 plan.

### **Administrative Procedures and Conversion of Cases**

The Liquidation Analysis assumes that each of the Debtors' chapter 11 cases is converted to a case under chapter 7 and consolidated during the chapter 7 cases for procedural purposes only. In the event that the Debtors were to be liquidated in separately administered chapter 7 cases, the administrative costs to the Debtors in each of the cases, including professional fees, Trustee fees, and operational costs likely would be higher than if the cases were consolidated.

### **Professionals Involved in the Chapter 7 Cases**

As part of the chapter 7 cases, the Debtors assume that the Trustee would choose to retain certain professionals, including counsel, advisors, and investment bankers, among others, to provide expertise and assistance in the liquidation of any remaining assets of the Debtors. The Liquidation Analysis assumes that the existing counsel and advisors would be replaced by the Trustee with new professionals.

### **Timing Considerations of Chapter 7 Cases**

The Liquidation Analysis assumes an orderly wind-down and liquidation of any remaining operations or assets over a six to twelve-month period commencing on or around September 5, 2024 (the "Conversion Date"). There can be no assurance, however, that a liquidation would be completed in the limited timeframe, nor is there any assurance that the recoveries assigned to the Debtors' assets would in fact be realized.

### **Trustee Fees for Chapter 7 Administration**

Under section 326(a) of the Bankruptcy Code, for a case under chapter 7, the Court may allow reasonable compensation for the Trustee's services not to exceed three percent (3%) of the moneys disbursed or turned over in the case by the Trustee to parties in interest, excluding the Debtors, but including Holders of secured Claims. The Debtors assume in the Liquidation Analysis that such fees would be approximately two percent (2%) to three percent (3%) of gross liquidation proceeds distributed.

### Additional Claims

The cessation of the Debtors' businesses in a chapter 7 liquidation is likely to trigger certain Claims that otherwise would not exist under the Plan. Examples of these kinds of Claims include tax liabilities triggered upon the transfer of assets, Claims related to the rejection of executory contracts and unexpired leases, and litigation Claims. While some of these Claims could be significant and may be entitled to priority in payment over General Unsecured Claims, no adjustment has been made for these potential Claims unless specified in the assumptions and notes to the Liquidation Analysis and Chapter 11 Wind-Down Analysis.

### Basis of Presentation

The Liquidation Analysis and the Chapter 11 Wind-Down Analysis are based on the internal, unaudited financial statements of the Debtors as of June 30, 2024 (unless otherwise indicated). The actual assets available to the Debtors' estates and claims arising in the event of an actual liquidation or wind-down may differ from the assets assumed to be available pursuant to the Liquidation Analysis.

### Distribution of Liquidation Proceeds.

Chapter 7 and chapter 11 Administrative Claims, Professional Compensation Claims, Priority Tax Claims, and Statutory Fees, and other Claims that may arise in a liquidation or wind-down scenario would be paid from the liquidation / wind-down proceeds before the balance of any proceeds will be made available to make distributions on account of Allowed Claims or Allowed Interests. Under the absolute priority rule, no junior creditor at a given entity would receive any distribution until all senior creditors are paid in full at such entity, and no equity holder at such entity would receive any distribution until all creditors at such entity are paid in full. The assumed distributions to creditors as reflected in the Liquidation Analysis and the Chapter 11 Wind-Down Analysis are estimated in accordance with the absolute priority rule. Administrative claims, including section 503(b)(9) Claims, accrued outstanding post-petition expenses, U.S. Trustee fees, accrued payroll and benefits, paid time off and unpaid and accrued Chapter 11 professional fees incurred in the chapter 11 cases through September 5, 2024, are assumed to be paid in full in the Chapter 11 Wind-Down Analysis with cash on hand.

### Liquidation Analysis

The Court approved or has been requested to approve the Debtors' sale of substantially all of their assets prior to the assumed Conversion Date. Upon the Conversion Date, a liquidation would be conducted pursuant to chapter 7 of the Bankruptcy Code, with a Trustee appointed to manage the bankruptcy estates, which would include any assets not otherwise sold prior to the Conversion Date, and to distribute funds received from any sale. The Trustee would be responsible for liquidating the Debtors' remaining assets in a manner intended to maximize the recovery to creditors. Asset sale proceeds resulting from the liquidation process would be reduced by the expenses of the liquidation process prior to the distribution of such proceeds to any Holders of Allowed Claims or Allowed Interests. The three major components of the liquidation process would be as follows:

- the generation of cash proceeds from the sale of remaining assets;
- the administration and management of costs and post-conversion operational cash flow related to the liquidation process, such as personnel retention costs, claims reconciliation costs, estate wind-down costs, and Trustee and professional fees; and
- the distribution of net proceeds generated from asset sales to claimants in accordance with the priority scheme under chapter 7 of the Bankruptcy Code.

### **Process Assumptions**

The Liquidation Analysis has been prepared assuming that the Debtors converted their cases from chapter 11 to chapter 7 on or about the Conversion Date. On the Conversion Date, it is assumed that a Trustee would be appointed to oversee the liquidation of the Debtors' estates. The Chapter 11 Wind-Down Analysis presumes that a plan administrator ("Plan Administrator") would be appointed as of September 5, 2024 to oversee the wind-down of the Debtors' estates within the Chapter 11 Wind-Down Analysis. In both the Liquidation Analysis and the Chapter 11 Wind-Down Analysis, to the extent asset sales have been consummated, the amount of cash proceeds received have been used.

### **Consummation of the Plan Will Provide Greater Value Than Under a Hypothetical Liquidation Through Chapter 7 of the Bankruptcy Code**

Because the distributions to Holders of Claims under the Liquidation Analysis provide for lower recoveries relative to the recoveries under the Plan, the Debtors believe that consummation of the Plan will provide greater value to such Holders than would a liquidation under chapter 7 of the Bankruptcy Code.

## Chapter 11 Wind-Down Analysis Compared to Chapter 7 Liquidation Analysis

The below exhibit provides a side-by-side comparison of the respective recoveries for various Classes of Claims and Interests under the Chapter 11 Wind-Down Analysis and the Liquidation Analysis.

Liquidation Proceeds (\$ in '000s)	Notes	Book Value		Chapter 11 Wind-Down Analysis				Chapter 7 Liquidation Analysis			
				Estimated Recovery				Estimated Recovery			
		Low (\$)	High (\$)	Low (%)	Low (\$)	High (%)	High (\$)	Low (%)	Low (\$)	High (%)	High (\$)
Lonafarnib (HDV) Expected Net Proceeds	1	\$ 5,044	\$ 5,044	100%	\$ 5,044	100%	\$ 5,044	100%	\$ 5,044	100%	\$ 5,044
Lambda Expected Net Proceeds	2	970	970	100%	970	100%	970	100%	970	100%	970
Expected Estate Cash	3	37,942	37,942	100%	37,942	100%	37,942	100%	37,942	100%	37,942
<b>Total Distributable Value Before Administration Costs</b>		<b>\$ 43,956</b>	<b>\$ 43,956</b>	<b>100%</b>	<b>\$ 43,956</b>	<b>100%</b>	<b>\$ 43,956</b>	<b>100%</b>	<b>\$ 43,956</b>	<b>100%</b>	<b>\$ 43,956</b>
<b>Less: Administration Costs</b>											
Plan Administrator & Liquidating Trustee / Ch 7 Trustee Fees	4				\$ 900		\$ 450		\$ 1,319		\$ 879
Post-Effective Date Budget / Chapter 7 Trustee Budget	5				6,997		5,025		6,997		5,025
<b>Total Administration Costs</b>					<b>7,897</b>		<b>5,475</b>		<b>8,316</b>		<b>5,904</b>
<b>Net Liquidation Proceeds Available for Distribution</b>					<b>\$ 36,059</b>		<b>\$ 38,481</b>		<b>\$ 35,640</b>		<b>\$ 38,051</b>
<b>Claims</b>											
		Claim Amount		Estimated Recovery				Estimated Recovery			
		Low (\$)	High (\$)	Low (%)	Low (\$)	High (%)	High (\$)	Low (%)	Low (\$)	High (%)	High (\$)
Class 1 - Other Secured Claims	6	\$ 0	\$ 0	100%	\$ 0	100%	\$ 0	100%	\$ 0	100%	\$ 0
Remaining Liquidation Proceeds Available for Distribution					36,058		38,480		35,640		38,051
Class 2 - Other Priority Claims	7	\$ 65	\$ 447	100%	\$ 447	100%	\$ 65	100%	\$ 447	100%	\$ 65
Remaining Liquidation Proceeds Available for Distribution					35,612		38,416		35,193		37,987
Class 3 - Prepetition Term Loan Claims	8	\$ 17,132	\$ 23,419	100%	\$ 23,419	100%	\$ 17,132	100%	\$ 23,419	100%	\$ 17,132
Remaining Liquidation Proceeds Available for Distribution					12,193		21,283		11,774		20,854
Class 4 - General Unsecured Claims	9	\$ 7,169	\$ 7,169	100%	\$ 7,169	100%	\$ 7,169	100%	\$ 7,169	100%	\$ 7,169
Remaining Liquidation Proceeds Available for Distribution					5,023		14,114		4,605		13,685
Class 5 - Intercompany Claims	10	\$ -	\$ -	N/A	\$ -	N/A	\$ -	N/A	\$ -	N/A	\$ -
Remaining Liquidation Proceeds Available for Distribution					5,023		14,114		4,605		13,685
Class 6 - Existing Equity Interests	11	N/A	N/A	N/A	\$ 5,023	N/A	\$ 14,114	N/A	\$ 4,605	N/A	\$ 13,685
Remaining Liquidation Proceeds Available for Distribution					-		-		-		-

### Footnotes to Wind-Down Analysis

#### 1. Lonafarnib (HDV) Expected Net Proceeds

Expected net proceeds for Lonafarnib (HDV) are \$5,200,000. Banker fees will be 3% of gross proceeds, resulting in net proceeds of \$5,044,000.

#### 2. Lambda Expected Net Proceeds

Expected net proceeds for Lambda are \$1,000,000. Banker fees will be 3% of gross proceeds, resulting in net proceeds of \$970,000.

#### 3. Expected Estate Cash

The Debtors' Cash and Cash equivalents bank balance is estimated to be \$37,941,746 as of the week ending September 6, 2024. The Cash balance includes sale proceeds of previously sold assets Zokinvy and Avexitide. The Cash proceeds from Zokinvy were deposited in an escrow account with a current balance of \$21,644,018.19, which funds are earning interest income at a rate of 2% per annum, the proceeds of which will be used to satisfy Allowed Claims and Allowed Interests. The Chapter 11 Wind-Down Analysis and the Liquidation Analysis assume liquidation proceeds of Cash and Cash equivalents are 100% of the unaudited book value.

#### **4. Plan Administrator and Liquidation Trustee / Chapter 7 Trustee Costs**

Expenses for a Chapter 11 Plan Administrator and Liquidation Trustee are expected to be \$75,000 per month. The range assumes a Plan Administrator and Liquidation Trustee will be engaged between six and twelve months.

Expenses for a Chapter 7 trustee are expected to range between 2% and 3% of all assets distributed.

#### **5. Post-Effective Date Budget / Chapter 7 Trustee Budget**

The budget includes (a) a budget to litigate claims against the Estates; (b) a disbursement bridge from plan confirmation to emergence, (c) asset transition tail costs, (d) costs to support assets post-divestiture, including the management of EigerBio Europe Limited, which is necessary for regulatory purposes; (e) Statutory Fees; and (e) reserves for customer programs in France, Germany, and Medicaid. For purposes of this analysis, we assume the budget is the same under Chapter 11 and Chapter 7.

#### **6. Class 1 – Other Secured Claims**

Includes Class 1 claims received of \$211.00.

#### **7. Class 2 – Other Priority Claims**

Other priority claims include (a) accrued employee priority severance payments of \$60,600 and (b) buyback of leftover Zokinvy inventory of \$0 - \$382,230.

#### **8. Class 3 – Prepetition Term Loan Claims**

The high-end of the range for the Claim shows the full amount alleged by Innovatus, including (a) a pre-payment penalty, (b) an exit fee, (c) cash, PIK and default interest accrued, and (d) a \$1,000,000 reserve to cover potential professional fee indemnification. The low end of the range for the Claim excludes (a) a pre-payment penalty, (b) an exit fee, and (c) default interest accrued.

#### **9. Class 4 – General Unsecured Claims**

The claims include (a) pre-petition accounts payable; (b) interest accrued on pre-petition accounts payable; (c) other unsecured claims; (d) former employee severance claims; (e) post-bankruptcy employee severance; (f) retention bonuses for post-bankruptcy employees; and (g) payroll taxes payable on severance and retention bonuses.

#### **10. Class 5 – Intercompany Claims**

This analysis assumes that under the Plan, on the Effective Date, each Holder of an Allowed Intercompany Claim shall have its Claim cancelled, released, and extinguished and without any distribution at the election of the Debtors. Per prior agreement, each Holder of an Allowed

Intercompany Claim will waive entitlement to a distribution on account of such Claim. For purposes of this analysis, it is assumed that Intercompany Claims will be treated the same in a Chapter 7 liquidation.

**11. Class 6 – Existing Equity Interests**

Assumes pro-rated returns to all Holders of Existing Equity Interests as of the Distribution Record Date.

## **Exhibit B**

### **Schedule of Assumed Executory Contracts and Unexpired Leases<sup>1</sup>**

The inclusion of a contract or other agreement in the following Schedule of Assumed Executory Contracts and Unexpired Leases shall not constitute or be deemed a determination or admission by the Debtors and their Estates or any other party in interest that such contract or other agreement is, in fact, an Executory Contract or Unexpired Lease within the meaning of the Bankruptcy Code, and any and all rights of the Debtors and their Estates, the Wind-Down Debtors and their Estates, the Plan Administrator, or the Liquidating Trustee with respect thereto are hereby reserved. Unless otherwise specified, each contract or other agreement listed herein shall include all exhibits, schedules, confirmations, riders, modifications, declarations, amendments, supplements, attachments, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects such contract or other agreement, without respect to whether such agreement, instrument, or other document is listed herein. The Debtors reserve all rights to amend, revise, or supplement the Schedule of Assumed Executory Contracts and Unexpired Leases, and any of the documents and designations contained herein.

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<sup>1</sup> Capitalized terms used herein shall have the meaning ascribed to them in the *Second Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 517-1] (as may be amended, supplemented, or modified from time to time, the "Plan").

