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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 OF THIRD PLAN SUPPLEMENT**

**PLEASE TAKE NOTICE THAT** on August 16, 2024, the Debtors filed the *Notice of Filing Plan Supplement* [Docket No. 525] (the “First Plan Supplement”), which was comprised of the following: (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; and (g) Identity of Any Insider to Be Employed by the Plan Administrator;

**PLEASE TAKE FURTHER NOTICE THAT** on September 3, 2024, the Debtors filed the *Notice of Filing of Second Plan Supplement* [Docket No. 598] (the “Second Plan Supplement”).

**PLEASE TAKE FURTHER NOTICE THAT** on September 5, 2024, the United States Bankruptcy Court for the Northern District of Texas (the “Court”) entered the *Order Approving*

<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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*the Debtors' Amended Disclosure Statement and Confirming the Fifth Amended Joint Plan of Liquidation of Eiger Biopharmaceuticals, Inc. and its Debtor Affiliates* [Docket No. 639] (the "Confirmation Order") confirming the *Fifth Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 635-1] (as may be altered, amended, modified, or supplemented from time to time, including all exhibits and schedules thereto, the "Plan").<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE THAT** the Debtors hereby file this third supplement to the Plan (together with the Initial Plan Supplement and the Second Plan Supplement, the "Plan Supplement"), consisting of the following documents:

<b>Exhibit</b>	<b>Third Plan Supplement Document</b>
E	Revised Liquidating Trust Agreement
E-1	Redline of Liquidating Trust Agreement
F	Revised Plan Administrator Agreement
F-1	Redline of Plan Administrator Agreement
G	Revised Identity of Any Insider to Be Employed by the Plan Administrator
G-1	Redline of Identity of Any Insider to Be Employed by the Plan Administrator

**PLEASE TAKE FURTHER NOTICE THAT** the Debtors reserve the right to alter, amend, modify, or supplement any document in the Plan Supplement in accordance with the Plan; *provided* that if any document in the 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** if you would like to obtain a copy of the Confirmation Order, the Plan, the Plan Supplement, 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/>.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

Dated: September 27, 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 September 27, 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 E**

**Liquidating Trust Agreement**

## LIQUIDATING TRUST AGREEMENT

This Liquidating Trust Agreement (the “Trust Agreement”), dated as of September 27, 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 Dundon Advisers LLC c/o Joshua Nahas, 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 September 5, 2024, the Debtors filed the *Fifth Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 635-1] (as may be amended, modified, or supplemented, the “Plan”),<sup>2</sup> with the Bankruptcy Court;

C. On September 5, 2024, the Bankruptcy Court entered an order confirming the Plan [Docket No. 639] (the “Confirmation Order”), which became effective on September 27, 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 and the Professional Fee Reserve, 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 Dundon Advisers LLC, c/o Joshua Nahas.

**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:

Mr. Joshua Nahas  
Dundon Advisers LLC  
Ten Bank Street  
White Plains, NY 10606

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:

---

**Liquidating Trustee:**

**Dundon Advisers LLC**

By:

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Joshua Nahas, Managing Director

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 E-1**

**Redline to Previously Filed Liquidating Trust Agreement**

## LIQUIDATING TRUST AGREEMENT

This Liquidating Trust Agreement (the “Trust Agreement”), dated as of ~~August~~ ~~[●]~~September 27, 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 ~~[ ]~~Dundon Advisers LLC c/o Joshua Nahas, 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~~September 5, 2024, the Debtors filed the ~~Second~~Fifth 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~~635-1] (as may be amended, modified, or supplemented, the “Plan”),<sup>2</sup> with the Bankruptcy Court;

C. On ~~[●]~~September 5, 2024, the Bankruptcy Court entered an order confirming the Plan [Docket No. ~~[●]~~639] (the “Confirmation Order”), which became effective on ~~[●]~~September 27, 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, and the 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,

<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.

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;

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 Dundon Advisers LLC, c/o Joshua Nahas.

**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. Wallace  
787 Seventh Avenue  
New York, New York 10019

If to the Liquidating Trustee:

{  
[Mr. Joshua Nahas](#)  
[Dundon Advisers LLC](#)  
[Ten Bank Street](#)  
[White Plains, NY 10606](#)

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: \_\_\_\_\_

**Liquidating Trustee:**

**Dundon Advisers LLC**

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

**Joshua Nahas, Managing Director**

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

<b>Summary report: Litera Compare for Word 11.7.0.54 Document comparison done on 9/27/2024 9:50:25 AM</b>	
<b>Style name:</b> Sidley Default	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> nd://4891-8880-7640/4/Exhibit E. Eiger - Liquidating Trust Agreement.docx	
<b>Modified DMS:</b> nd://4891-8880-7640/5/Exhibit E. Eiger - Liquidating Trust Agreement.docx	
<b>Changes:</b>	
<u>Add</u>	17
<del>Delete</del>	13
<del>Move From</del>	0
<u>Move To</u>	0
<u>Table Insert</u>	0
<del>Table Delete</del>	0
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>30</b>

**Exhibit F**

**Revised Plan Administrator Agreement**



## **PLAN ADMINISTRATOR AGREEMENT**

THIS PLAN ADMINISTRATOR AGREEMENT (the “Agreement”) is entered into this 27th day of September, 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 Broadbent Advisors LLC, a Delaware LLC, in its 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 September 5, 2024, the Debtors filed the *Fifth Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 635-1] (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 September 5, 2024, the Bankruptcy Court entered an order confirming the Plan [Docket No. 639] (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. Gary Broadbent 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, the Zokinvy Asset Purchase Agreement, the Lonafarnib APA, and the Lambda APA, 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.

(d) The Plan Administrator shall not bear any risk associated with any bills of the Debtors. The Estates will provide the funds necessary to pay any such bills, and the management of such payment will be handled by the Plan Administrator.

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:**

Gary Broadbent  
Broadbent Advisors LLC  
Corporation Trust Center  
1209 Orange St.  
Wilmington, DE 19801  
Email: gary.broadbent@broadbentadvisors.com

With a copy to:

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

Title: Plan Administrator



**Exhibit A**

**Plan**

*(See attached.)*

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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)

**FIFTH 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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## INTRODUCTION

The Debtors propose this Plan under section 1121 of the Bankruptcy Code. The Debtors are the proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement Filed contemporaneously with this Plan for a discussion of the Debtors' history, business, prepetition capital structure, and Liquidation Analysis, as well as a summary and analysis of the Plan and certain related matters, including distributions to be made under this Plan.

Supplemental agreements and documents referenced in this Plan and the Disclosure Statement are available for review on both the Bankruptcy Court's docket and on the Debtors' case information website: <https://veritaglobal.net/eiger>.

**ALL HOLDERS OF CLAIMS AND INTERESTS ARE ENCOURAGED TO READ THIS PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.**

## ARTICLE I. DEFINED TERMS AND RULES OF INTERPRETATION

### A. Defined Terms

“Administrative Claim” means a Claim of a kind specified under section 503(b) of the Bankruptcy Code and entitled to priority under sections 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (1) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estates and operating Debtors' business; (2) Allowed Professional Compensation Claims; (3) Statutory Fees; and (4) 503(b)(9) Claims.

“Administrative Claims Bar Date” means 5:00 p.m. prevailing Central Time on the date that is 30 days after the Effective Date and is the deadline by which a claimant must file a request for payment of any Administrative Claim (excluding Professional Compensation Claims) arising on or after the Petition Date, through and including the Effective Date.

“Affiliate” has the meaning set forth in section 101(2) of the Bankruptcy Code as if the reference Entity was a debtor in a case under the Bankruptcy Code.

“Allowed” means, with respect to any Claim or Interest, except as otherwise provided herein: (1) a Claim or Interest in a liquidated amount as to which no objection has been Filed prior to the applicable claims objection deadline and that is evidenced by a Proof of Claim timely Filed by the applicable Bar Date or that is not required to be evidenced by a Filed Proof of Claim under the Plan, the Bankruptcy Code, or a Final Order; (2) a Claim or Interest that is scheduled by the Debtors as neither disputed, contingent, nor unliquidated, and for which no Proof of Claim has been timely Filed in an unliquidated or a different amount; (3) a Claim or Interest that is upheld or otherwise Allowed (a) pursuant to the Plan (including any Claim or Interest that is upheld or otherwise Allowed pursuant to a settlement executed by a Debtor or a Wind-Down Debtor in

accordance with the Plan), (b) in any stipulation that is approved by the Bankruptcy Court, (c) pursuant to any contract, instrument, indenture, or other agreement entered into or assumed in connection herewith, or (d) by Final Order (including any such Claim to which the Debtors had objected or which the Bankruptcy Court had disallowed prior to such Final Order); *provided* that with respect to a Claim or Interest described in clauses (1) through (3) above, such Claim or Interest shall be considered Allowed only if and to the extent that with respect to such Claim or Interest no objection to the allowance thereof has been or, in the Debtors' or the Wind-Down Debtors' reasonable good faith judgment, may be interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim or Interest, as applicable, shall have been allowed by a Final Order; *provided, further*, that no Claim of any Entity subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such Entity pays in full the amount that it owes such Debtor. A Proof of Claim Filed after the Bar Date is not considered Allowed and shall be deemed expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Court. Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim is or has been timely Filed, is not considered Allowed and shall be deemed expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Court. "Allow," "Allowing," and "Allowance" shall have correlative meanings.

"Asset Purchase Agreements" means, collectively, (1) the Avexitide Asset Purchase Agreement, (2) the Zokinvy Asset Purchase Agreement, (3) the Lonafarnib Asset Purchase Agreement, (4) the Lambda Asset Purchase Agreement, or (5) any other asset purchase agreement approved by the Sale Orders.

"Avexitide Asset Purchase Agreement" means that certain *Asset Purchase Agreement by and between Amylyx Pharmaceuticals, Inc., or a wholly owned subsidiary thereof, as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, Dated as of June 21, 2024* [Docket No. 350, Ex. A] and as from time to time amended in accordance with the Avexitide Sale Order or further order of this Court.

"Avexitide Assets" means the assets related to the Avexitide Asset Purchase Agreement.

"Avexitide Sale Order" means the *Order (I) Approving the Sale of the Debtors' Avexitide Assets, (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (III) Granting Related Relief* [Docket No. 376].

"Avoidance Actions" means any and all claims and Causes of Action which any of the Debtors, the Estates, or any other appropriate party in interest has asserted or may assert under sections 502, 510, 542, 544, 545, or 547 through 553 of the Bankruptcy Code or under similar or related state or federal statutes and common law, including fraudulent transfer laws.

"Bankruptcy Code" means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as amended.

"Bankruptcy Court" means the United States Bankruptcy Court for the Northern District of Texas.



“Bankruptcy Rules” means Federal Rules of Bankruptcy Procedure.

“Bar Date” means, with respect to any particular Claim, the applicable date set by the Bankruptcy Court as the last day for Filing Proofs of Claim or requesting allowance of Administrative Claims in the Chapter 11 Cases for such Claim, whether pursuant to the Confirmation Order, the Plan, the *Order (I) Setting Bar Dates for Filing Proofs of Claim; (II) Approving Form and Manner for Filing Proofs of Claim; and (III) Approving the Form and Manner for Filing Proofs of Claim, Including Section 503(b)(9) Requests Notice of Bar Dates* [Docket No. 375], or any other applicable order of the Bankruptcy Court.

“Bid Procedures Order” means that certain *Order (I)(A) Approving the Bid Procedures; (B) Authorizing the Debtors to Select Sentyln Therapeutics, Inc. as the Zokinvy Stalking Horse Purchaser & Approving Bid Protections; (C) Approving the Bid Protections Relating to the Remaining Assets Stalking Horse Purchaser(s), if Any; (D) Establishing Bid Deadlines, Auction(s), and Sale Hearing(s); (E) Approving the Form and Manner of Sale Notice; (F) Approving Assignment and Assumption Procedures; (G) Approving the Form and Manner of Potential Assumption and Assignment Notice; (II)(A) Authorizing the Sale of the Assets Free and Clear; and (B) Approving the Assumption and Assignment of Designated Contracts; and (III) Granting Related Relief* [Docket No. 94] entered in the Chapter 11 Cases.

“Business Day” means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state of Texas.

“Cash” means cash in legal tender of the United States of America and cash equivalents, including bank deposits, checks, and other similar items.

“Cash Collateral Order” means that certain *Final Order (I) Authorizing the Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Term Loan Secured Parties; and (III) Modifying Automatic Stay* [Docket No. 161] entered in the Chapter 11 Cases or such further interim or final order authorizing the Debtors’ use of cash collateral, as applicable.

“Causes of Action” means without limitation, any claims, interests, damages, remedies, causes of action, demands, rights, actions, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, Liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, secured or unsecured, assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, in contract, tort, law, equity, or otherwise. Causes of Action also include the following: (1) Avoidance Actions; (2) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by law; (3) the right to object to or otherwise contest Claims or Interests; (4) claims pursuant to sections 362, 510, 542, 543, 544 through 550, or 553 of the Bankruptcy Code; and (5) such claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code.

“Chapter 11 Cases” means those certain chapter 11 bankruptcy cases of the Debtors jointly administered under the caption *In re Eiger BioPharmaceuticals, Inc., et al.*, Case No. 24-80040 (SGJ) (Bankr. N.D. Tex. 2024).

“Claim” means any claim, as defined in section 101(5) of the Bankruptcy Code, against any of the Debtors.

“Claims Objection” means an objection to the allowance of a claim as set forth in section 502 of the Bankruptcy Code, Bankruptcy Rule 3007, and/or any Bankruptcy Court order regarding omnibus claims objections.