**Eiger Biopharmaceuticals, Inc.**

Contract Assumption List

Sort #	Counterparty	Description of Contract	Cure Amounts
344	Accenture LLP	MSA	\$0.00
345	Accenture LLP	SOW 1	\$0.00
346	Accenture LLP	Software License	\$0.00
347	Accenture LLP	SOW 2	\$0.00
348	Accenture LLP	SOW 3	\$0.00
349	Accenture LLP	Change Order 1 to SOW 2	\$0.00
350	Accenture LLP	Change Order 1 to SOW 3	\$0.00
351	Accenture LLP	Change Order 2 to SOW 5	\$0.00
352	Accenture LLP	Amended and Restated SOW 5	\$0.00
353	Accenture LLP	Change Order 2 to Amended and Restated SOW 5	\$0.00
354	Accenture LLP	Data Privacy and Security Exhibit	\$0.00
355	Accenture LLP	Amendment 1 to MSA	\$0.00
356	Accenture LLP	Change Order 2 to SOW 3	\$0.00
357	Accenture LLP	SOW 7	\$0.00
358	Accenture LLP	Change Order 1 to SOW 8	\$0.00
326	Box, Inc.	License Renewal Q-00288262	\$0.00
339	Browneinc dba BrowneMusser	MSA	\$750.00
340	Browneinc dba BrowneMusser	Work Order #1	
305	Countsy	AP Outsourcing	\$2,112.80
328	CrossCountry Consulting LLC	PPS Project Order 3	\$12,919.20
341	Digital Media Innovations, LLC ("Notified")	Notified Order Form 00098976	\$1,400.00
322	Jump Start Technology, Inc.	Quote JSTQ2145	\$24,593.75
330	Jump Start Technology, Inc.	Services Agreement	
301	JumpStart Technology	SOW (Sox Compliance)	
332	Niche Quality Limited	CNS	\$8,470.67
333	Niche Quality Limited	Quote 1092047	
318	Okta	Quote Q-545757	\$0.00
307	Okta, Inc	Quote Q-368834	\$0.00
309	Oracle America Inc	Estimate 804616	\$0.00
313	Oracle America Inc	Estimate 958802	\$0.00
315	Oracle America Inc	Estimate 944225	\$0.00
316	Oracle America Inc	SOW US-105793	\$0.00
300	Oracle America, Inc	Agreement	\$0.00
304	Oracle America, Inc	SOW (ACH)	\$0.00
319	Oracle America, Inc.	Subscription Services Agreement	\$0.00
320	Oracle America, Inc.	SOW NetSuite	\$0.00
303	Oracle Netsuite	Estimate 678406	\$0.00
325	PhasIII LLC	CNS	\$4,650.00
324	Precision Trials Solutions LLC	CNS	\$14,787.50
331	Regus CME Ireland Ltd	Lease	\$4,216.35
310	TriNet	Addendum	\$0.00
314	TriNet and Washington State	Auth to Access or File	\$0.00
329	ZenQMS LLC	SOW	\$0.00



**Exhibit C**

**Schedule of Retained Causes of Action**

### **Schedule of Retained Causes of Action**<sup>1</sup>

The Retained Causes of Action set forth below shall be retained pursuant to Articles IV.F and IV.G of the Plan. The Retained Causes of Action include such Causes of Action that shall vest in the Liquidation Trust and may be enforced by the Liquidating Trustee (the “Liquidating Trust Retained Causes of Action”) and those Causes of Action that shall vest in the Wind-Down Debtors and may be enforced by the Plan Administrator (the “Wind-Down Debtors Retained Causes of Action”).

For the avoidance of doubt, the Retained Causes of Action shall not include any Causes of Action against the Debtors’ current or former directors and officers. The Retained Causes of Action shall also not include any Causes of Action transferred to the Purchasers in connection with the Sale Orders, and such Causes of Action shall transfer to the applicable Purchaser according to the terms and conditions of the applicable Sale Order.

#### **Liquidating Trust Retained Causes of Action**

1. Avoidance Actions arising under applicable state law and Chapter 5 of the Bankruptcy Code, including Bankruptcy Code sections 544, 547, and 548, against any party who is not a Released Party.

2. Solely to the extent concerning parties other than Released Parties that are Related Parties of the Debtors, all Causes of Action under any and all insurance contracts and insurance policies to which the Debtors are a party or pursuant to which the Debtors have any rights whatsoever, regardless of whether such contract or policy is specifically identified in the Plan, this Plan Supplement, or any amendments thereto or hereto including, Causes of Action against insurance carriers, reinsurance carriers, insurance brokers, underwriters, occurrence carriers, or surety bond issuers relating to coverage, indemnity, contribution, reimbursement, or any other matters; *provided* that nothing in this paragraph shall prevent, modify, or impair the coverage of Released Parties that are Related Parties of the Debtors under the D&O Liability Insurance Policies.

3. All Causes of Action against or related to all entities (other than Released Parties) that are party to or that may in the future become party to litigation, arbitration, or any other type of adversarial proceeding or dispute resolution proceeding against one or more Debtors, whether formal or informal or judicial or non-judicial, regardless of whether such entity is specifically identified in the Plan, except to the extent such entity is a Released Party.

4. All Causes of Action against or related to all entities (other than Released Parties) that owe or that may in the future owe money to the Debtors, regardless of whether such entity is expressly identified in the Plan except to the extent such entity is a Released Party. The Debtor expressly reserves all Causes of Action against or related to all entities who assert or may assert that the Debtor owe money to them. The claims and Causes of Action reserved include Causes of

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<sup>1</sup> Capitalized terms used herein shall have the meaning ascribed to them in the *Second Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 517-1] (as may be amended, supplemented, or modified from time to time, the “Plan”).

Action against vendors, suppliers of goods or services, any customer of the Debtors, or any other parties, except to the extent such party is a Released Party: (a) for overpayments, back charges, duplicate payments, improper holdbacks, deductions owing or improper deductions taken, deposits, warranties, guarantees, indemnities, recoupment, or setoff; (b) for wrongful or improper termination, suspension of services or supply of goods, or failure to meet other contractual or regulatory obligations; (c) for failure to fully perform or to condition performance on additional requirements under contracts with any one or more of the Debtors before the assumption or rejection, if applicable, of such contracts; (d) for payments, deposits, holdbacks, reserves or other amounts owed by any creditor, utility, supplier, vendor, insurer, surety, factor, lender, bondholder, lessor or other party; (e) for any liens, including mechanics', artisans', materialmens', possessory or statutory liens held by the Debtors; (f) for counter-claims and defenses related to any contractual obligations; (g) for any turnover actions arising under Bankruptcy Code sections 542 or 543; and (h) for unfair competition, interference with contract or potential business advantage, breach of contract, infringement of intellectual property or any business tort claims.

5. To the extent not released by an order of the Bankruptcy Court, all Causes of Action based in whole or in part upon any liens regardless of whether such lien is specifically identified herein.

6. All Causes of Action against any Entity arising in the ordinary course of business, such as accounts receivable and accounts payable on account of goods or services being performed.

#### **Wind-Down Debtors Retained Causes of Action**

7. All Causes of Action in connection with any and all tax obligations to which the Debtors are a party or pursuant to which the Debtors have any rights whatsoever, including, without limitation, against or related to all entities that owe or that may in the future owe money related to tax refunds to the Debtors or Wind-Down Debtors, including in connection with any tax refunds, credits, overpayments, recoupments, or offsets, regardless of whether such entity is specifically identified herein.

8. All Causes of Action based in whole or in part upon any and all postings of a security deposits, adequate assurance payment, or any other type of deposit, prepayment, or collateral, regardless of whether such posting of security deposit, adequate assurance payment, or any other type of deposit, prepayment or collateral is specifically identified herein.

**Exhibit D**

**Amended Certificate of Incorporation of Eiger BioPharmaceuticals, Inc.**

**CERTIFICATE OF AMENDMENT  
TO THE  
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
EIGER BIOPHARMACEUTICALS, INC.**

Eiger BioPharmaceuticals, Inc. (the “Corporation”), a Delaware corporation duly organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the “DGCL”), hereby certifies as follows:

FIRST: The name of the Corporation is Eiger BioPharmaceuticals, Inc.

SECOND: The date on which the original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware, under the name Celladon Corporation, was February 24, 2012.

THIRD: The Amended and Restated Certificate of Incorporation of the Corporation is hereby amended to decrease the number of authorized shares of Common Stock to 5,000,000 and to decrease the number of authorized shares of Preferred Stock to 1,000,000. Specifically, Section A of Article IV of the Amended and Restated Certificate of Incorporation is hereby amended and restated in its entirety as follows:

“A. The Company is authorized to issue two classes of stock to be designated, respectively, “Common Stock” and “Preferred Stock.” The total number of shares which the Company is authorized to issue is 6,000,000 shares. 5,000,000 shares shall be Common Stock, each having a par value of \$0.001. 1,000,000 shares shall be Preferred Stock, each having a par value of \$0.001.”

FOURTH: The foregoing amendment has been duly adopted in accordance with the provisions of Sections 228 and 242 of the DGCL by the directors and stockholders of the Corporation.

FIFTH: The foregoing amendment has been duly adopted without the need for the approval of the board of directors or the stockholders of the Corporation in accordance with the provisions of Section 303 of the DGCL, pursuant to approval received by the United States Bankruptcy Court for the Northern District of Texas in the cases captioned *In re Eiger BioPharmaceuticals, Inc., et al*, Case No. 24-80040.

SIXTH: The Certificate of Amendment to the Amended and Restated Certificate of Incorporation so adopted reads in full as set forth above and is hereby incorporated herein by this reference. All other provisions of the Amended and Restated Certificate of Incorporation of the Corporation remain in full force and effect.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to the Amended and Restated Certificate of Incorporation to be signed by a duly authorized officer on this [●] day of [●], 2024.

**EIGER BIOPHARMACEUTICALS, INC.**

By: /s/ [DRAFT]

Name: James Vollins  
Title: General Counsel, Chief Compliance  
Officer and Corporate Secretary

**Exhibit E**

**Liquidating Trust Agreement**

## LIQUIDATING TRUST AGREEMENT

This Liquidating Trust Agreement (the “Trust Agreement”), dated as of August [●], 2024, is by and among Eiger BioPharmaceuticals, Inc. and its affiliated debtors and debtors-in-possession (collectively, the “Debtors”)<sup>1</sup> in the Chapter 11 bankruptcy cases jointly administered under Case No. 24-80040 (SGJ) (the “Chapter 11 Cases”), currently pending in the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”), and [\_\_\_\_\_], as liquidating trustee (together with any successor or additional trustee appointed under the terms of this Trust Agreement, including Section 2.4 of this Trust Agreement, the “Liquidating Trustee”), for the purpose of forming 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, as contemplated by the Plan (the “Liquidating Trust”).

### RECITALS

A. On April 1, 2024 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the Bankruptcy Court, thereby commencing the Chapter 11 Cases;

B. On August 15, 2024, the Debtors filed the *Second Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 517-1] (as may be amended, modified, or supplemented, the “Plan”),<sup>2</sup> with the Bankruptcy Court;

C. On [●], 2024, the Bankruptcy Court entered an order confirming the Plan [Docket No. [●]] (the “Confirmation Order”), which became effective on [●], 2024 (the “Effective Date”);

D. The Plan provides for, *inter alia*, the creation of the Liquidating Trust for the benefit of the Beneficiaries on the Effective Date for the purpose of liquidating and administering all property and Cash of the Estates, net of the Wind-Down Budget, Professional Fee Reserve, and the Prepetition Term Loan Claims Escrow Account (provided that any excess portion of the Prepetition Term Loan Claims Escrow Amount shall be reallocated to the Liquidating Trust), all as set forth in the Plan (collectively, the “Liquidating Trust Assets”), and making distributions on account thereof in accordance with the terms of the Plan and this Trust Agreement, and to 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, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust, as provided for under the Plan and this Trust Agreement;

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<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are: Eiger BioPharmaceuticals, Inc. (1591); EBPI Merger Inc. (9986); EB Pharma LLC (8352); Eiger BioPharmaceuticals Europe Limited (N/A); and EigerBio Europe Limited (N/A). The Debtors’ service address is 2100 Ross Avenue, Dallas, Texas 75201.

<sup>2</sup> Any capitalized term contained herein without definition shall have the definition set forth in the Plan.

E. The transfer of the Liquidating Trust Assets, as required by the Plan on the Effective Date to be transferred to, and to vest automatically in, the Liquidating Trust for Distribution (hereinafter defined) to the Holders of Claims and Existing Equity Interests (each, a “Beneficiary” and collectively, the “Beneficiaries”), pursuant to and in accordance with this Trust Agreement, the Plan, the Confirmation Order, and the Bankruptcy Code. The Liquidating Trust is established and is effective for the benefit of the Beneficiaries;

F. For federal income tax purposes, (i) the Beneficiaries to be treated as the grantees of the Liquidating Trust and deemed to be the owners of the Liquidating Trust Assets; and (ii) the Debtors to treat the transfer of the Liquidating Trust Assets to the Liquidating Trust as a deemed transfer to such Beneficiaries followed by a deemed transfer by such Beneficiaries to the Liquidating Trust;

G. The management of the Liquidating Trust Assets by the Liquidating Trustee, subject to the oversight and direction of the Liquidating Trust Oversight Committee (hereinafter defined);

H. The liquidation of the Liquidating Trust Assets and, after payment of expenses in accordance with the terms of this Trust Agreement, the Distribution of the proceeds of such liquidation to the Beneficiaries as set forth in the Plan; and

I. The duties and powers of the Liquidating Trustee shall include all powers necessary to administer the Liquidating Trust Assets, including, without limitation, the duties and powers listed in the Plan.