“Claims Objection Bar Date” means 5:00 p.m. Central Time on the date that is sixty (60) days after the Effective Date and is the deadline by which a Claims Objection must be made; *provided* that the Claims Objection Bar may be extended upon presentment of an order to the Bankruptcy Court by the Plan Administrator or Liquidating Trustee, as applicable.

“Claims Register” means the register managed by the Notice and Claims Agent reflecting Filed Proofs of Claim.

“Class” means a category of Holders of Claims or Interests pursuant to section 1122(a) of the Bankruptcy Code.

“Combined Hearing” means the hearing(s) conducted by the Bankruptcy Court to consider (1) final approval of the adequacy of the Disclosure Statement under section 1125 of the Bankruptcy Code and (2) confirmation of the proposed Plan under section 1129 of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

“Conditions Precedent to the Effective Date” means the conditions set forth in Article VIII.A of this Plan.

“Confirmation” means the Bankruptcy Court’s entry of the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

“Confirmation Date” means the date on which Confirmation occurs.

“Confirmation Order” means the order of the Bankruptcy Court confirming the Plan under section 1129 of the Bankruptcy Code.

“Consummation” means the occurrence of the Effective Date.

“Cure” means a Claim (unless waived or modified by the applicable counterparty) based upon a Debtor’s defaults under an Executory Contract or an Unexpired Lease assumed or assumed and assigned by such Debtor under section 365 of the Bankruptcy Code amounts, other than a default that is not required to be cured pursuant to section 365(b)(2) of the Bankruptcy Code.

“D&O Liability Insurance Policies” means, collectively, each director and officer liability insurance policy and any “tail policy” to which any of the Debtors are a party as of the Effective Date.

“Debtor Releases” means the releases set forth in Article IX.A herein.

“Debtors” means, collectively, Eiger BioPharmaceuticals, Inc., EBPI Merger Inc., EB Pharma LLC, Eiger BioPharmaceuticals Europe Limited, and EigerBio Europe Limited.

“Definitive Documents” means this Plan (including, for the avoidance of doubt, the Plan Supplement and any and all exhibits, supplements, appendices, and schedules hereto and thereto), the Confirmation Order, the Disclosure Statement Order (including all exhibits, supplements, appendices, and schedules thereto), the Solicitation Materials, including the Disclosure Statement, and any such other agreements, instruments, and documents as may be necessary or reasonably desirable to consummate and document the Liquidation Transactions.

“Disallowed” means all or that portion, as applicable, of any Claim or Interest which: (1) has been disallowed under the Plan, the Bankruptcy Code, applicable law or by a Final Order; (2) is scheduled by the Debtors as being in an amount of zero dollars (\$0.00) or as contingent, disputed, or unliquidated and as to which no Proof of Claim was timely filed or deemed timely filed prior to the applicable Bar Date pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court, including the order approving the Bar Date, or otherwise deemed timely filed under applicable law; or (3) is not scheduled by the Debtors and as to which no Proof of Claim or request for allowance of an Administrative Claim (as applicable) has been timely filed or deemed timely filed prior to the applicable Bar Date pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law.

“Disbursing Agent” means the Debtors, the Wind-Down Debtors, or the Liquidating Trustee or the Person or Entit(ies) selected by the Liquidating Trustee, as applicable, to make or to facilitate distributions under the Plan, which Entity may include the Notice and Claims Agent.

“Disclosure Statement” means the related disclosure statement with respect to the Plan, as the same may be amended, supplemented, or modified from time to time, including all exhibits and schedules thereto, as approved or ratified by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

“Disclosure Statement Motion” means the *Debtors’ Motion for Entry of an Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing; (II) Conditionally Approving the Disclosure Statement; (III) Establishing Objection Deadlines and Related Procedures; (IV) Approving the Notice Materials; and (V) Granting Related Relief* [Docket No. 426].

“Disclosure Statement Order” means the order approving the Disclosure Statement.

“Disputed” means, with respect to any Claim or Interest, any Claim or Interest or any portion thereof that is not yet Allowed or Disallowed.

“Distributable Cash” means the Cash on hand of the Debtors or, after the Effective Date, the Liquidating Trust available for distribution as of the Effective Date or such applicable later date pursuant to the terms of the Plan.

“Distribution Record Date” means the record date for purposes of making distributions under the Plan on account of Allowed Claims, which date shall be the Confirmation Date or such other date as designated in a Final Order of the Bankruptcy Court.

“Effective Date” means the date that is the first Business Day after the Confirmation Date on which (1) all Conditions Precedent to the Effective Date have been satisfied or waived in accordance with the Plan and (2) no stay of the Confirmation Order is in effect. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable thereafter.

“Eiger Conversion” has the meaning set forth in Article IV.C.1 of the Plan.

“Employment Agreement” means any agreement relating to the employment of any of the Debtors’ current employees.

“Entity” has the meaning as defined in section 101(15) of the Bankruptcy Code.

“Equity Committee” means the official committee of equity security holders appointed by the U.S. Trustee under section 1102(b) of the Bankruptcy Code in these Chapter 11 Cases on June 25, 2024 [Docket No. 359, as amended, Docket No. 438].

“Estate” means the estate of any Debtor created under sections 301 and 541 of the Bankruptcy Code upon the commencement of the applicable Debtor’s Chapter 11 Case.

“Exculpated Parties” means collectively, (1) the Debtors, and (2) any Statutory Committee and each of its members.

“Executory Contract” means a contract to which any of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

“Existing Equity Interest Recovery Pool” means all Distributable Cash of the Debtors or the Wind-Down Debtors (as applicable) less (1) an amount of Cash required to pay Administrative Claims and Priority Tax Claims Allowed as of the Effective Date, (2) an amount of Cash required to fund the Wind-Down Budget, (3) an amount of Cash required to fund the Professional Fee Reserve Account in accordance with the Plan, (4) an amount of Cash required to satisfy the Other Secured Claims and the Other Priority Claims pursuant to the Plan, and (5) an amount of Cash required to satisfy the General Unsecured Claims pursuant to the Plan.

“Existing Equity Interests” means an Interest in a Debtor existing as of the Petition Date.

“Federal Judgment Rate” means the interest rate provided under 28 U.S.C. 1961(a), calculated as of the Petition Date.

“File,” “Filed,” or “Filing” means file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases.

“Final Order” means an order or judgment of the Bankruptcy Court or court of competent jurisdiction with respect to the subject matter that has not been reversed, stayed, modified, or amended, as entered on the docket in any Chapter 11 Case or the docket of any court of competent

jurisdiction, and as to which the time to appeal, or seek certiorari or move for a new trial, reargument, or rehearing has expired and no appeal or petition for certiorari or other proceedings for a new trial, reargument, or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be timely Filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument, or rehearing will have been denied, resulted in no stay pending appeal of such order, or has otherwise been dismissed with prejudice; *provided, however*, that no order or judgment shall fail to be a “Final Order” solely because of the possibility that a motion under Rules 59 or 60 of the Federal Rules of Civil Procedure, or any analogous Bankruptcy Rule (or analogous rules applicable in another court of competent jurisdiction) or sections 502(j) or 1144 of the Bankruptcy Code, may be Filed with respect to such order or judgment.

“General Unsecured Claim” means any Claim that is not an Administrative Claim (including a Professional Compensation Claim), a Priority Tax Claim, an Other Secured Claim, an Other Priority Claim, a Prepetition Term Loan Claim, or an Intercompany Claim.

“Governmental Unit” means a “governmental unit,” as defined in section 101(27) of the Bankruptcy Code.

“Holder” means any Entity that holds a Claim or Interest, as applicable.

“Impaired” means with respect to any Class of Claims or Interests, a Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

“Indemnification Obligations” means, collectively, each of the Debtors’ indemnification obligations (whether arising from charters, bylaws, limited liability company agreements, other organizational documents, or contracts) in place as of the Effective Date to indemnify the Debtors’ officers, directors, agents, or employees serving in such roles as of the Petition Date with respect to all present and future actions, suits, and proceedings against the Debtors or such officers, directors, agents, or employees based upon any act or omission for or on behalf of the Debtors.

“Insurance Policies” means all insurance policies that have been issued at any time to or provide coverage to the Debtors and all agreements, documents, or instruments relating thereto; *provided* that “Insurance Policies” does not include any such policies that are, or have been, assumed and assigned to the Purchaser on or before the Effective Date pursuant to the Asset Purchase Agreements, the Sale Orders, and section 365 of the Bankruptcy Code.

“Intercompany Claim” means a Claim held by a Debtor against a Debtor.

“Intercompany Interests” means all interests of any Debtor in any other Debtor.

“Interest(s)” means any equity security (as defined in section 101(16) of the Bankruptcy Code) in any Debtor and any other rights, options, warrants, stock appreciation rights, phantom stock rights, restricted stock units, redemption rights, repurchase rights, convertible, exercisable or exchangeable securities or other agreements, arrangements or commitments of any character relating to, or whose value is related to, any such interest or other ownership interest in any Debtor.

“IRS Form” means IRS Form W-9, W-8BEN, any acceptable substitute, or any other tax information form that the Debtors or the Liquidating Trustee may require from a Holder of a Claim for a distribution under the Plan.

“Lambda Asset Purchase Agreement” means that certain *Asset Purchase Agreement by and between Eiger InnoTherapeutics, Inc., as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, Dated as of August 1, 2024*, annexed as Exhibit B to the Lonafarnib and Lambda Sale Order and as from time to time amended in accordance with the Lonafarnib and Lambda Sale Order or further order of this Court.

“Lambda Assets” means the assets related to the Lambda Asset Purchase Agreement.

“Law” means any federal, state, local, or foreign law (including common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the Bankruptcy Court).

“Lien” means a lien as defined in section 101(37) of the Bankruptcy Code.

“Liquidation” means the liquidation of the Debtors through the Liquidation Transactions in accordance with the terms of this Plan.

“Liquidation Analysis” means the analysis of a liquidation scenario under chapter 7 of the Bankruptcy Code for these Debtors, to be filed as part of the Plan Supplement.

“Liquidation Transactions” means the transactions described in Article IV of the Plan.

“Liquidating Trust Agreement” means the liquidating trust agreement included in the Plan Supplement, as the same may be amended, modified, or supplemented from time to time.

“Liquidating Trust Assets” means all property and Cash of the Estates, net of the Wind-Down Budget and the Professional Fee Reserve Account, which Wind-Down Budget and the Professional Fee Reserve Account shall vest in and be administered by the Plan Administrator.

“Liquidating Trust” means the vehicle created pursuant to this Plan and the Liquidating Trust Agreement to take the following actions: (1) administer the Liquidating Trust Assets; (2) File and prosecute objections and/or settlements of disputed Claims; (3) upon resolution of disputed Claims, make distributions as appropriate; and (4) exercise discretion to evaluate and prosecute Retained Causes of Action, all as set forth more particularly in Article IV of this Plan and in the Liquidating Trust Agreement.

“Liquidating Trustee” means the Person or Entity appointed, with the consent of the Debtors, the Unsecured Creditors’ Committee, and the Equity Committee, on the Effective Date to administer the Liquidating Trust in accordance with this Plan and the Liquidating Trust Agreement.

“Liquidating Trust Oversight Committee” means the Persons or Entities appointed, pursuant to Article IV of this Plan, on the Effective Date to supervise the Liquidating Trustee in

the discharge of the Liquidating Trustee's duties as set forth in this Plan and the Liquidating Trust Agreement.

“Lonafarnib and Lambda Sale Order” means the *Revised Order (I) Authorizing the Sale of the Lonafarnib and Lambda Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (II) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases, (III) Granting the Purchaser the Protections Afforded to a Good Faith Purchaser, (IV) Approving Purchaser Protections in Connection with the Sale of the Lonafarnib and Lambda Assets, and (V) Granting Related Relief* [Docket No. 558].

“Lonafarnib Asset Purchase Agreement” means that certain *Asset Purchase Agreement by and between Eiger InnoTherapeutics, Inc., as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, Dated as of August 1, 2024*, annexed as Exhibit A to the Lonafarnib and Lambda Sale Order and as from time to time amended in accordance with the Lonafarnib and Lambda Sale Order or further order of this Court.

“Lonafarnib Assets” means the assets related to the Lonafarnib Asset Purchase Agreement.

“Marketing Process” means the process for the marketing and sale of all or substantially all of the Debtors' assets, or any combination thereof, pursuant to the Bid Procedures Order.

“Merck License” means that certain License Agreement dated September 3, 2010 by and between Debtor Eiger BioPharmaceuticals, Inc. and Merck Sharp & Dohme LLC (as successor in interest to Merck Sharp & Dome Corp., as successor in interest to Schering Corporation) as amended.

“Merck Side Letters” means, collectively, each “Merck Side Letter” as defined in, respectively, the Zokinvy Asset Purchase Agreement and the Lonafarnib Asset Purchase Agreement.

“Notice and Claims Agent” means Verita Global f/k/a Kurtzman Carson Consultants, LLC, in its capacity as noticing, claims, and solicitation agent for the Debtors.

“OCP” means an ordinary course professional whose retention and compensation has been authorized by the Bankruptcy Court pursuant to the OCP Order.

“OCP Order” means the order entered by the Bankruptcy Court approving the Debtors' motion or motions to retain and compensate certain OCPs in the ordinary course of business [Docket No. 254].

“Other Priority Claim” means any Claim other than an Administrative Claim or a Priority Tax Claim entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

“Other Secured Claim” means any Secured Claim other than a Prepetition Term Loan Claim.