**NOW, THEREFORE**, pursuant to the Plan and in consideration of the promises, the mutual agreements of the parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and affirmed, the parties hereby agree as follows:

## ARTICLE I

### DECLARATION OF TRUST

**1.1 Purpose of the Liquidating Trust.** The Debtors and the Liquidating Trustee, pursuant to the Plan and the Confirmation Order, and in accordance with the Bankruptcy Code, applicable tax statutes, rules and regulations, to the extent incorporated in this Trust Agreement, hereby constitute and create the Liquidating Trust for the purpose of pursuing or liquidating the Liquidating Trust Assets, reconciling and objecting to Claims, prosecuting Retained Causes of Action, and making Plan Distributions to Holders of Allowed Claims, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust, as provided for under the Plan and this Trust Agreement. In particular, the Liquidating Trust, through the Liquidating Trustee, and subject to the oversight and direction of the Liquidating Trust Oversight Committee, shall (i) administer the Liquidating Trust Assets, including liquidating the Liquidating Trust Assets to Cash; (ii) resolve and/or reconcile all claims filed against the Debtors’ Estates (each, a “Claim”); (iii) investigate, prosecute, abandon, settle, and/or defend certain Retained Causes of Action as set



forth in the Plan and Plan Supplement; (iv) prepare and file any and all informational returns, reports, statements, returns or disclosures relating to the Debtors or the Liquidating Trust that are required under the Plan, by any Governmental Unit or applicable law; (v) make any and all Distributions provided for under the Plan or pursuant to this Trust Agreement; (vi) pay all reasonable out-of-pocket expenses incurred in carrying out the terms of the Plan and this Trust Agreement (the “Liquidating Trust Expenses”) out of the Liquidating Trust Assets; and (vii) perform all actions required under the Plan and take such steps as are reasonably necessary to accomplish such purpose, all as more fully provided in, and subject to the terms and provisions of the Plan, the Confirmation Order and this Trust Agreement. The Liquidating Trust shall not have authority to engage in a trade or business, and no portion of the Liquidating Trust Assets shall be used in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust, as provided for under the Plan and this Trust Agreement.

**1.2 Name of the Liquidating Trust.** The Liquidating Trust established hereby shall be known as the “Eiger Liquidating Trust.” In connection with the exercise of its powers, the Liquidating Trustee may use such name or such variation thereof as it deems necessary and may transact the business and affairs of the Liquidating Trust in such name.

**1.3 Transfer of Assets to Create Liquidating Trust.** The Debtors and the Estates hereby grant, release, assign, transfer, convey, and deliver the Liquidating Trust Assets to the Liquidating Trust as of the Effective Date, to have and to hold unto the Liquidating Trustee and his successors in trust and to be applied as specified in the Plan and this Trust Agreement. To the extent required, the Debtors shall cause the Liquidating Trust Assets to be transferred to the Liquidating Trust. Upon the transfer of the Liquidating Trust Assets to the Liquidating Trust, and except as otherwise provided herein or in the Plan, such assets shall become Liquidating Trust Assets and the Debtors shall retain no interest in such Liquidating Trust Assets. Upon delivery of the remaining assets to the Liquidating Trust and their vesting in the Liquidating Trust as Liquidating Trust Assets, the Debtors and their predecessors, successors, and assigns shall be released from all liability with respect to the delivery thereof and shall have no reversionary or further interest in or with respect to the Liquidating Trust Assets or the Liquidating Trust. Notwithstanding the foregoing, for purposes of section 553 of the Bankruptcy Code, the transfer of the Liquidating Trust Assets to the Liquidating Trust shall not affect the mutuality of obligations that otherwise may have existed prior to the effectuation of such transfer.

On the Effective Date, the Debtors shall execute and deliver or cause to be executed and delivered to or upon the order of the Liquidating Trustee all such documents, in recordable form where necessary or appropriate, and the Debtors shall take or cause to be taken such further or other action, as the Liquidating Trustee may deem appropriate, to vest or perfect in or confirm to the Liquidating Trustee, or upon the order of the Liquidating Trustee, title to and possession of all of the Liquidating Trust Assets.

**1.4 Acceptance by Liquidating Trustee.** The Liquidating Trustee hereby accepts (a) the appointment to serve as Liquidating Trustee; (b) the transfer of the Liquidating Trust Assets on behalf of the Liquidating Trust; and (c) the trust imposed on him by this Trust Agreement. The Liquidating Trustee agrees to receive, hold, administer, and distribute the Liquidating Trust Assets

and the income derived therefrom, if any, pursuant to the terms of the Plan, the Confirmation Order, and this Trust Agreement.

## ARTICLE II

### LIQUIDATING TRUSTEE - GENERALLY

**2.1 Appointment.** The initial Liquidating Trustee shall be [\_\_\_\_\_].

**2.2 Term of Service.** The Liquidating Trustee shall serve until (a) the termination of the Liquidating Trust in accordance with Article IV of this Trust Agreement; or (b) the Liquidating Trustee's resignation, death or removal in accordance with this Trust Agreement.

**2.3 Services.** The Liquidating Trustee shall be entitled to engage in such other activities as he deems appropriate which are not in conflict with the Plan, this Trust Agreement, or the interests of the Beneficiaries. The Liquidating Trustee shall devote such time as is reasonably necessary to fulfill all of his duties as Liquidating Trustee.

**2.4 Resignation, Death or Removal of Liquidating Trustee.** The Liquidating Trustee may resign at any time upon thirty (30) days' written notice, in accordance with the notice provisions of the Plan, to the Bankruptcy Court, the Liquidating Trust Oversight Committee, and the United States Trustee. Such resignation shall become effective prior to the expiration of such thirty (30) day notice period upon the appointment of a permanent or interim successor Liquidating Trustee. The Liquidating Trustee may be removed for cause by majority vote of the Liquidating Trust Oversight Committee upon three (3) business days' notice, without further order of the Bankruptcy Court; provided, however, in any such case, removal shall be in good faith and can be challenged by the Liquidating Trustee by making an application to the Bankruptcy Court, provided that the Liquidating Trustee shall remain vested with all rights and obligations under this Trust Agreement pending the Bankruptcy Court's adjudication of the Liquidating Trustee's challenge to the Liquidating Trust Oversight Committee's removal of the Liquidating Trustee. "Cause" for removal of the Liquidating Trustee shall include negligence, fraud, wrongful action or inaction in the performance of his duties. Upon the resignation, death or removal of the Liquidating Trustee, the Liquidating Trust Oversight Committee shall appoint the successor Liquidating Trustee. In its discretion, the Liquidating Trust Oversight Committee may appoint an interim successor Trustee pending its appointment of a permanent successor Liquidating Trustee. Upon appointment pursuant to this Section 2.4 of the Trust Agreement, the successor Liquidating Trustee, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of his, her, or its predecessor.

**2.5 Trust Continuance.** The death, resignation, or removal of the Liquidating Trustee shall not terminate the Liquidating Trust or revoke any existing agency (other than any agency of such Liquidating Trustee as a Liquidating Trustee) created pursuant to this Trust Agreement or invalidate any action previously taken by the Liquidating Trustee. By accepting the position as Liquidating Trustee, such successor Liquidating Trustee agrees that the provisions of this Trust Agreement shall be binding upon, and inure to the benefit of, such successor Liquidating Trustee and all of its heirs and legal and personal representatives, successors, or assigns.

**2.6 Compensation and Expenses of Liquidating Trustee.** The Liquidating Trustee shall be entitled to receive reasonable compensation in connection with its performance of its duties plus the reimbursement of reasonable out-of-pocket expenses. All reasonable and documented costs, expenses, and obligations, including filing fees, incurred by the Liquidating Trustee or the Liquidating Trustee's Professionals (defined below) shall be paid from the Liquidating Trust Assets, and without further Bankruptcy Court approval or order (subject to the limitations set forth in this Trust Agreement and the Plan); *provided* that an amount of Cash sufficient to make payment in full on account of Class 4 General Unsecured Claims, including interest as set forth in the Plan, shall be reserved prior to the Liquidating Trustee making any distributions on account of the Liquidating Trustee's compensation or reimbursement of the Liquidating Trustee's reasonable out-of-pocket expenses or the reasonable and documented costs, expenses, and obligations, as well as payment to the Liquidating Trustee's Professionals.

**2.7 Retention and Payment of Professionals.** The Liquidating Trustee, in its sole discretion, may retain such professionals, consultants, or other Persons as the Liquidating Trustee deems reasonably necessary to carry out its duties under this Trust Agreement, including, without limitation, any advisory firm of which such Liquidating Trustee is employed or affiliated with, or any counsel, advisory firm, or other professional previously retained in these Chapter 11 cases (the "Liquidating Trustee's Professionals"); *provided* that any professional consultant, agent, or Person whom the Liquidating Trustee intends to retain shall be approved in advance of such retention by the Liquidating Trust Oversight Committee. The Liquidating Trustee's Professionals shall submit monthly invoices to the Liquidating Trustee and the Liquidating Trust Oversight Committee, and the Liquidating Trustee may pay the amounts requested from the Liquidating Trust Assets. The Liquidating Trust Expenses of the Liquidating Trustee and the Liquidating Trustee's Professionals may only be paid from the Liquidating Trust Assets to the extent there are sufficient funds available from which to make such payments. The Liquidating Trustee shall not be personally liable to any of the Liquidating Trustee's Professionals for any unpaid invoices or claims for services rendered. If there is an objection received to the Liquidating Trustee's or the Liquidating Trustee's Professionals' invoice and despite best efforts, the parties are unable to agree on the resolution of such objection then the objecting party shall, within twenty (20) days of the receipt of such monthly fee statement, file an objection with the Bankruptcy Court on notice to such professional and the Liquidating Trustee. The Bankruptcy Court shall retain jurisdiction to resolve any such dispute.

## ARTICLE III

### **POWERS AND LIMITATIONS OF LIQUIDATING TRUSTEE**

**3.1 General Powers of Liquidating Trustee.** In connection with the administration of the Liquidating Trust, except as otherwise set forth herein, the Liquidating Trustee is authorized to perform only those acts reasonably necessary and desirable to accomplish the purposes of the Liquidating Trust set forth in the Plan and this Trust Agreement, including but not limited to, using the Liquidating Trust Assets to fund the administration of the Liquidating Trust. The Liquidating Trust shall succeed to all of the rights of the Debtors necessary to protect, conserve, pursue, and liquidate all Liquidating Trust Assets as quickly as reasonably practicable. Subject to the limitations set forth in this Trust Agreement, the Plan, and the Confirmation Order, the Liquidating Trustee may exercise all powers granted hereunder related to, or in connection with, the collection, prosecution, settlement, liquidation, and distribution to the Beneficiaries, of the Liquidating Trust

Assets. Without limiting, but subject to, the foregoing, the Liquidating Trustee shall be expressly authorized:

(a) To open and maintain bank accounts on behalf of or in the name of the Liquidating Trust, calculate and make Distributions (defined below) and take other actions consistent with the Plan and the implementation thereof, including the establishment, re-evaluation, adjustment, and maintenance of appropriate reserves that may be required, in the name of the Liquidating Trust;

(b) To effect all actions and execute all agreements, instruments, and other documents necessary to implement the applicable provisions of the Plan and Trust Agreement;

(c) To receive, conserve, and manage the Liquidating Trust Assets;

(d) To hold legal title to any and all Liquidating Trust Assets;

(e) Subject to the applicable provisions of the Plan, to investigate, pursue, prosecute, settle, defend, collect, and liquidate the Liquidating Trust Assets, including but not limited to, the Retained Causes of Action;

(f) To take discovery from third parties, including but not limited to issuing Fed. R. Bankr. P. 2004 subpoenas and discovery requests in connection with the prosecution of Retained Causes of Actions;

(g) With input from the Liquidating Trust Oversight Committee, make decisions regarding the retention or engagement of the Liquidating Trustee's Professionals and to pay, from the Liquidating Trust Assets and the proceeds thereof, the fees and charges incurred by the Liquidating Trust, including, but not limited to, the fees and expenses of the Liquidating Trustee and the Liquidating Trustee's Professionals relating to the implementation of the Plan and performance by the Liquidating Trustee of its duties under this Trust Agreement;

(h) To pay all lawful expenses, debts, charges and liabilities of the Liquidating Trust;

(i) To wind down the affairs of the Liquidating Trust including the filing of final tax returns, establish any administrative reserves necessary to close the Liquidating Trust and make all Distributions to the Beneficiaries provided for or contemplated by the Plan;

(j) To withhold from the amount distributable to any Person such amount as may be sufficient to pay any tax or other charge which the Liquidating Trustee has determined, in its sole discretion, may be required to be withheld therefrom under the income tax laws of the United States or of any state or political subdivision thereof. In the exercise of its discretion and judgment, the Liquidating Trustee may enter into agreements with taxing or other governmental authorities for the payment of such amounts as may be withheld in accordance with the provisions of this section;

(k) To abandon in any commercially reasonable manner, including abandonment or donation to a charitable organization of its choice, any Liquidating Trust Assets if the Liquidating Trustee concludes that they are of no significant value or benefit to the Liquidating Trust;

(l) If any of the Liquidating Trust Assets are situated in any state or other jurisdiction in which the Liquidating Trustee is not qualified to act as trustee, to nominate and appoint a Person duly qualified to act as trustee in such state or jurisdiction and require from each such trustee some form of adequate security as designated by the Liquidating Trustee; confer upon such trustee all the rights, powers, privileges and duties of Liquidating Trustee, subject to the conditions and limitations of this Trust Agreement, except as modified or limited by the Liquidating Trustee and except where the conditions and limitations may be modified by the laws of such state or other jurisdiction (in which case, the laws of the state or other jurisdiction in which such trustee is acting shall prevail to the extent necessary); require such other trustee to be answerable to the Liquidating Trustee for all monies, assets, and other property that may be received in connection with the administration of all property; and remove such other trustee, with or without cause, and appoint a successor trustee at any time by the execution by the Liquidating Trustee of a written instrument declaring such other trustee removed from office, and specifying the effective date and time of removal;

(m) Except as otherwise set forth in this Trust Agreement, to have exclusive power to investigate, prosecute, abandon, compromise, defend, and/or settle all Retained Causes of Action, or any other causes of action or counterclaims as described in the Plan and Disclosure Statement (collectively, the "Actions") and exercise, participate in or initiate any proceeding before the Bankruptcy Court or any other court of competent and appropriate jurisdiction and voluntarily participate as a party or otherwise in any administrative proceeding, arbitration, mediation, or other nonjudicial proceeding and litigate or settle such Actions on behalf of the Liquidating Trust, and pursue such actions to settlement or final order, all in accordance with the terms of this Trust Agreement;

(n) To hold any unclaimed Distributions or payment to a Beneficiary in accordance with this Trust Agreement, the Confirmation Order, and the Plan;

(o) To purchase or create and carry all insurance policies and pay all insurance premiums and costs it deems necessary or advisable;

(p) To collect and liquidate all Liquidating Trust Assets pursuant to the Plan, the Confirmation Order, and this Trust Agreement;

(q) To object to Claims and supervise and administer the resolution, settlement, withdrawal, compromise, allowance, and/or payment of such Claims, together with any distribution to the Beneficiaries in accordance with this Trust Agreement and the Plan. Specifically, the Liquidating Trustee may compromise or settle any such Claim (Disputed or otherwise) free of any restrictions other than those restrictions expressly imposed by the Plan, the Confirmation Order, or this Trust Agreement;

(r) Exercise such rights of setoff as the Debtors or the Estates may have had against any Beneficiary as set forth in the Plan Supplement;

(s) Voluntarily engage in arbitration or mediation with regard to Retained Causes of Action;

(t) To (i) seek a determination of tax liability under section 505 of the Bankruptcy Code; (ii) file, if necessary, any and all tax returns required with respect to the Liquidating Trust treating the Liquidating Trust as a grantor trust pursuant to Treas. Reg. 1.67-4(a) or otherwise; (iii) make tax elections by and on behalf of the Liquidating Trust; and (iv) pay taxes, if any, payable by the Liquidating Trust;

(u) To make all distributions (“Distributions”) to Holders of Allowed Claims and Existing Equity Interests provided for or contemplated by the Plan;

(v) Resolve issues pertaining to the retention or disposal of the Liquidating Trust’s administrative and business records;

(w) To perform any other actions or duties required to be performed by the Liquidating Trustee pursuant to the provisions of the Plan and/or Confirmation Order; and

(x) To assert or waive any attorney-client, work product, or other privilege on behalf of the Debtors and Estates with regard to the Liquidating Trust Assets.