“Person” means a “person” as defined in section 101(41) of the Bankruptcy Code.

“Petition Date” the date on which each of the Debtors Filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code, thereby commencing these Chapter 11 Cases, or April 1, 2024.

“Plan” means this plan under chapter 11 of the Bankruptcy Code, as may be altered, amended, supplemented, or otherwise modified from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules, or the terms hereof, as the case may be, including the Plan Supplement, which is incorporated herein by reference, including any and all exhibits, supplements, appendices, and schedules hereto and thereto.

“Plan Administrator” means the Person or Entity appointed by the Debtors, in consultation with the Unsecured Creditors’ Committee and Equity Committee, on the Effective Date to administer and wind down the Debtor’s remaining business operations including (1) transition services and obligations required under the Asset Purchase Agreements, including maintaining necessary licensures and government approvals, to the extent required thereunder, all as approved pursuant to the Sale Orders, (2) transition services required under 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, (3) administer employee termination and wind-down matters, (4) maintain and distribute the Professional Fee Reserve Account, (5) file any and all tax returns (other than any Liquidating Trust’s tax return), (6) in consultation and cooperation with the Liquidating Trustee, close these Chapter 11 Cases, as described in more detail in Article IV herein, and (7) any other duties or responsibilities set forth herein.

“Plan Distribution” means a payment or distribution to Holders of Allowed Claims or other eligible Entities under this Plan.

“Plan Objection Deadline” means the deadline to file objections to the adequacy of the Disclosure Statement and confirmation of the Plan pursuant to the Disclosure Statement Order.

“Plan Supplement” means the compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan (in each case, as may be altered, amended, modified, or supplemented from time to time through the Effective Date in accordance with the terms hereof and in accordance with the Bankruptcy Code and Bankruptcy Rules) to be Filed two (2) weeks prior to the Plan Objection Deadline by the Debtors, including the following: (1) the Schedule of Assumed Executory Contracts and Unexpired Leases; (2) the Schedule of Retained Causes of Action; and (3) the Liquidating Trust Agreement.

“Prepetition Term Loan Agent” means Innovatus Life Sciences Lending Fund I, LP, as Collateral Agent (as defined in the Prepetition Term Loan Credit Agreement and, in such capacity and including any successors thereto).

“Prepetition Term Loan Claims” meaning any Claim on account of the Prepetition Term Loan Documents.

“Prepetition Term Loan Credit Agreement” means that certain Loan and Security Agreement, dated as of June 1, 2022 (as amended, restated, or otherwise modified from time to time).



“Prepetition Term Loan Documents” means the Prepetition Term Loan Credit Agreement and, together with all other documentation executed in connection therewith, including without limitation, the Loan Documents (as defined in the Prepetition Term Loan Credit Agreement) executed in connection therewith, as amended, restated, or otherwise modified from time to time.

“Prepetition Term Loan Secured Parties” means, collectively, the Prepetition Term Loan Agent and the lenders from time to time party to the Prepetition Term Loan Credit Agreement.

“Priority Tax Claim” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

“Professional” means a Person or Entity employed in the Chapter 11 Cases pursuant to a Bankruptcy Court order in accordance with sections 327, 328, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered before or on the Effective Date, pursuant to sections 327, 328, 329, 330, 363, or 331 of the Bankruptcy Code, excluding any ordinary course professional retained pursuant to a Bankruptcy Court order.

“Professional Compensation Claim” means a Claim against a Debtor for professional services rendered and costs incurred between the Petition Date and the Effective Date by a Professional, including estimates through the Effective Date, in connection with the Chapter 11 Cases.

“Professional Fee Reserve Account” means that certain account held by the Debtors for the benefit of Professionals, as more fully described in Paragraph 3(d) of the Cash Collateral Order.

“Proof of Claim” means a proof of claim Filed against any of the Debtors in the Chapter 11 Cases by the applicable Bar Date.

“Purchaser” means, collectively: (1) Sentyln Therapeutics, Inc., in its capacity as purchaser of the Zokinvy Assets; (2) Amylyx Pharmaceuticals, Inc., or a wholly owned subsidiary thereof, in its capacity as purchaser of the Avexitide Assets; (3) Eiger InnoTherapeutics, Inc., in its capacity as purchaser of the Lonafarnib Assets and Lambda Assets; and (4) any purchaser of other of the Debtors’ assets pursuant to section 363 of the Bankruptcy Code.

“Related Party” means each of, and in each case only in its capacity as such, (i) current directors, managers, officers, committee members, and members of any governing body, and (ii) current and former equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, Affiliates, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, attorneys (including any other attorneys or professionals retained by any current or former director or manager in his or her capacity as director or manager of an entity), accountants, investment bankers, consultants, representatives, and other professionals and advisors and any such Person’s or Entity’s respective heirs, executors, estates, and nominees.

“Released Party” means each of, and in each case in its capacity as such: (1) each Debtor and its Estate; (2) each Wind-Down Debtor and its Estate; (3) each Related Party of each Entity in

clause (1) and (2); *provided* that in each case, an Entity shall not be a Released Party if it: (x) elects to opt out of the releases contained in Article IX.A or Article IX.B of the Plan or (y) timely objects to the releases contained in Article IX.A or Article IX.B of the Plan and such objection is not resolved before Confirmation.

“Releasing Party” means each of, and in each case in its capacity as such: (1) each Debtor and its Estate; (2) each Wind-Down Debtor and its Estate; (3) any Statutory Committee and each of its members; (4) the Holders of all Claims or Interests who vote to accept the Plan; (5) the Holders of all Claims or Interests whose vote to accept or reject the Plan is solicited but who do not vote either to accept or to reject the Plan and do not opt out of granting the releases set forth in Article IX.A or Article IX.B of the Plan; (6) the Holders of all Claims or Interests who vote to reject the Plan but do not opt out of granting the releases set forth in Article IX.A or Article IX.B of the Plan; (7) each current and former Affiliate of each Entity in clauses (1) through (6) and the following clause (8); and (8) each Related Party of each Entity in clause (1) through this clause (8), solely to the extent such Related Party may assert Claims or Causes of Action on behalf of or in a derivative capacity by or through an Entity in clause (1) through clause (7); *provided* that in each case, an Entity shall not be a Releasing Party if it: (x) elects to opt out of the releases contained in Article IX.A or Article IX.B of the Plan or (y) timely objects to the releases contained in Article IX.A or Article IX.B of the Plan and such objection is not resolved before Confirmation.

“Retained Causes of Action” means those Causes of Action indicated on the Schedule of Retained Causes of Action, which shall vest in the Liquidating Trust or Wind-Down Debtors, as applicable, on the Effective Date.

“Sale Orders” means, collectively: (1) the Zokinvy Sale Order; (2) the Avexitide Sale Order; (3) the Lonafarnib and Lambda Sale Order; and (4) any other order approving the sale of certain of the Debtors’ assets pursuant to section 363 of the Bankruptcy Code.

“Sale Transactions” the sale of the assets and related transactions approved by the Sale Orders.

“Sale Transactions Documents” means the definitive documents to effectuate the Sale Transactions.

“Schedule of Assumed Executory Contracts and Unexpired Leases” means the list of Executory Contracts and Unexpired Leases that will be assumed by the Debtors pursuant to Article V of the Plan, which shall be included in the Plan Supplement.

“Schedule of Retained Causes of Action” means the schedule of Causes of Action of the Debtors that are not released, waived, or transferred pursuant to the Plan, as the same may be amended, modified, or supplemented from time to time.

“Schedules” means, collectively, the schedule of assets and liabilities and statement of financial affairs Filed by each Debtor pursuant to section 521 of the Bankruptcy Code, the Bankruptcy Rules, and the official bankruptcy forms, as the same may be amended, modified, or supplemented from time to time.

“Secured” means, when referring to a Claim: (1) secured by a Lien on property in which the Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or, in the case of setoff, pursuant to section 553 of the Bankruptcy Code; or (2) otherwise Allowed pursuant to the Plan or a Final Order of the Bankruptcy Court as a Secured Claim.

“Securities Act” means the Securities Act of 1933, as amended, 15 U.S.C. §§ 77a–77aa, or any similar federal, state, or local law, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

“Solicitation Materials” means solicitation materials and documents to be included in the solicitation packages.

“Statutory Committee” means any statutory committee appointed in the Chapter 11 Cases, including the Unsecured Creditors Committee and the Equity Committee.

“Statutory Fees” means all fees due and payable pursuant to section 1930 of Title 28 of the United States Code, together with the statutory rate of interest set forth in section 3717 of Title 31 of the United States Code, to the extent applicable.

“Third-Party Release” means such releases by the Releasing Parties as set forth in Article IX.B hereof.

“Unexpired Lease” means a lease to which any of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

“Unimpaired” means, with respect to a Claim or Class of Claims, not “impaired” within the meaning of sections 1123(a)(4) and 1124 of the Bankruptcy Code.

“Unsecured Creditors Committee” means the official committee of unsecured creditors appointed by the U.S. Trustee under section 1102(b) of the Bankruptcy Code in these Chapter 11 Cases on June 10, 2024 [Docket No. 322].

“U.S. Trustee” means the United States Trustee for the Northern District of Texas.

“Wind-Down” means the post-Effective Date functions of the Plan Administrator as set forth in the definition of “Plan Administrator.”

“Wind-Down Budget” means a budget for any fees, costs, and expenses to be incurred by the Plan Administrator in connection with the Wind-Down of the Debtors from and after the Effective Date as described herein.

“Wind-Down Debtor” means each of the Debtors following the Effective Date.

“Zokinvy Asset Purchase Agreement” means that certain *Asset Purchase Agreement by and between Sentyln Therapeutics, Inc., as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, Dated March 31, 2024*, annexed as Exhibit 1 to the Zokinvy Sale Order, and as from time to time amended in accordance with the Zokinvy Sale Order or further order of this Court, including by the First Amendment to the Zokinvy Asset Purchase Agreement attached to the Zokinvy Sale Order.

“Zokinvy Assets” means the assets related to the Zokinvy Asset Purchase Agreement.

“Zokinvy Sale Order” means the *Order (I) Approving the Sale of the Debtors’ Zokinvy Assets, (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (III) Granting Related Relief* [Docket No. 162].

## **B. Rules of Interpretation**

Unless otherwise specified, all section or exhibit references in this Plan are to the respective section in or exhibit to this Plan, as the same may be amended, waived, or modified from time to time in accordance with the terms hereof. The words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to this Plan as a whole and not to any particular section, subsection, or clause contained therein and have the same meaning as “in this Plan,” “of this Plan,” “to this Plan,” and “under this Plan,” respectively. The words “includes” and “including” are not limiting. The headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. For purposes herein: (1) in the appropriate context, each term, whether stated in the singular or plural, shall include both the singular and plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (3) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (4) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

## **C. Computation of Time**

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) will apply. Any references to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter unless otherwise specified herein.

## **D. Reference to Monetary Figures**

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

## **E. Controlling Document**

In the event of an inconsistency between this Plan and the Plan Supplement, the terms of the relevant document in the Plan Supplement shall control unless otherwise specified in such Plan

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

## **ARTICLE II.**

### **ADMINISTRATIVE CLAIMS, PRIORITY TAX CLAIMS, AND STATUTORY FEES**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims (including Professional Compensation Claims) and Priority Tax Claims have not been classified for purposes of voting or receiving distributions, and, thus, are excluded from the Classes of Claims and Interests set forth in Article III hereof.

#### **A. Administrative Claims**

Except to the extent that a Holder of an Allowed Administrative Claim agrees to a less favorable treatment, each Holder of an Allowed Administrative Claim (other than a Professional Compensation Claim) shall receive, in full and final satisfaction of such Claim, (1) Cash in an amount equal to such Allowed Administrative Claim in accordance with the following: (a) if Allowed on or prior to the Effective Date, then on the Effective Date or as soon as reasonably practicable thereafter; (b) if not Allowed as of the Effective Date, then no later than forty-five (45) days after the date on which an order Allowing such Administrative Claim becomes a Final Order; or (c) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court; or (2) such other treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.

Except for Professional Compensation Claims, and notwithstanding any prior Filing or Proof of Claim, Proofs of Claim seeking the allowance and payment of Administrative Claims must be Filed and served on the Debtors or the Liquidating Trustee (as applicable) and their counsel by no later than the Administrative Claims Bar Date pursuant to the procedures set forth in the Confirmation Order and the notice of the occurrence of the Effective Date. The burden of proof for the allowance of Administrative Claims remains on the Holder of the Administrative Claims.

**Except as otherwise provided in Articles II.B, II.C, or II.D herein, Holders of Administrative Claims that do not File and serve a Proof of Claim or application for payment of administrative expenses requesting the allowance of an Administrative Claim by the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting Administrative Claims against the Debtors, the Plan Administrator, the Liquidating Trustee, the Estates, or the Debtors' assets and properties, and any Administrative Claims shall be deemed disallowed as of the Effective Date unless otherwise ordered by the Bankruptcy Court.**

## **B. Professional Compensation Claims**

### **1. Final Fee Applications and Payment of Professional Compensation Claims**

All requests for payment of Professional Compensation Claims (other than from OCPs) for services rendered and reimbursement of expenses incurred through the Effective Date shall be filed no later than forty-five (45) days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Compensation Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code. Objections to Professional Compensation Claims must be Filed and served no later than twenty-one (21) days after the Filing of the Professional Compensation Claims. To the extent any Cash is remaining in the Professional Fee Reserve Account following irrevocable payment in full of all Allowed Professional Compensation Claims (including Allowed Professional Compensation Claims arising after the Confirmation Date), such Cash shall be transferred to the Wind-Down Debtors.