**3.2 Limitations on the Liquidating Trustee.** Notwithstanding anything in this Trust Agreement to the contrary, the Liquidating Trustee shall not do or undertake any of the following:

(a) Take any action in contravention of the Plan, the Confirmation Order, or this Trust Agreement;

(b) Take any action that would significantly jeopardize treatment of the Liquidating Trust as a “liquidating trust” for federal income tax purposes;

(c) Grant liens on any of the Liquidating Trust Assets;

(d) Guaranty any debt;

(e) Loan Liquidating Trust Assets to the Liquidating Trustee;

(f) Purchase Liquidating Trust Assets from the Liquidating Trust;

(g) Transfer Liquidating Trust Assets to another trust with respect to which the Liquidating Trustee serves as trustee;

(h) Settle any actions in which the amount being sought by the Liquidating Trustee (or the amount in controversy) is in excess of \$250,000 in an amount which is less than

seventy percent (70%) of the amount at issue, without the advice and consent of the Liquidating Trust Oversight Committee;

(i) Make investments other than invest in demand and time deposits, such as short-term certificates of deposits, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury Bills; and

(j) Exercise control over any matters explicitly within the control of the Plan Administrator, pursuant to the Plan, the Confirmation Order, or the Plan Administrator Agreement.

**3.3 Liquidating Trustee Conflicts of Interest.** If the Liquidating Trustee or the Liquidating Trust Oversight Committee determines in their reasonable discretion that the Liquidating Trustee has a material conflict of interest with respect to any matter, the Liquidating Trust Oversight Committee shall, at its option and in its own discretion, either (i) exercise the Liquidating Trustee's rights and authorities with respect to such matter; or (ii) designate a Person to act on behalf of the Liquidating Trust solely with respect to such matter with such designee's authority to act on behalf of the Liquidating Trust to terminate upon the matter's conclusion. If neither the Liquidating Trustee nor the Liquidating Trust Oversight Committee is able to act on behalf of the Liquidating Trust, and the Liquidating Trust Oversight Committee is unable to appoint a designee to act on behalf of the Liquidating Trust with respect to any matter, the Liquidating Trustee and the Liquidating Trust Oversight Committee, after notice to the United States Trustee, may request the Bankruptcy Court to approve a designee of the Liquidating Trustee or the Liquidating Trust Oversight Committee to act on behalf of the Liquidating Trust solely with respect to such matter, with such designee's authority to act on behalf of the Liquidating Trust to automatically terminate upon the matter's conclusion.

## ARTICLE IV

### LIQUIDATING TRUST OVERSIGHT COMMITTEE, GENERALLY

**4.1 The Liquidating Trust Oversight Committee.** On the Effective Date, a governing board of creditors currently serving on the Official Committee of Equity Security Holders shall commence serving as members of the Liquidating Trust (the "Liquidating Trust Oversight Committee"). The members of the Liquidating Trust Oversight Committee may each appoint individual representatives to the Liquidating Trust Oversight Committee, with the representatives of each such member of the Liquidating Trust Oversight Committee set forth on Schedule A attached hereto, together with a list of individuals who have been designated as Persons that have the authority to attend meetings of the Liquidating Trust Oversight Committee in lieu of or in addition to a particular member if such member so desires. The Liquidating Trust Oversight Committee shall have general oversight powers for the activities of the Liquidating Trustee as well as those specific rights and powers set forth in other provisions of this Trust Agreement and under the Plan.

**4.2 Authority and Responsibilities.** The Liquidating Trust Oversight Committee shall have the authority and responsibility to oversee, monitor, review, and guide the activities and performance of the Liquidating Trustee and shall have the authority to remove the Liquidating Trustee in accordance with Section 2.4 hereof. The Liquidating Trust Oversight Committee shall

also (a) monitor and review the fairness of any settlement, abandonment, withdrawal, and/or other disposition proposals proposed to or conditionally agreed to by the Liquidating Trustee with respect to Retained Causes of Action; (b) consult with the Liquidating Trustee, and if required, vote on a proposed settlement, abandonment, withdrawal, and/or other disposition or prosecution of any Actions which are part of the Liquidating Trust Assets; (c) monitor and oversee the administration of the Liquidating Trust and the Liquidating Trustee's performance of its responsibilities under this Trust Agreement and the Plan; and (d) perform such other tasks as set forth in this Trust Agreement and in the Plan. In all circumstances, except as explicitly provided herein, the Liquidating Trust Oversight Committee shall exercise its responsibilities under the Liquidating Trust consistent with fiduciary standards. In all circumstances, the Liquidating Trust Oversight Committee shall act in the best interests of all Beneficiaries and in furtherance of the purpose of the Liquidating Trust. The Liquidating Trustee shall consult with and provide information to the Liquidating Trust Oversight Committee on a regular basis in accordance with and pursuant to the terms of this Trust Agreement, the Plan, and the Confirmation Order.

**4.3 Meeting of the Liquidating Trust Oversight Committee.** Meetings of the Liquidating Trust Oversight Committee are to be held with such frequency and at such place as the Liquidating Trustee and the Liquidating Trust Oversight Committee may determine in their reasonable discretion, but in no event shall such meetings be held less frequently than quarterly. Special meetings of the Liquidating Trust Oversight Committee may be held at a location and time elected (including virtually) by the Liquidating Trustee or the majority of the Liquidating Trust Oversight Committee. Unless the Liquidating Trust Oversight Committee decides otherwise (which decision shall rest in the reasonable discretion of the Liquidating Trust Oversight Committee), the Liquidating Trustee and its designated advisors and professionals may attend meetings of the Liquidating Trust Oversight Committee.

**4.4 Manner of Acting.** Unless otherwise specified herein, all other rules of decorum and procedure governing the Liquidating Trust Oversight Committee shall be identical to those rules of decorum and procedure governing the Official Committee of Equity Security Holders as set forth in the By-laws of the Official Committee of Equity Security Holders of Eiger BioPharmaceuticals, Inc., *et al.* (which are incorporated herein by reference as if fully set forth herein). Any vote requiring a majority to carry the proposed action shall be deemed to require the vote of a majority of the quorum of the Liquidating Trust Oversight Committee, and any action requiring the attendance of a quorum shall be deemed to require the attendance of two (2) members of the Liquidating Trust Oversight Committee. Any action required or permitted to be taken by the Liquidating Trust Oversight Committee at a meeting may be taken without a meeting if the action is taken by unanimous written consent of the Liquidating Trust Oversight Committee as evidenced by one or more written consents describing the action taken, signed by appropriate representatives of all members of the Liquidating Trust Oversight Committee and recorded in the minutes, if any, or other transcript, if any, of proceedings of the Liquidating Trust Oversight Committee. The affirmative vote of a majority of the members of the Liquidating Trust Oversight Committee present at a meeting shall be the act of the Liquidating Trust Oversight Committee, except as otherwise required by law or as provided in this Trust Agreement. Any or all of the members of the Liquidating Trust Oversight Committee and their representatives or professionals may participate in a regular or special meeting by, or conduct the meeting through, the use of conference telephone, video conference, or similar communications equipment by means of which all Persons participating in the meeting may hear each other, in which case any required notice of



such meeting may generally describe the arrangements (rather than or in addition to the place) for the holding thereof. Any member of the Liquidating Trust Oversight Committee and their representatives or professionals participating in a meeting by this means are deemed to be present in person at the meeting. Voting (including on negative notice) may be conducted by electronic mail or individual communications by the Liquidating Trustee and each member of the Liquidating Trust Oversight Committee.

**4.5 Tenure of the Members of the Liquidating Trust Oversight Committee.** The authority of the members of the Liquidating Trust Oversight Committee will be effective as of the Effective Date and will remain and continue in full force and effect until the Liquidating Trust is terminated in accordance with this Trust Agreement. The members of the Liquidating Trust Oversight Committee will serve until death, resignation pursuant to Section 4.6 below, removal pursuant to Section 4.7 below, or the dissolution of the Liquidating Trust Oversight Committee.

**4.6 Resignation.** A member of the Liquidating Trust Oversight Committee may resign by giving not less than forty-five (45) days prior written notice thereof to the Liquidating Trustee and the other members of the Liquidating Trust Oversight Committee. Such resignation shall become effective on the earlier to occur of: (i) the day specified in such notice; and (ii) the appointment of a successor in accordance with Section 4.8 below.

**4.7 Removal.** A member of the Liquidating Trust Oversight Committee may be removed only for Cause by the unanimous vote of the other members of the Liquidating Trust Oversight Committee, and written resolution of which shall be delivered to the removed member.

**4.8 Appointment of Successor Liquidating Trust Oversight Committee Member.**

(a) In the event of a vacancy on the Liquidating Trust Oversight Committee (whether by removal, death, or resignation), a new member may be appointed to fill such position by the remaining members. The appointment of a successor member of the Liquidating Trust Oversight Committee will be evidenced by the Liquidating Trustee's filing with the Bankruptcy Court of a notice of appointment, which notice will include the name, address, and telephone number of the successor member.

(b) Immediately upon the appointment of any successor member, all rights, powers, duties, authority, and privileges of the predecessor member hereunder will be vested in and undertaken by the successor member without any further act, and the representative(s) of the successor member will not be liable personally for any act or omission of the representatives of the predecessor member.

(c) Every successor member appointed hereunder shall execute, acknowledge and deliver to the Liquidating Trustee and other members a written instrument assenting to the appointment under this Trust Agreement and agreeing to be bound thereto, and thereupon the successor member without any further act, deed, or conveyance, shall become vested with all rights, powers, trusts, and duties of the retiring member.

(d) For the avoidance of doubt, existing members of the Liquidating Trust Oversight Committee may appoint and/or replace their designated representatives and/or

professionals on the Liquidating Trust Oversight Committee at any time upon notice to the other members of the Liquidating Trust Oversight Committee, and such additional and/or replacement representative(s) shall be deemed to assent, agree to, and be bound by the terms of this Trust Agreement.

## ARTICLE V

### **LIABILITY OF LIQUIDATING TRUSTEE AND MEMBERS OF TRUST OVERSIGHT COMMITTEE**

**5.1 Liquidating Trustee's and Members' of Liquidating Trust Oversight Committee Standard of Care; Exculpation.** Neither the Liquidating Trustee nor the Liquidating Trust Oversight Committee, or any partner, director, officer, affiliate, employee, employer, professional, agent or representative of the Liquidating Trustee or Liquidating Trust Oversight Committee ("Indemnified Persons") shall be held personally liable in connection with the affairs of the Liquidating Trust to any Person, including any Beneficiary of the Liquidating Trust, or to the Liquidating Trust, except for acts or omissions of the Indemnified Person that constitute fraud, willful misconduct, or gross negligence. Persons dealing with Indemnified Persons in connection with the Liquidating Trust, or seeking to assert claims against the Liquidating Trust, shall have recourse only to the Liquidating Trust Assets to satisfy any liability incurred by the Indemnified Persons to such Persons in carrying out the terms of this Trust Agreement, except for acts or omissions of the Indemnified Persons that constitute fraud, willful misconduct or gross negligence.

**5.2 Indemnification.** Except as otherwise set forth in the Plan or Confirmation Order, Indemnified Persons, including, without limitation, any member of the Liquidating Trust Oversight Committee or firm in which the Liquidating Trustee is a partner, member, shareholder or employee ("Firm") shall be defended, held harmless and indemnified from time to time by the Liquidating Trust against any and all losses, claims, costs, expenses, and liabilities incurred in connection with the Liquidating Trust Assets to which such Indemnified Persons may be subject by reason of such Indemnified Party's execution in good faith of its duties pursuant to the discretion, power and authority conferred on such Person by this Trust Agreement, the Plan or the Confirmation Order; *provided*, however, that the indemnification obligations arising pursuant to this section shall not indemnify any Indemnified Person for any actions taken by an Indemnified Person which constitute bad faith, fraud, willful misconduct, gross negligence, willful disregard of his or her duties hereunder, or willful material breach of the Plan. Satisfaction of any obligation of an Indemnified Person arising pursuant to the terms of this Section 5.2 shall be payable only from the Liquidating Trust Assets.

**5.3 No Liability for Acts of Predecessor Liquidating Trustees.** No successor Liquidating Trustee shall be in any way liable for the acts or omissions of any predecessor Liquidating Trustee unless a successor Liquidating Trustee expressly assumes in writing such responsibility.

**5.4 Reliance by Liquidating Trustee and Members of Liquidating Trust Oversight Committee on Documents, Mistake of Fact, or Advice of Counsel.** Except as otherwise provided in this Trust Agreement, the Liquidating Trustee and each member of the Liquidating Trust Oversight Committee, together with their representative(s) and professionals, in good faith

may rely, and shall be protected from liability for acting, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order or other paper or document reasonably believed by the Liquidating Trustee or member of the Liquidating Trust Oversight Committee, as the case may be, to be genuine and to have been presented by an authorized party. The Liquidating Trustee and each member of the Liquidating Trust Oversight Committee, together with their representative(s) and professionals, shall not be liable if it acts based on a mistake of fact before having actual knowledge of an event or for any action taken or suffered by such Person if such Person has reasonably relied upon the advice of counsel or other professionals engaged by the Liquidating Trustee or member of the Liquidating Trust Oversight Committee in accordance with this Trust Agreement.