### **2. Administrative Claims of OCPs**

All requests for payment of Professional Compensation Claims of OCPs shall be made pursuant to the OCP Order. To the extent any Professional Compensation Claims of the OCPs have not been Allowed pursuant to the OCP Order on or before the Effective Date, the amount of Professional Compensation Claims owing to the OCPs shall be paid in Cash to such OCPs by the Debtor or the Plan Administrator (as applicable) from the Professional Fee Reserve Account as soon as reasonably practicable after such Professional Compensation Claims are Allowed pursuant to the OCP Order.

### **3. Post-Confirmation Date Fees and Expenses**

Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors, the Plan Administrator, or the Liquidating Trustee (as applicable) shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred by the Debtors, the Plan Administrator, or the Liquidating Trustee (as applicable). Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Debtors, the Plan Administrator, or the Liquidating Trustee (as applicable) may employ and pay any professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors, the Plan Administrator, or the Liquidating Trustee (as applicable) shall pay, within ten business days after submission of a detailed invoice such reasonable claims for compensation or reimbursement of expenses incurred by the professionals of the Debtors, the Plan Administrator, or the Liquidating Trustee (as applicable). If the Debtors, the Plan Administrator, or the Liquidating Trustee dispute the reasonableness of any such invoice, the affected professional may submit such dispute to the Bankruptcy Court for a determination of the reasonableness of any such invoice, and the disputed portion of such invoice shall not be paid until the dispute is resolved.

#### 4. Professional Fee Reserve Account

On the Effective Date, the Debtors shall fund an amount in Cash into the Professional Fee Reserve Account equal to (a) the aggregate accrued and unpaid Professional Compensation Claims as of the Effective Date (which shall be estimated by each applicable Professional in its reasonable discretion based on the amount of then-accrued Professional Compensation Claims plus a reasonable estimate of fees and expenses that will accrue up until the Effective Date), less (b) any amount then held in the Professional Fee Reserve Account.

Funds held in the Professional Fee Reserve Account shall be held for the benefit of the Professionals and shall not be property of the Estates. The Professionals shall reasonably and in good faith estimate their Professional Compensation Claims before and as of the Effective Date, taking into account any prior payments, and shall deliver such estimates to the Debtors no later than five (5) Business Days prior to the anticipated Effective Date.

Professional Compensation Claims shall be paid in full without interest or other earnings therefrom, in Cash, from the Professional Fee Reserve Account, in such amounts as are Allowed by the Bankruptcy Court as soon as reasonably practicable after such Professional Compensation Claims are allowed. The obligations of the Estates with respect to Professional Compensation Claims shall not be limited by nor deemed limited to the balance of funds held in the Professional Fee Reserve Account. To the extent that funds held in the Professional Fee Reserve Account are insufficient to satisfy the amount of accrued Professional Compensation Claims owing to the Professionals, such Professionals shall have an Allowed Administrative Claim for any such deficiency. No Liens, claims, or interests shall encumber the Professional Fee Reserve Account in any way, other than customary liens in favor of the depository bank at which the Professional Fee Reserve Account is maintained.

#### **C. Priority Tax Claims**

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, each Holder of an Allowed Priority Tax Claim shall receive, in full and final satisfaction, settlement, release, and discharge of such Claim, treatment in a manner consistent with section 1129(a)(9)(C) of the Bankruptcy Code.

#### **D. Statutory Fees**

All Statutory Fees due and payable prior to the Effective Date shall be paid by the Debtors. On and after the Effective Date, the Plan Administrator shall pay any and all 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 pay quarterly fees to the U.S. Trustee until the earliest of a Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

**ARTICLE III.  
 CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

**A. Classification of Claims and Interests**

Except for the Claims addressed in Article II herein, all Claims and Interests are classified in the Classes set forth below in accordance with sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Class to the extent that any portion of the Claim or Interest qualifies within the description of such other Class. A Claim or Interest also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and has not been otherwise paid, released, or satisfied at any time.

The classification of Claims against and Interests in the Debtors pursuant to the Plan is as follows:

<b>Class</b>	<b>Claims and Interests</b>	<b>Status</b>	<b>Voting Rights</b>
Class 1	Other Secured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 3	Prepetition Term Loan Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 4	General Unsecured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 5	Intercompany Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 6	Existing Equity Interests	Impaired	Entitled to Vote

**B. Treatment of Claims and Interests**

1. Class 1 – Other Secured Claims

a. *Classification:* Class 1 consists of all Other Secured Claims against the Debtors.

b. *Treatment:* Except to the extent the Holder of an Allowed Other Secured Claim agrees to less favorable treatment, each Holder of an Allowed Other Secured Claim shall receive, in full and final satisfaction, settlement, release, and discharge of such Claim, at the



Debtors' option: (i) payment in full in Cash; (ii) the collateral securing its Allowed Other Secured Claim; (iii) reinstatement of its Allowed Other Secured Claim; or (iv) such other treatment rendering its Allowed Other Secured Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.

c. *Voting:* Class 1 is Unimpaired, and Holders of Other Secured Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 1 Other Secured Claims are not entitled to vote to accept or reject the Plan.

2. Class 2 – Other Priority Claims

a. *Classification:* Class 2 consists of all Other Priority Claims against the Debtors.

b. *Treatment:* Except to the extent the Holder of an Allowed Other Priority Claim agrees to less favorable treatment, each Holder of an Allowed Other Priority Claim shall receive, in full and final satisfaction, settlement, release, and discharge of such Claim, treatment in a manner consistent with section 1129(a)(9) of the Bankruptcy Code.

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

3. Class 3 – Prepetition Term Loan Claims

a. *Classification:* Class 3 consists of all Prepetition Term Loan Claims against the Debtors.

b. *Treatment:* Except to the extent the Holder of an Allowed Prepetition Term Loan Claim agrees to less favorable treatment, each Holder of an Allowed Prepetition Term Loan Claim shall receive, in full and final satisfaction, settlement, release, and discharge of such Claim such Holder's *pro rata* share of an amount of Cash equal to approximately \$20,377,176.72 as of September 6, 2024 *plus* interest at the base rate from and after September 6, 2024 that accrue through actual payment to the Prepetition Term Loan Agent *minus* \$2.8 million. In addition, the Holder of the Allowed Prepetition Term Loan Claim shall be entitled to payment of legal fees and expenses as provided for in paragraph 30 of the Confirmation Order.

c. *Voting:* Class 3 is Unimpaired, and Holders of Prepetition Term Loan Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 3 Prepetition Term Loan Claims are not entitled to vote to accept or reject the Plan.