**5.5 Insurance.** The Liquidating Trustee may purchase errors and omissions insurance with the Liquidation Trust Assets for itself (and any Trustee Firm) and the members of the Liquidating Trust Oversight Committee (in their capacity as such) with regard to any liabilities, losses, damages, claims, costs and expenses such Person may incur, including but not limited to reasonable attorneys' fees, arising out of or due to its actions or omissions, or consequences of such actions or omissions, other than as a result of its fraud, gross negligence or willful misconduct, with respect to the implementation and administration of the Plan and this Trust Agreement.

## ARTICLE VI

### **DUTIES OF LIQUIDATING TRUSTEE**

**6.1 General.** The Liquidating Trustee shall have all duties specified in the Plan, the Confirmation Order, and this Trust Agreement as being the responsibility of the Liquidating Trustee.

**6.2 Books and Records.** The Liquidating Trustee shall maintain, in respect of the Liquidating Trust, books and records relating to the Liquidating Trust Assets, income realized therefrom, and expenses of and claims against or assumed by the Liquidating Trust, in such detail and for such period of time as may be necessary to enable it to make full and proper reports in respect thereof. Except as expressly provided in this Trust Agreement, the Plan, or the Confirmation Order, nothing in this Trust Agreement is intended to require the Liquidating Trustee to file any accounting or seek approval of any court with respect to the administration of the Liquidating Trust, or as a condition for making any payment or Distribution to a Beneficiary out of the Liquidating Trust Assets. Notwithstanding the foregoing, the Liquidating Trustee shall disseminate periodic reports to the members of the Liquidating Trust Oversight Committee regarding the Liquidating Trust Assets and the Liquidating Trust Expenses. The Liquidating Trust shall be responsible for out-of-pocket costs and expenses of providing access and/or maintaining such books and records with third parties following the Effective Date.

**6.3 Asset Valuation.** The valuation of the Liquidating Trust Assets agreed to by the Parties shall be used consistently by all parties for all federal income tax purposes. The Liquidating Trust shall file (or cause to be filed) any other statements, returns or disclosures related to the Liquidating Trust that are required by any governmental unit. Any dispute regarding the valuation of Liquidating Trust Assets shall be resolved by the Bankruptcy Court. The Liquidating Trust may request an expedited determination of taxes of the Liquidating Trust under Bankruptcy Code

section 505(b) for all tax returns filed for or on behalf of the Liquidating Trust for all taxable periods through the dissolution of the Liquidating Trust.

## **ARTICLE VII**

### **BENEFICIARIES**

**7.1 Effect of Death, Incapacity, or Bankruptcy of Beneficiary.** The death, incapacity, or bankruptcy of a Beneficiary during the term of the Liquidating Trust shall not operate to terminate the Liquidating Trust, nor shall it entitle the representative or creditors of the deceased, incapacitated, or bankrupt Beneficiary to an accounting or to take any action in any court or elsewhere for the distribution of the Liquidating Trust Assets or for a petition thereof nor shall it otherwise affect the rights and obligations of the Beneficiary under this Trust Agreement or in the Liquidating Trust.

**7.2 Standing of Beneficiary.** Except as expressly provided in this Trust Agreement, the Plan, or the Confirmation Order, a Beneficiary does not have standing to direct the Liquidating Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party (other than the Liquidating Trustee) upon or with respect to the Liquidating Trust Assets.

**7.3 Release of Liability by Beneficiary.** A Beneficiary shall not release the Liquidating Trustee from any duty, responsibility, restriction or liability as to such Beneficiary that would otherwise be imposed under this Trust Agreement unless such relief is approved by Final Order of the Bankruptcy Court.

## **ARTICLE VIII**

### **DISTRIBUTIONS**

**8.1 Distributions from Liquidating Trust Assets.** All Distributions of Liquidating Trust Assets made by the Liquidating Trustee to the Beneficiaries shall be made only in accordance with the Plan, the Confirmation Order, and this Trust Agreement, and only to the extent any such Distribution is in excess of \$100.00 and only to the extent that the Liquidating Trust has sufficient Liquidating Trust Assets from which to make such payments in accordance with, and to the extent provided for, in the Plan, the Confirmation Order, and this Trust Agreement. Any Distribution made by the Liquidating Trustee in good faith and if required hereby, with the consent of the Liquidating Trust Oversight Committee, shall be binding and conclusive on all interested parties.

**8.2 Distributions; Withholding.** To the extent that sufficient funds are contained in the Liquidating Trust from which to make a Distribution, the Liquidating Trustee may make discretionary Distributions on an interim basis to the Beneficiaries from all net Cash income and all other Cash held in the Liquidating Trust; *provided*, however, and subject to Section 2.6, that the Liquidating Trust may retain such amounts (a) as are reasonably necessary to meet contingent liabilities of the Liquidating Trust; (b) to pay reasonable administrative expenses including, without limitation, the compensation to and reasonable, actual and necessary costs and expenses of the Liquidating Trustee, including, without limitation, the Liquidating Trust Expenses and the fees and expenses of the Liquidating Trustee's Professionals, in connection with the performance

of the Liquidating Trustee's duties in connection with this Trust Agreement; (c) the reasonable fees and expenses of the members of the Liquidating Trust Oversight Committee as permitted by the terms of this Trust Agreement; (d) the reasonable costs necessary to pursue liquidation of the Retained Causes of Action; and (e) to satisfy all other liabilities incurred or assumed by the Liquidating Trust (or to which the Liquidating Trust Assets are otherwise subject) in accordance with the Plan, the Confirmation Order, and this Trust Agreement. All such Distributions shall be made as provided, and subject to any withholding, in this Trust Agreement, the Plan, or the Confirmation Order. Additionally, the Liquidating Trustee may withhold from amounts distributable to the Beneficiaries any and all amounts, determined in the Liquidating Trustee's reasonable sole direction, to be required for any law, regulation, rule, ruling, directive or other governmental requirement. In no event shall the Liquidating Trustee be required to make any Distribution if the same would be administratively burdensome or unreasonably expensive in relation to the dollar amount of the total Cash to be distributed.

Notwithstanding any provision in the Plan to the contrary, no partial payments and no partial Distributions will be made with respect to a Disputed Claim until the resolution of such disputes by settlement or Final Order.

**8.3 Non-Cash Property.** If, in the Liquidating Trustee's judgment, after consultation with the Liquidating Trust Oversight Committee, (i) any Liquidating Trust Asset that is not Cash cannot be sold, settled, or otherwise reduced to Cash in a commercially reasonable manner, or (ii) the Cash available for the final distribution is less than the cost to distribute such funds, then the Liquidating Trustee shall have the right to abandon, withdraw, or otherwise dispose of such property, including by donation of such property to a charity designated by the Liquidating Trustee. Except in the case of willful misconduct, no party in interest shall have a cause of action against the Liquidating Trust, the Liquidating Trustee, any member of the Liquidating Trust Oversight Committee or any partner, director, officer, employee, representative, consultant of, or professional employed by the Liquidating Trustee or any member of the Liquidating Trust Oversight Committee in connection with the Liquidating Trust arising from or related to the disposition of non-Cash property in accordance with this Section 8.3.

**8.4 Method of Cash Distributions.** Any Cash Distribution to be made by the Liquidating Trust pursuant to the Plan will be in U.S. dollars and may be made, at the sole discretion of the Liquidating Trustee, by check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law.

**8.5 Distributions on Non-Business Days.** Any payment or Distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day.

**8.6 Documents Requested by the Liquidating Trustee.** The Liquidating Trustee may require any Beneficiary to furnish to the Liquidating Trustee its social security number or employer or taxpayer identification number as assigned by the IRS and complete any related documentation (including but not limited to a Form W-8 or Form W-9). Any Beneficiary that fails to return such documents and/or forms to the Liquidating Trustee within 180 days of a request by the Liquidating Trustee, in writing, shall forfeit its right to Distribution and shall cease being a Beneficiary of the Liquidating Trust, unless otherwise agreed by the Liquidating Trustee.

**8.7 Undeliverable Distributions.** If any distribution to any Beneficiary is returned as undeliverable, and after reasonable efforts the Liquidating Trustee has not been able to determine the current address of the Beneficiary, such undeliverable and/or unclaimed distribution shall be deemed unclaimed property under Bankruptcy Code section 347(b) one hundred and eighty (180) days from the original mailing and may be reallocated to the remaining Beneficiaries. Such undeliverable or unclaimed distributions shall not be subject to (i) any claims by such Beneficiary, who shall have lost his status as a Beneficiary and whose Claim to such unclaimed property shall be forever barred, expunged, and deemed Disallowed; or (ii) the unclaimed property or escheat laws of any state or governmental unit. Any Liquidating Trust Assets which are undistributable in accordance with this section revert back to the Liquidating Trust. No further distributions to a Holder of such Claim shall be made. Notwithstanding anything to the contrary stated herein, nothing shall require the Liquidating Trustee to attempt to determine a Beneficiary's current address or otherwise locate a Beneficiary.

**8.8 Forfeiture of Distribution.** As long as the mailing has not been returned as "undeliverable," all Distributions to Beneficiaries made in the form of a check that are not negotiated within 90 days of the date of such Distribution shall be null and void. The Liquidating Trustee shall not reissue any check except upon directly receiving a request in writing from the Beneficiary that was originally issued such check within one hundred and eighty (180) days of the Distribution. If the 180-day period elapses without the Beneficiary requesting the check be reissued, the unresponsive Beneficiary's Distribution shall be deemed unclaimed property pursuant to Bankruptcy Code section 347(b). Notwithstanding the foregoing, ninety (90) days after the final Distribution under Bankruptcy Code section 1194, the Liquidating Trustee shall stop payment on any check remaining unpaid, the corresponding distribution shall be deemed unclaimed property, and all unclaimed property shall be redistributed in accordance with the terms of this Trust Agreement. Such unclaimed Distribution shall not be subject to (i) any claims by such Beneficiary who shall have lost his status as a Beneficiary and whose Claim to such unclaimed property shall be forever barred, expunged, and deemed Disallowed; or (ii) the unclaimed property or escheat laws of any state or governmental unit. Any Liquidating Trust Assets which are undistributable in accordance with this section revert back to the Liquidating Trust. No further distributions to a Holder of such Claim shall be made.

## **ARTICLE IX**

### **TAXES**

**9.1 Income Tax Status.** Consistent with the Revenue Procedure 94-45, 1994-28 I.R.B. 124, the Liquidating Trust shall be treated as a liquidating trust pursuant to Treasury Regulation Section 301.7701-4(d) and as a grantor trust pursuant to Sections 671-677 of the Internal Revenue Code. As such, the Beneficiaries will be treated as both the grantors and the deemed owners of the Liquidating Trust. Any items of income, deductions and credit loss of the Liquidating Trust shall be allocated for federal income tax purposes, to the Liquidating Trust.

**9.2 Tax Returns.** In accordance with Treasury Regulation Section 1.671-4(a), the Liquidating Trust shall file with the Internal Revenue Service annual tax returns on Form 1041 together with the separate statements required under such Regulation. In addition, the Liquidating

Trustee shall file in a timely manner such other tax returns as are required by applicable law and pay any taxes shown as due thereon.

**9.3 Withholding of Taxes Related to Liquidating Trust Operations.** To the extent that the operation of the Liquidating Trust or the liquidation of the Liquidating Trust Assets creates a tax liability in excess of applicable net operating losses, the Liquidating Trust shall promptly pay such tax liability and any such payment shall be considered Liquidating Trust Expense payable from the Liquidating Trust Assets. The Liquidating Trustee may reserve a sum, the amount of which shall be determined by the Liquidating Trustee in its sole discretion, sufficient to pay the accrued or potential tax liability arising out of the operations of the Liquidating Trust or the operation of the Liquidating Trust Assets. In the exercise of discretion and judgment, the Liquidating Trustee may enter into agreements with taxing authorities or other governmental units for the payment of such amounts as may be withheld.

No later than the time required under applicable law after the end of each calendar year, the Liquidating Trustee shall cause to be filed all required federal, state, and other tax returns. Pursuant to the requirement under the Plan for the Liquidating Trust to be treated as a grantor trust, all items of income will be treated as income subject to tax on a current basis. Further, for federal income tax purposes, all items of income, gain, loss, and deduction of the Liquidating Trust for such calendar year shall be allocated to all Beneficiaries on a pro rata basis, based on either their Allowed Claim(s) or, in the case of Disputed Claims, the greater of (a) the amount of the claim as scheduled by the Debtors in their bankruptcy Schedules and Statement of Financial Affairs filed by the Debtors in these Chapter 11 Cases; and (b) the amount set forth in any proof of claim filed by the Beneficiary in these Chapter 11 Cases. Such pro-rata allocation will be calculated as of the end of each calendar year and, with respect to each Disputed Claim, until such claim either becomes an Allowed Claim or is disallowed. Further, such pro rata allocation in regard to Disputed Claims shall not in itself entitle any Beneficiary to any payment and shall be irrespective of whether any payments are actually disbursed to such Beneficiary.

## ARTICLE X

### TERMINATION OF TRUST

**10.1 Maximum Term.** The Liquidating Trust shall commence as of the Effective Date shall continue and remain in full force and until (i) the conclusion by settlement or Final Order of all pending litigation to which the Liquidating Trustee is a party and, in the sole opinion and discretion of the Liquidating Trustee, the exhaustion of all efforts to collect thereon, (ii) all of the Liquidating Trust Assets are liquidated or disposed of in accordance with the Plan and this Trust Agreement and all of the funds in the Liquidating Trust have been completely distributed in accordance with the Plan and this Trust Agreement, (iii) all tax returns and any other filings or reports have been filed with the appropriate state or federal regulatory authorities and all time periods and all opportunity for such authorities to challenge such final tax returns have expired, and (iv) the order closing these Chapter 11 Cases is a Final Order (the “Trust Term”).

The Liquidating Trust shall terminate no later than the fifth anniversary of the Effective Date. Notwithstanding the foregoing, within 120 days of the fifth anniversary of the Effective Date, the Liquidating Trustee may file a motion with the Bankruptcy Court requesting an extension

of the term of the Liquidating Trust. An extension shall only be granted if the Bankruptcy Court determines that: (i) an extension is necessary to facilitate or complete the recovery on Liquidating Trust Assets and (ii) further extension would not adversely affect the status of the Liquidating Trust as a liquidating trust for federal income tax purposes. For purposes of this Section, a favorable letter ruling from the Internal Revenue Service shall be conclusive proof that further extension would not adversely affect the status of the Liquidating Trust as a liquidating trust for federal income tax purposes.

**10.2 Distribution Upon Termination.** Upon the termination of the Liquidating Trust, the Liquidating Trustee shall distribute the remaining Liquidating Trust Assets, if any, to the Beneficiaries, in accordance with the Plan, Confirmation Order, and this Trust Agreement.

**10.3 Winding Up and Discharge of the Liquidating Trustee.** For the purposes of winding up the affairs of the Liquidating Trust at its termination, the Liquidating Trustee shall continue to act as Liquidating Trustee and the members of the Liquidating Trust Oversight Committee shall continue to act as members of the Liquidating Trust Oversight Committee until their respective duties have been fully discharged. After doing so, the Liquidating Trustee, its agents and employees and the members of the Liquidating Trust Oversight Committee, their agents, representatives, and employees shall have no further duties or obligations hereunder, except as required by this Trust Agreement, the Plan, or applicable law concerning the termination of a trust.

## ARTICLE XI

### ADMINISTRATIVE EXPENSES

**11.1 Trust Administrative Expenses.** Subject to Section 2.6, the Liquidating Trust Expenses, including, without limitation, the compensation to and the reimbursement of reasonable, actual and necessary costs, fees and expenses of the Liquidating Trustee and each member of the Liquidating Trust Oversight Committee, including, without limitation, the fees, costs and expenses of the Liquidating Trustee's Professionals, in connection with the performance of the Liquidating Trustee's and each member of the Liquidating Trust Oversight Committee's duties in connection with this Trust Agreement, shall be paid from the Liquidating Trust Assets.

At the time of making final Distributions to Beneficiaries, the Liquidating Trustee may reserve amounts from the Liquidating Trust Assets that the Liquidating Trustee, in consultation with the Liquidating Trust Oversight Committee, deems necessary to wind down the Liquidating Trust and close these Bankruptcy Cases. In the event that the Liquidating Trustee is holding funds after making the final distributions to Beneficiaries, on account of excess reserved amounts or distributions returned to the Liquidating Trust due to Beneficiaries failing to negotiate distributions issued by check, the Liquidating Trustee may donate such remaining funds to a not for profit organization of its choosing, subject to approval by the Liquidating Trust Oversight Committee.



## ARTICLE XII

### MISCELLANEOUS PROVISIONS

**12.1 Amendments.** Any substantive provision of this Trust Agreement may be amended or waived in writing by a majority of members of the Liquidating Trust Oversight Committee; provided however, that any proposed amendment to or waiver of this Trust Agreement or any portion thereof that affects the rights or obligations of the Wind-Down Debtors or the Plan Administrator in any respect shall require the consent of the Plan Administrator. Non-material amendments to this Trust Agreement may be made, as necessary to clarify this Trust Agreement or enable the Liquidating Trustee to effectuate the terms of this Trust Agreement, upon written notice to the Liquidating Trust Oversight Committee, the Wind-Down Debtors and the Plan Administrator; provided, however, that all amendments of this Trust Agreement shall be consistent with the purpose and intention of the Liquidating Trust to liquidate in an expeditious but orderly manner the Liquidating Trust Assets in accordance with Treasury Regulation section 301.7701-4(d) and Section 2.6 hereof. No amendment to or waiver of this Trust Agreement that is inconsistent with the terms of the Plan shall be effective.

**12.2 Waiver.** No failure by the Liquidating Trustee to exercise or delay in exercising any right, power or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any further exercise thereof, or of any other right, power or privilege.

**12.3 Cumulative Rights and Remedies.** The rights and remedies provided in this Trust Agreement are cumulative and are not exclusive of any rights under law or in equity.

**12.4 Irrevocability.** The Liquidating Trust is irrevocable.

**12.5 Relationship to the Plan.** The principal purpose of this Trust Agreement is to aid in the implementation of the Plan and, therefore, this Trust Agreement incorporates and is subject to the provisions of the Plan and the Confirmation Order. In the event that any provision of this Trust Agreement is found to be inconsistent with a provision of the Plan or the Confirmation Order, the provisions of the Plan or the Confirmation Order shall control.

**12.6 Division of Liquidating Trust.** Under no circumstances shall the Liquidating Trustee have the right or power to divide the Liquidating Trust unless authorized to do so by the Bankruptcy Court.

**12.7 Governing Law.** This Trust Agreement shall be governed and construed in accordance with the laws of the State of Delaware, without giving effect to rules governing the conflict of laws.

**12.8 Retention of Jurisdiction.** Notwithstanding the Effective Date and to the fullest extent permitted by law, the Bankruptcy Court shall retain exclusive jurisdiction over the Liquidating Trust after the Effective Date, including, without limitation, jurisdiction to resolve any and all controversies, suits and issues that may arise in connection therewith, including, without limitation, this Trust Agreement, or any entity's obligations incurred in connection herewith,

including without limitation, any action against the Liquidating Trustee or any professional retained by the Liquidating Trustee or the Liquidating Trust, in each case in its capacity as such. Each party to this Trust Agreement hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court in any action to enforce, interpret or construe any provision of this Trust Agreement or of any other agreement or document delivered in connection with this Trust Agreement, and also hereby irrevocably waives any defense of improper venue, forum non conveniens or lack of personal jurisdiction to any such action brought in the Bankruptcy Court. Each party further irrevocably agrees that (i) any action to enforce, interpret, or construe any provision of this Trust Agreement will be brought only in the Bankruptcy Court; and (ii) all determinations, decisions, rulings, and holdings of the Bankruptcy Court shall be final and non-appealable and not subject to re-argument or reconsideration. Each party hereby irrevocably consents to the service by certified or registered mail, return receipt requested, to be sent to its address set forth in Section 12.11 of this Trust Agreement may designate from time to time by notice given in the manner provided above, of any process in any action to enforce, interpret or construe any provision of this Trust Agreement.

**12.9 Severability.** In the event that any provision of this Trust Agreement or the application thereof to any Person or circumstance shall be determined by the Bankruptcy Court or another court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Trust Agreement, or the application of such provision to Persons or circumstances, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

**12.10 Limitation of Benefits.** Except as otherwise specifically provided in this Trust Agreement, the Plan, or the Confirmation Order, nothing herein is intended or shall be construed to confer upon or to give any Person other than the parties hereto and the Beneficiaries any rights or remedies under or by reason of this Trust Agreement.

**12.11 Notices.** All notices, requests, demands, consents and other communication hereunder shall be in writing and shall be deemed to have been duly given, if delivered in person or by facsimile with an electromechanical report of delivery or if sent by overnight mail or by registered or certified mail with postage prepaid, return receipt requested, to the following addresses.

If to the Debtors:

Eiger BioPharmaceuticals, Inc.  
Attn: Douglas Staut  
2100 Ross Avenue  
Dallas, TX 75201

With copy to:  
Sidley Austin LLP  
Attn: Thomas R. Califano; William E. Curtin; Anne G. Wallice  
787 Seventh Avenue  
New York, New York 10019

If to the Liquidating Trustee:

[ ]

With copy to:

Porzio, Bromberg & Newman, P.C.  
Attn: Warren J. Martin Jr.  
Attn: Rachel A. Parisi  
100 Southgate Parkway  
Morristown, NJ 07962

Notice of any application to the Bankruptcy Court shall also be provided to the Office of the United States Trustee address as follows:

Office of the United States Trustee:

Office of the United States Trustee  
Attn: Elizabeth Ziegler Young  
1100 Commerce Street, Room 976  
Dallas, Texas 75242

The parties may designate in writing from time to time other and additional places to which notices may be sent. All demands, requests, consents, notices and communications shall be deemed to have been given (a) at the time of actual delivery thereof, (b) if given by certified or registered mail, five (5) business days after being deposited in the United States mail, postage prepaid and properly addressed, or (c) if given by overnight courier, the next business day after being sent, charges prepaid and properly addressed.

**12.12 Further Assurances.** From and after the Effective Date, the parties hereto covenant and agree to execute and deliver all such documents and notices and to take all such further actions as may reasonably be required from time to time to carry out the intent and purposes of this Trust Agreement, and to consummate the transactions contemplated hereby.

**12.13 Integration.** This Trust Agreement, the Plan, and the Confirmation Order constitute the entire agreement with, by, and among the parties, and there are no representations, warranties, covenants, or obligations except as set forth herein, in the Plan, and in the Confirmation Order. This Trust Agreement, together with the Plan and the Confirmation Order, supersede all prior and contemporaneous agreements, understandings, negotiations, and discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise provided herein, the Plan, or Confirmation Order, nothing herein is intended or shall be construed to confer upon or give any Person other than the parties hereto and the Beneficiaries any rights or remedies under or by reason of this Trust Agreement.

**12.14 Successors or Assigns.** The terms of this Trust Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

**12.15 Interpretation.** The enumeration and section headings contained in this Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Trust Agreement or of any term or provision hereof. Unless the context otherwise requires, whenever used in this Trust Agreement the singular shall include the plural and the plural shall include the singular, and words importing the masculine gender shall include the feminine and the neuter, if appropriate, and vice versa, and words importing Persons shall include partnerships, associations and corporations. The words “herein”, “hereby”, and “hereunder” and words with similar import, refer to this Trust Agreement as a whole and not to any particular section or subsection hereof unless the context requires otherwise.

**12.16 Counterparts.** This Trust Agreement may be signed by the parties hereto in counterparts, which, when taken together, shall constitute one and the same document.

**IN WITNESS WHEREOF**, the parties hereto have either executed and acknowledged this Trust Agreement or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as of the date first above written.

**Eiger BioPharmaceuticals, Inc., et al.**

By:

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**Liquidating Trustee**

By:

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SCHEDULE A

MEMBERS OF LIQUIDATING TRUST OVERSIGHT COMMITTEE

MEMBER	PERSON(S) DESIGNATED TO ATTEND MEETINGS
Adam Gui, Individually	Adam Gui
Gary C. Ribe, Individually	Gary C. Ribe
Kenneth S. Grossman, Individually	Kenneth S. Grossman

**Exhibit F**

**Plan Administrator Agreement**

## **PLAN ADMINISTRATOR AGREEMENT**

THIS PLAN ADMINISTRATOR AGREEMENT (the “Agreement”) is entered into this [●] day of [August], 2024, by and among Eiger BioPharmaceuticals, Inc., EBPI Merger Inc., EB Pharma LLC, Eiger BioPharmaceuticals Europe Limited, and EigerBio Europe Limited (collectively, the “Debtors”) in the chapter 11 bankruptcy cases jointly administered under Case No. 24-80040 (SGJ) (the “Chapter 11 Cases”), and [●] in [his // her] capacity as the Plan Administrator under the Plan (in such capacity, the “Plan Administrator”) (each a “Party” and collectively, the “Parties”).

### **W I T N E S S E T H:**

WHEREAS, on April 1, 2024 (the “Petition Date”), the Debtors 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 Northern District of Texas (the “Bankruptcy Court”), thereby commencing the Chapter 11 Cases;

WHEREAS, on August 15, 2024, the Debtors filed the *Second Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 517-1] (as may be amended, modified, or supplemented, the “Plan”) with the Bankruptcy Court;

WHEREAS, pursuant to the Plan, as of the Effective Date, the Plan Administrator, selected by the Debtors in consultation with the Unsecured Creditors’ Committee and Equity Committee, shall be appointed and thereafter serve in accordance with the Plan;

WHEREAS, on [●], 2024, the Bankruptcy Court entered an order confirming the Plan [Docket No. [●]] (the “Confirmation Order”). Copies of the Plan and Confirmation Order are attached hereto as **Exhibit A** and **Exhibit B**, respectively, and are incorporated herein by reference;

NOW, THEREFORE, for and in consideration of the promises and mutual covenants herein contained, pursuant to the Plan, the Parties do hereby covenant and agree as follows:

## **ARTICLE I**

### **Definitions; Interpretive Rules.**

1.1 **Terms Defined in Plan.** Any capitalized term used and not defined herein shall have the respective meaning ascribed to such terms in the Plan.

1.2 **Interpretive Rules.** For purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires: (a) references to “Articles”, “Sections”, “Exhibits”, and other subdivisions, without reference to a particular document, are to be designated Articles, Sections, Exhibits, and other subdivisions of this Agreement; (b) the use of the term “including” means “including but not limited to”; and (c) the words “herein”, “hereof”, “hereunder”, and other words of similar import refer to this Agreement as a whole and not to any particular provision (unless otherwise specified). The enumeration and headings contained in this



Agreement are for convenience of reference only and are not intended to have any substantive significance in interpreting this Agreement. The singular shall include the plural and the plural the singular, when the context so requires, and the feminine, the masculine, and the neuter genders shall be mutually inclusive.

## ARTICLE II

### Appointment of the Plan Administrator

2.1 Appointment and Acceptance. [●] is hereby appointed as the Plan Administrator, and the Plan Administrator hereby accepts such appointment. On the Effective Date and automatically and without further action, all actions and services performed by the Plan Administrator in connection with its duties and obligations under this Agreement prior to the Effective Date, and the authorization and payment for such performance, including the Plan Administrator's professional fees and expenses, shall be ratified and authorized to the extent not already authorized by the Plan or Confirmation Order.

### Rights and Powers of Plan Administrator

2.2 In addition to the powers and authority specified in the Plan, the Plan Administrator shall be empowered to:

(a) transition services and obligations required under (i) the Avexitide Asset Purchase Agreement and the Zokinvy Asset Purchase Agreement, including maintaining necessary licensures and government approvals, to the extent required thereunder, all as approved pursuant to the Sale Orders and (ii) any other Asset Purchase Agreement(s) entered into by the Debtors and any third party and approved by the Bankruptcy Court prior to the Effective Date;

(b) take all actions reasonably necessary to wind down the Estates, including the administration of any employee terminations;

(c) make distributions to Professionals for Allowed Professional Fee Claims from the Professional Fee Reserve Account;

(d) as applicable, administer and pay taxes, including, among other things (i) file tax returns, other than any Liquidating Trust's tax return, and (ii) represent the interest and account of the Debtors before any taxing authority in all matters;

(e) enforce any Retained Causes of Action that vest in the Wind-Down Debtor as of the Effective Date (identified as "Wind Down Debtors Retained Causes of Action" in the Schedule of Retained Causes of Action);

(f) enact additional corporate governance or structural changes that may be required to confer standing on the Liquidating Trustee with respect to any Retained Causes of Action, *provided* that any such proposed governance or structural changes requested by the Liquidating Trustee do not interfere with the Plan Administrator's ability to carry out its own functions and responsibilities;

(g) execute and deliver any appropriate agreements or other documents of consolidation, conversion, disposition, transfer, or dissolution containing terms that are consistent with the terms of this Plan and that satisfy the requirements of applicable law;

(h) deliver the Liquidating Trust Assets to the Liquidating Trustee;

(i) open and maintain bank accounts on behalf of, or in the name of, the Debtors and the Debtors' Estates, including the establishment, re-evaluation, adjustment, and maintenance of accounts to establish appropriate reserves, and designate additional authorized signatories on bank accounts as may be necessary;

(j) calculate and make distributions and other payments, in each case as provided for, or contemplated by, the Plan, the Confirmation Order, or this Agreement;

(k) distribute information statements as required for U.S. federal income tax and other applicable tax purposes;

(l) pay all lawful expenses, debts, charges, taxes, and liabilities of the Debtors and their Estates in accordance with this Agreement, the Plan, and the Confirmation Order;

(m) withhold from the amount distributable to any Person such amount as may be sufficient to pay any tax or other charge which the Plan Administrator has determined, in its reasonable discretion, may be required to be withheld therefrom under the income tax laws of the United States, any foreign country, or of any state, local, or political subdivision thereof;

(n) effect all actions and enter into any agreement or execute any document or instrument required by, or consistent with, the Plan, the Confirmation Order, or this Agreement and perform all obligations thereunder;

(o) retain and compensate, without the need for retention or fee applications or further order of the Bankruptcy Court, the services of employees, professionals, and consultants to advise and assist in the administration of the Estates in accordance with the Plan, the Confirmation Order, and this Agreement;

(p) file post-confirmation and post-Effective Date reports and pay statutory fees as and when they become due;

(q) implement, enforce, or discharge all of the terms, conditions, and all other provisions of, and all duties and obligations under, the Plan, the Confirmation Order, and this Agreement relating to the Debtors and their Estates;

(r) in consultation and cooperation with the Liquidating Trustee, file one or more motions to close the Chapter 11 Cases; and

(s) take all other actions consistent with the provisions of the Plan that the Plan Administrator deems reasonably necessary to effectuate the Plan, in each case, in accordance with the Plan, the Confirmation Order, this Agreement, and applicable law.

2.3 Plan Administrator as Debtor/Estate Representative. On the Effective Date and to the extent necessary to give full effect to its administrative rights and duties under the Plan, the Plan Administrator:

(a) shall be deemed to be vested with all rights, powers, privileges, and authorities of (i) an appropriate corporate or partnership director, officer, or manager of each of the Debtors under any applicable nonbankruptcy law and (ii) a “trustee” of each of the Debtors under chapter 7 of the Bankruptcy Code and section 1106 of the Bankruptcy Code; and

(b) pursuant to Section IV.H of the Plan, shall, together with the Liquidating Trustee, succeed to all powers as would have been applicable to each Debtor’s directors, officers, and managers; *provided, however*, that the Plan Administrator may continue to consult with or employ the Debtors’ former directors, officers, employees, and managers in its reasonable discretion.

2.4 Limitations on the Plan Administrator. Notwithstanding anything to the contrary under applicable law permitting any such action, the Plan Administrator shall not do or undertake any of the following:

(a) receive transfers of any listed stocks or securities, or any readily marketable securities, except as is absolutely necessary or required under the Plan and the Confirmation Order;

(b) retain Cash or cash equivalents in excess of a reasonable amount necessary to (i) fulfill obligations related to the Plan or this Agreement, including reserves with respect thereto (ii) make specified distributions, and (iii) satisfy any liabilities of the Debtors and their Estates;

(c) receive or retain any operating assets of an ongoing business, a partnership interest in a partnership that holds operating assets, or fifty percent (50%) or more of the stock of a corporation or other Entity with operating assets;

(d) accept, guarantee, endorse or otherwise assume or take on, directly or indirectly, any obligation or other liability, monetary or otherwise, on behalf of the Debtors other than as required or permitted by the Plan or the Confirmation Order;

(e) exercise control over any aspects of the Liquidating Trust Assets or the Liquidating Trust Retained Causes of Action (as defined in the Schedule of Retained Causes of Action), including the investigation, prosecution, or disposition of such Liquidating Trust Retained Causes of Action;

(f) take any actions inconsistent with the orderly liquidation of the Estates or as are required by applicable law, the Plan, or the Confirmation Order.

2.5 Wind-Down Budget.

(a) On the Effective Date, pursuant to the terms of the Plan, the Plan Administrator shall operate according to the budget for the fees and expenses associated with the Debtors’ Wind-Down (the “Wind-Down Budget”).

(b) Any funds remaining in the Wind-Down Budget at the time of entry of the final decree closing these Chapter 11 Cases shall be distributed pursuant to the terms of the Plan and this Agreement.

2.6 Professional Fee Reserve Account. On the Effective Date, the Plan Administrator shall establish and maintain the Professional Fee Reserve Account, pursuant to the terms of the Plan. To the extent there are any excess amounts remaining in the Professional Fee Reserve Account following the satisfaction of all Professional Fee Claims, the Plan Administrator shall distribute such funds pursuant to the terms of the Plan.

2.7 Retention of Counsel and Agents.

(a) The Plan Administrator shall retain legal counsel and shall retain other advisors and professionals (collectively, the “Plan Administrator Professionals”) in the Plan Administrator’s sole discretion.

(b) Any professionals retained by the Plan Administrator shall be entitled to compensation for all reasonable and documented services rendered and monthly reimbursement of reasonable and documented fees, costs, and expenses incurred. The payment of the fees, costs, and expenses of the Plan Administrator and Plan Administrator Professionals incurred before or after the Effective Date shall be made in the ordinary course of business and shall not be subject to prior approval of the Bankruptcy Court.

2.8 Compensation of Plan Administrator.

(a) The Plan Administrator shall be entitled to compensation as set forth hereto as **Exhibit C** (the “Fees”), and reimbursement of reasonable and documented out of pocket fees, costs, and expenses (the “Expenses”).

(b) The Fees and Expenses shall be payable without further Bankruptcy Court order or any notice or action.

(c) Subject to subsection (b), the Plan Administrator shall also be entitled to Fees rendered and Expenses incurred (including reasonable and documented legal fees and costs), prior to the Effective Date in connection with this Agreement, and upon the Effective Date, all of such Fees and Expenses shall be paid.

2.9 Resignation or Death Plan Administrator.

(a) The Plan Administrator may resign at any time by giving at least thirty (30) days’ written notice of the Plan Administrator’s intention to do so. In the event of a resignation, the resigning Plan Administrator shall render to the successor Plan Administrator a full and complete accounting of monies and assets received, disbursed, and held during the term of office of that Plan Administrator. The resignation shall be effective on the later of: (i) the date specified in the notice; (ii) the date that is thirty days (30) after the date the notice is delivered; or (iii) the date the accounting described in the preceding sentence is delivered.

(b) In the event that the Plan Administrator resigns pursuant to subsection (a) or is otherwise no longer available for any reason, the Plan Administrator shall designate another Person or Entity to serve as successor Plan Administrator within thirty (30) days, or such time as may be extended for cause, and thereupon such successor Plan Administrator, without any further act or need for an order of the Bankruptcy Court, shall become fully vested with all of the rights, powers, duties and obligations of the predecessor. Notice of any such selection shall be filed with the Bankruptcy Court. Without limiting the generality of the foregoing, in the event of any dispute over removal or selection of the Plan Administrator, including whether or not “Cause” for removal exists as described herein or any other dispute over the terms of this Agreement or the Plan Administrator’s performance hereunder, the Plan Administrator or any party-in-interest may request appropriate relief from the Bankruptcy Court. Upon the appointment of the successor Plan Administrator, all responsibilities of the predecessor Plan Administrator relating to the Debtors or arising under the Plan or this Agreement shall be terminated; *provided, however*, that the original Plan Administrator’s right to indemnification and other protections set forth herein shall survive termination and is subject to Sections 2.14 and 2.15.

(c) Upon the appointment of a successor Plan Administrator, the predecessor Plan Administrator shall have no further liability or responsibility with respect thereto (other than liabilities arising prior to the cessation of its role as Plan Administrator). A successor Plan Administrator shall have no duty to examine or inquire into the acts or omissions of its immediate or remote predecessor, and no successor Plan Administrator shall be in any way liable for the acts or omissions of any predecessor Plan Administrator, unless a successor Plan Administrator expressly assumes such responsibility. A predecessor Plan Administrator shall have no liability for the acts or omissions of any immediate or subsequent successor Plan Administrator for any events or occurrences subsequent to the cessation of its role as Plan Administrator. Notwithstanding anything in this Agreement, in the event a successor Plan Administrator is not appointed after thirty (30) days of the occurrence or effectiveness, as applicable, of the prior Plan Administrator’s resignation, death, incapacity, or removal, any party in interest may request the Bankruptcy Court to appoint a successor Plan Administrator.

2.10 Removal of Plan Administrator. The Plan Administrator may be removed for “Cause” as determined by order of the Bankruptcy Court. For purposes of both this provision and removal, Cause shall mean:

- (i) gross negligence, fraud or willful misconduct under the Plan or this Agreement that is (a) repeated and/or continued after written notice of, and a reasonable opportunity to cure, such gross negligence or material failure, and (b) material to the Debtors and the Estates; or
- (ii) the indictment or conviction (including any plea of guilty or no contest) for any felony or other crime involving dishonesty or moral turpitude.

During the pendency of any dispute before the Bankruptcy Court regarding removal of the Plan Administrator and any appeals therefrom, the Plan Administrator shall (i) continue to discharge the rights, obligations, and duties of the Plan Administrator, and (ii) continue to receive payment of Fees and Expenses incurred pursuant to this Agreement.

2.11 Plan Provisions. In connection with all actions taken in its capacity as Plan Administrator, the Plan Administrator shall be entitled to rely upon the applicable exculpation, release, and indemnification and limitation of liability provisions set forth in any corporate organizational document, this Agreement, the Plan, and the Confirmation Order. For the avoidance of doubt, this Section 2.11 does not create any rights of exculpation, release, indemnification or limitation of liability not already set forth in the aforementioned documents. Notwithstanding anything herein, the Plan Administrator shall not be entitled to any release, exculpation, or indemnification if the Plan Administrator is determined to have engaged in fraud, gross negligence, or willful misconduct as determined by a Final Order of the Bankruptcy Court, provided that in no event will the Plan Administrator be liable for punitive, exemplary, consequential, or special damages under any circumstances.

2.12 Exculpation and Indemnification. The Plan Administrator and all professionals retained by the Plan Administrator (collectively, the “Post-Effective Date Indemnified Parties”), each in their capacities as such, shall be deemed exculpated and indemnified, to the fullest extent of the law, in all respects by the Debtors, solely from available funds in the Wind-Down Budget, for any losses, claims, damages, liabilities, and expenses, including reasonable attorneys’ fees, disbursements, and related expenses which may incur or to which the Post-Effective Date Indemnified Parties may become subject in connection with any action, suit, proceeding, or investigation brought or threatened against one or more of the Post-Effective Date Indemnified Parties on accounts of the acts or omissions of the Plan Administrator solely in its capacity as such; *provided, however*, that the Post-Effective Date Indemnified Parties shall not be entitled to any indemnification for actions or omissions that result in willful misconduct, gross negligence, or fraud.

2.13 Limitation of Liability. The Plan Administrator shall be deemed a judicial officer for purposes of immunity from civil action. No Holder of a Claim or Interest or representative thereof shall have or pursue any Cause of Action against the Plan Administrator or the Post-Effective Date Indemnified Parties for taking any action in accordance with, or to implement the provisions of, the Plan, this Agreement, the Confirmation Order, or any order of the Bankruptcy Court other than for actions or omissions as a result of willful misconduct, gross negligence, or fraud. All Persons and Entities shall look solely to the available funds in the Wind-Down Budget for satisfaction of claims of any nature arising in connection with the affairs of the Plan Administrator or claims against the Plan Administrator or the Post-Effective Date Indemnified Parties, and there shall be no personal obligation to satisfy such liabilities. The Plan Administrator may, in connection with the performance of its functions, in its sole and absolute discretion, consult with and rely upon its attorneys, accountants, advisors, and agents, and shall not be liable for any act taken, or omitted to be taken, or suggested to be done in accordance with advice or opinions rendered by such Persons, regardless of whether such advice or opinions were in writing. Notwithstanding such authority, the Plan Administrator shall be under no obligation to consult with any such attorneys, accountants, advisors, or agents, and its determination not to do so shall not result in the imposition of liability on the Plan Administrator unless such determination is based on willful misconduct, gross negligence, or fraud; *provided* that in no event will the Plan Administrator be liable for punitive, exemplary, consequential, or special damages under any circumstances.

2.14 Burden of Proof. In any proceeding brought by any of the Debtors or the Estates, or any other Person or Entity who is bound by this Agreement challenging any action, determination or

failure to act of the Post-Effective Date Indemnified Parties in discharge of their duties under this Agreement or the Plan, the Person or Entity bringing or prosecuting such proceeding shall have the burden of proving that such determination, action or failure to act constituted gross negligence, willful misconduct, or fraud. Notwithstanding anything to the contrary in this Agreement or any duty otherwise existing at law or equity, each determination, action or failure to act of the Post-Effective Date Indemnified Parties in the discharge of their duties under this Agreement or Plan is, to the extent consistent with this Agreement or Plan, hereby deemed to not constitute a breach of this Agreement, the Plan or any duty hereunder, thereunder or existing at law, in equity or otherwise.

2.15 Reliance by the Plan Administrator. Post-Effective Date Indemnified Parties may absolutely rely upon, and shall be fully protected in acting or refraining from acting if they rely upon, any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Post-Effective Date Indemnified Party has no reasonable belief to be other than genuine and to have been signed or presented other than by the proper party or parties or, in the case of facsimile transmissions, to have been sent other than by the proper party or parties, in each case without obligation to satisfy itself that the same was given in good faith and without responsibility for errors in delivery, transmission or receipt. In the absence of gross negligence, willful misconduct, or fraud in respect of the Post-Effective Date Indemnified Parties' duties as found by a final order of the Bankruptcy Court, the Post-Effective Date Indemnified Parties may rely as to the truth of statements and correctness of the facts and opinions expressed therein and shall be fully protected personally in acting (or, if applicable, not acting) thereon.

2.16 Reliance by Entities Dealing with the Plan Administrator. In the absence of actual knowledge to the contrary, any Person or Entity dealing with the Debtors or the Estates shall be entitled to rely on the authority of the Plan Administrator to act on behalf of the Debtors or the Estates, and shall have no obligation to inquire into the existence of such authority. Each Person or Entity who is bound by this Agreement hereby waives, to the fullest extent permitted by law, any and all defenses or other remedies that may be available against such Person or Entity to contest, negate or disaffirm any action of the Plan Administrator in connection with any such dealing. Each and every certificate, document or other instrument executed on behalf of the Debtors or the Estates by the Plan Administrator or its representative or agents shall be conclusive evidence in favor of any and every Person or Entity relying thereon or claiming thereunder that (a) at the time of the execution and delivery of such certificate, document or instrument, this Agreement was in full force and effect, (b) the Person or Entity executing and delivering such certificate, document or instrument was duly authorized and empowered to do so for and on behalf of the Debtors or the Estates, and (c) such certificate, document or instrument was duly executed and delivered in accordance with the terms and provisions of this Agreement and is binding upon Debtors following the Effective Date and the Estates.

2.17 Limited Recourse. Except as otherwise provided in this Agreement, the Plan, or the Confirmation Order, Persons (including any professionals retained by the Plan Administrator in accordance with this Agreement) engaged in transactions with the Debtors or the Plan Administrator, shall look only to available funds in the Wind-Down Budget to satisfy any liability incurred in connection with the carrying out the terms of this Agreement, the Plan, or the Confirmation Order.

2.18 Insurance. The Plan Administrator may obtain, at the expense of the Debtors and with funds from the Wind-Down Budget, commercially reasonable liability or other appropriate insurance with respect to the obligations of the Debtors, including appropriate directors' and officers' insurance with respect to the Wind-Down.

2.19 No Successor Liability. Except as otherwise expressly provided in the Plan and Confirmation Order, the Plan Administrator: (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 prior to the Effective Date; (ii) is not, and shall not be, successor to the Debtors by any 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.

2.20 Survival. The provisions of this Article II shall survive the termination of this Agreement and the death, resignation, removal, liquidation, dissolution, or replacement of the Plan Administrator. The provisions of this section are in the nature of contractual obligations and no change in applicable law or the Debtors' charters, bylaws, or other organizational documents or policies shall affect the Plan Administrator's or the other Post-Effective Date Indemnified Parties' rights hereunder.

2.21 Standard of Care. The Plan Administrator shall exercise its rights and powers vested in it by this Agreement and use reasonable business judgment in the exercise of its duties. Subject to applicable law, the Plan Administrator shall not be liable to the Debtors or any beneficiary for any act it may do or omit to do as a Plan Administrator while acting in good faith and in the exercise of its reasonable business judgment. The foregoing limitation on liability will apply equally to the agents, and/or employees of the Plan Administrator and Plan Administrator Professionals (as defined herein) acting on behalf of the Plan Administrator in the fulfillment of the Plan Administrator's duties hereunder. Nothing in this Agreement shall be deemed to prevent the Plan Administrator from taking, or failing to take, any action that, based upon the advice of counsel or other professionals, the Plan Administrator determines it is obligated to take (or fail to take) in the performance of any fiduciary or similar duty of the Plan Administrator.

## ARTICLE III

### Distributions

3.1 Distributions under the Plan. Distributions of proceeds of the Liquidating Trust Assets shall be distributed by the Debtors or the Liquidating Trustee, as applicable, pursuant to the Plan.

3.2 U.S. Trustee Statutory Fees and Reports. All U.S. Trustee Statutory Fees due and payable, pursuant to 28 U.S.C. § 1930(a), prior to the Effective Date shall be paid by the Debtors (or the Disbursing Agent on behalf of each of the Debtors) on the Effective Date. On and after the Effective Date, the Plan Administrator or Disbursing Agent, shall pay any and all U.S. Trustee Statutory Fees when due and payable, and shall file with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the U.S. Trustee. Each of the Debtors and the Plan Administrator, as applicable, shall remain obligated to file post-confirmation quarterly reports and to pay quarterly fees to the U.S. Trustee until the earliest of that particular Debtor's case being



closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code. Notwithstanding anything to the contrary herein, the U.S. Trustee shall not be required to File a Proof of Claim or any other request for payment of quarterly fees.

## **ARTICLE IV**

### **Effect of the Agreement on Third Parties**

4.1 There is no obligation on the part of any person dealing with the Debtors' Estates, the Debtors, the Plan Administrator, or the Plan Administrator Professionals, to see to the application of the money or other consideration paid or delivered to the Plan Administrator, or to inquire into the validity, expediency, or propriety of any such transaction, or the authority of the Plan Administrator, or any agent of the Plan Administrator, to enter into or consummate the same, except upon such terms as the Plan Administrator may deem advisable.

## **ARTICLE V**

### **Termination of the Agreement and Amendment and Dissolution of the Debtors**

5.1 Termination of the Agreement. This Agreement shall terminate and the Plan Administrator shall be discharged at such time as: (i) the Estates have been fully administered and all of the Liquidating Trust Assets are held by the Liquidating Trust or have been distributed or abandoned by the Liquidating Trustee, (ii) all duties and obligations of the Plan Administrator hereunder have been fulfilled, (iii) all distributions required to be made under the Plan and this Agreement have been made, and (iv) a Final Order has been entered by the Bankruptcy Court closing the last of the Chapter 11 Cases.

5.2 Dissolution of the Debtors. The Debtors will be dissolved by the Plan Administrator, in accordance with the terms of this Agreement and the Plan (including, for the avoidance of doubt, Article IV.C.1(c) thereof), as soon as practicable after the Plan Administrator's full performance of all other duties and functions set forth herein or in the Plan.

## **ARTICLE VI**

### **Miscellaneous**

6.1 Right to Seek Court Approval. The Plan Administrator shall have the right to seek Bankruptcy Court approval or direction with respect to any matter relating to the administration of the Estates or the performance of its duties and responsibilities under the Plan, the Confirmation Order, or this Agreement, even if such approval is not required by the Plan, the Confirmation Order, or this Agreement.

6.2 Confidentiality. The Plan Administrator shall and shall cause its agents and representatives to hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity or matter of which the Plan Administrator has become aware in its capacity as Plan Administrator.

6.3 Amendments. The Plan Administrator may modify, supplement, or amend this Agreement in any way that is not inconsistent with the Plan or the Confirmation Order, including to clarify any ambiguity or inconsistency or render the Agreement in compliance with its stated purposes, provided that any such material modification, supplement or amendment should be filed with the Bankruptcy Court.

6.4 Waiver. No failure by the Plan Administrator to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power, or privilege

6.5 Cumulative Rights and Remedies. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights under law or in equity.

6.6 No Bond Required. Notwithstanding any state law to the contrary, the Plan Administrator (including any successor Plan Administrator) shall be exempt from giving any bond or surety or other security for the performance of its duties in any jurisdiction unless otherwise ordered by the Bankruptcy Court.

6.7 Irrevocability. This Agreement shall be irrevocable, except as otherwise expressly provided in this Agreement and in accordance with the Plan.

6.8 Retention of Jurisdiction. Notwithstanding the Effective Date, and to the fullest extent permitted by law, the Bankruptcy Court shall retain exclusive jurisdiction after the Effective Date, including, without limitation, jurisdiction to resolve any and all controversies, suits, and issues that may arise in connection therewith, including, without limitation, this Agreement, or any Entity's obligations incurred in connection herewith, including, without limitation, any action against the Plan Administrator, any Person retained by the Plan Administrator and the Post-Effective Date Indemnified Parties.

6.9 Severability. In the event that any provision of this Agreement or the application thereof to any person or circumstance shall be determined to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to persons or circumstance, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

6.10 Limitation of Benefits. Except as otherwise specifically provided in this Agreement, nothing herein is intended or shall be construed to confer upon or to give any person other than the parties hereto any rights or remedies under or by reason of this Agreement.

6.11 Notices. Unless otherwise expressly specified or permitted by the terms hereof, any notice, request, submission, instruction or other document to be given hereunder by a Party shall be in writing and shall be deemed to have been given, (a) when received if given in person, (b) upon delivery, if delivered by a nationally known commercial courier service providing next day delivery service (such as Federal Express), or (c) upon delivery, or refusal of delivery, if deposited in the U.S. mail, certified or registered mail, return receipt requested, postage prepaid:

**If to the Plan Administrator, addressed as follows:**

[·]  
[Address 1]  
[Address 2]  
Email: [●]

With a copy to:

Sidley Austin LLP  
787 Seventh Avenue  
New York, NY 10019  
Attn: Thomas R. Califano, William E. Curtin, Anne G. Wallace  
Email: tom.califano@sidley.com; wcurtin@sidley.com; anne.wallace@sidley.com

6.12 Further Assurances. From and after the date hereof, the parties hereto covenant and agree to execute and deliver all such documents and notices and to take all such further actions as may reasonably be required from time to time to carry out the intent and purposes of this Agreement, and to consummate the transactions contemplated hereby.

6.13 Counterparts. This Agreement may be signed by the parties hereto in counterparts, which, when taken together, shall constitute one and the same document. Delivery of an executed counterpart of this Agreement by facsimile or email in pdf format shall be equally effective as delivery of a manually executed counterpart.

6.14 Plan Controls in Event of Conflict. The principal purpose of this Agreement is to aid in the implementation of the Plan and, therefore, this Agreement incorporates and is subject to the provisions of the Plan. In the event of any inconsistency among this Agreement and the Plan, the provisions of the Plan and the Confirmation Order shall govern.

6.15 Preservation of Privilege. In connection with any rights, claims, or Causes of Action that may be enforced by the Plan Administrator, any attorney-client privilege, work product privilege, or other privilege or immunity attaching to any documents or communications (whether oral or written) in respect of such rights, claims, or Causes of Action shall vest in the Plan Administrator. The Plan Administrator shall seek to preserve and protect all applicable privilege and work product relating to any such rights, claims, or Causes of Action, including but not limited to any attorney-client privilege or work product attaching to any documents or communications (whether written oral). The Plan Administrator's receipt of such information shall not waive any such privileges, and all such privileges are expressly preserved; *provided* that, for the avoidance of doubt, upon the Effective Date, such privileges shall belong to the Plan Administrator and shall be waivable by the Plan Administrator.

6.16 Filing Documents. A copy of this Agreement and all amendments thereof shall be maintained in an office or residence of the Plan Administrator and shall be available for inspection upon reasonable written request seeking such inspection.

6.17 Books and Records.

(a) On the Effective Date, all books and records of the Debtors shall be transferred to the control of the Plan Administrator.

(b) The Debtors shall instruct any third parties or professionals possessing such books and records (including computer generated or computer maintained books, records and data, legal and accounting files maintained by any professional of the Debtors and other of the Debtors' books and records maintained by or in the possession of third parties), to permit access to such books and records as may be reasonably requested by the Plan Administrator.

(c) In accordance with the Liquidating Trust Agreement, on the Effective Date, the Debtors shall provide to the Liquidating Trustee timely access to the books and records relating to the Liquidating Trust Assets, in a form accessible and viewable by the Liquidating Trustee.

(d) The Plan Administrator will maintain reasonably good and sufficient books and records in respect to matters related to the Wind-Down of the Debtors. The Plan Administrator may without Bankruptcy Court approval, destroy any documents that each believes are no longer required to effectuate the terms and conditions of the Plan.

6.18 Governing Law. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

6.19 Entire Agreement. This Agreement, the Plan, and the Confirmation Order constitute the entire agreement of the Parties and there are no representations, warranties, covenants, or obligations except as set forth herein or therein. This Agreement, the Plan, and the Confirmation Order supersede all prior and contemporaneous agreements, understandings, negotiations, and discussions, written or oral, of the Parties hereto, relating to any transaction contemplated hereunder. In the event of any inconsistency between this Agreement, the Plan, and the Confirmation Order, the Confirmation Order shall govern; *provided, however*, that the Plan Administrator may amend, modify and/or correct the terms hereof to supersede the Plan and/or the Confirmation Order, with the approval of the Bankruptcy Court. Except as otherwise specifically provided herein, nothing in this Agreement is intended or shall be construed to confer upon or to give any person other than the Parties hereto and their respective heirs, administrators, executors, successors, and assigns any rights or remedies under or by reason of this Agreement.

6.20 Jurisdiction; Venue. Each Party hereto irrevocably agrees that any suit, action or proceeding with respect to this Agreement shall be brought exclusively in the United States Bankruptcy Court for the Northern District of Texas, and by execution and delivery of this Agreement, each Party (a) irrevocably submits to each such jurisdiction and venue, (b) waives, to the fullest extent permitted by law, any objection that it may have to the laying of the venue of any such suit, action or proceeding brought in such court has been brought in an inconvenient forum, and (c) agrees that final judgment in any such suit, action or proceeding brought in such a court shall be conclusive and binding upon it and may be enforced in any court to the jurisdiction of

which such Party is subject by a suit upon such judgment; *provided* that service of process is effected as otherwise permitted by law.

6.21 WAIVER OF JURY TRIAL. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY.

6.22 Exculpatory Provisions and Survival Thereof. Whether or not expressly therein so provided, any and all exculpatory provisions, immunities and indemnities, payment provisions, and any limitations and negations of liability contained in this Agreement, in each case inuring to the benefit of the Plan Administrator, shall survive (a) the termination or revocation of this Agreement, and (b) as to any person who has served as Plan Administrator, the resignation or removal of such person as Plan Administrator.

*[Signature Pages to Follow]*

**Debtors' Signature Page to  
the Plan Administrator Agreement**

**EIGER BIOPHARMACEUTICALS, INC.  
EBPI MERGER INC.  
EB PHARMA LLC  
EIGER BIOPHARMACEUTICALS EUROPE LIMITED  
EIGERBIO EUROPE LIMITED**

**By:** \_\_\_\_\_  
Name: Douglas Staut  
Title: Chief Restructuring Officer

**Plan Administrator's Signature Page to  
the Plan Administrator Agreement**

**PLAN ADMINISTRATOR**

**By:** \_\_\_\_\_

Name: [.]

Title: [.]

**Exhibit A**

**Plan**

*(See attached.)*



**Exhibit B**

**Confirmation Order**

*(See attached.)*

**Exhibit C**

**Compensation of the Plan Administrator**

The compensation for the Plan Administrator will be as set forth below:

***[Monthly/Annual Fees:***

1. [●].

***Incentive Fees:***

1. [●].]

**Exhibit G**

**Identity of any Insider to Be Employed by the Plan Administrator**

[●] is an insider of the Debtors as that term is defined in section 101(31) of the Bankruptcy Code. No other insider is anticipated to be employed by the Plan Administrator at this time.