4. Class 4 – General Unsecured Claims

a. *Classification:* Class 4 consists of all General Unsecured Claims against the Debtors.

b. *Treatment:* Except to the extent the Holder of an Allowed General Unsecured Claim agrees to less favorable treatment, each Holder of an Allowed General Unsecured Claim shall receive, in full and final satisfaction, settlement, release, and discharge of such Claim, payment in full in Cash, including post-petition interest through the date on which a distribution is made on account of the Claim calculated at the applicable contract rate, the Federal Judgment Rate, or such other rate as determined by the Bankruptcy Court (in any adversary proceeding, contested matter, or otherwise).

c. *Voting:* Class 4 is Unimpaired, and Holders of General Unsecured Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 4 General Unsecured Claims are not entitled to vote to accept or reject the Plan.

5. Class 5 – Intercompany Claims

a. *Classification:* Class 5 consists of the Intercompany Claims.

b. *Treatment:* 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.

c. *Voting:* Class 5 is Unimpaired, and Holders of Intercompany Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 5 Intercompany Claims are not entitled to vote to accept or reject the Plan.

6. Class 6 – Existing Equity Interests

a. *Classification:* Class 6 consists of all Existing Equity Interests in the Debtors.

b. *Treatment:* Except to the extent the Holder of an Existing Equity Interest agrees to less favorable treatment, each Holder of an Existing Equity Interest shall receive, in full and final satisfaction, settlement, release, and discharge of such Interest, its *pro rata* share of the Existing Equity Interest Recovery Pool.

c. *Voting:* Class 6 is Impaired, and Holders of Class 6 Existing Equity Interests are entitled to vote to accept or reject the Plan.

**C. Special Provision Governing Unimpaired Claims**

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

**D. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Combined Hearing, does not have at least one Holder of a Claim or Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from this Plan for purposes of voting to accept or reject this Plan, and disregarded for purposes of determining whether this Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**E. Voting Classes**

The Debtors assert that only Classes of Interests in Class 6 are impaired and entitled to vote to accept or reject the Plan.

**F. Presumed Acceptance by Non-Voting Classes**

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

**G. Controversy Concerning Impairment**

If a controversy arises as to whether any Claim or any Class of Claims is Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Combined Hearing.

**H. Subordination of Claims**

The allowance, classification, and treatment of all Allowed Claims and Interests and the respective distributions and treatments under the Plan shall take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, contract, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors or the Liquidating Trustee (as applicable) reserve the right to re-classify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

**I. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code**

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by one or more of the Classes entitled to vote pursuant to Article III of the Plan. The Debtors hereby request Confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any Class that is deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code. The Debtors reserve the right to request Confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any voting Class that votes to reject the Plan.

The Debtors reserve the right to modify the Plan in accordance with Section XI.A of the Plan to the extent that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules. The Debtors have requested that any party that disputes the Debtors' characterization of its Claim or Interest as being unimpaired request a finding of impairment from the Bankruptcy Court in order to obtain the right to vote on the Plan; *provided, however*, that such party files and serves an objection requesting such determination on or before August 30, 2024 at 4:00 p.m. prevailing Central Time.

#### **J. Insurance**

Notwithstanding anything to the contrary in the Plan, if any Claim is subject to coverage under an Insurance Policy, payments on account of such Claim will first be made from proceeds of such Insurance Policy in accordance with the terms thereof, with the balance of such Claim, if any, treated in accordance with the provisions of the Plan governing the Class applicable to such Claim.

### **ARTICLE IV. MEANS FOR IMPLEMENTATION OF THE PLAN**

#### **A. General Settlement of Claims and Interests**

Pursuant to section 1123(b)(2) of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the distributions, releases, and other benefits provided pursuant to this Plan, upon the Effective Date, the provisions of this Plan shall constitute a good faith compromise and settlement of Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a Holders of Claims or Interests may have with respect to any Allowed Claim or Interest or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise and settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and Holders of such Claims or Interests, and is fair, equitable, and reasonable.

#### **B. Creation of Liquidating Trust, Liquidating Trustee, and the Liquidating Trust Oversight Committee**

##### **1. Creation of the Liquidating Trust**

On the Effective Date, the Liquidating Trust will be established for the benefit of the Holders of Claims and Existing Equity Interests pursuant to the terms set forth in the Liquidating Trust Agreement, which agreement shall be in a form reasonably acceptable to the Debtors, the Unsecured Creditors' Committee, and the Equity Committee. On the Effective Date, certain Causes of Action (as set forth in the Schedule of Retained Causes of Action) shall vest in the Liquidating Trust, and any recoveries from such Retained Causes of Action shall constitute Liquidating Trust Assets. The primary purpose of the Liquidating Trust shall be to hold and to administer the Liquidating Trust Assets, distributing Distributable Cash pursuant to this Plan, and the Liquidating Trust shall have 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 trust. On the Effective Date, the Liquidating Trust Assets will be transferred by the Debtors to the Liquidating Trust. The Liquidating Trust shall be a legally separate and distinct Entity from the Debtors and the Plan Administrator.

## 2. Liquidating Trustee

The Liquidating Trust shall be controlled and administered by the Liquidating Trustee, subject to the oversight and direction of the Liquidating Trust Oversight Committee. The Debtors and the Plan Administrator shall have no direct or indirect control, influence, or authority over the Liquidating Trust, the Liquidating Trustee, or the Liquidating Trust Oversight Committee or any of their respective decisions, except as expressly set forth in this Plan.

The Liquidating Trustee, subject to the oversight of the Liquidating Trust Oversight Committee, shall have the exclusive control over all aspects of the Retained Causes of Action that shall vest in the Liquidating Trust (as set forth in the Schedule of Retained Causes of Action), including the investigation, prosecution, and disposition of the same in accordance with the terms of the Liquidating Trust Agreement.

It is intended that the Liquidating Trust qualify as a “liquidating trust” within the meaning of Treasury Regulations Section 301.7701-4(d). In general, a liquidating trust is not a separate taxable entity but rather is treated for U.S. federal income tax purposes as a “grantor” trust (i.e., a pass-through entity). The IRS, in Revenue Procedure 94-45, 1994-2 C.B. 684, set forth the general criteria for obtaining an IRS ruling as to the grantor trust status of a liquidating trust under a chapter 11 plan. The Liquidating Trust will be structured with the intention of complying with such general criteria. Pursuant to the Plan, and in conformity with Revenue Procedure 94-45, all parties (including the Liquidating Trustee and holders of beneficial interests in the Liquidating Trust) are required to treat for U.S. federal income tax purposes the Liquidating Trust as a grantor trust of which such holders of beneficial interest are the owners and grantors. The Liquidating Trustee is hereby appointed in such instance pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to handle all of the Liquidating Trust’s tax matters, including, without limitation, the filing of all tax returns and the handling of tax audits and proceedings of the Liquidating Trust. Notwithstanding the foregoing, the Liquidating Trustee may make an election under Treasury Regulations Section 1.468B-0(c)(2)(ii) to treat the Liquidating Trust (or any portion thereof) as a disputed ownership fund. The Liquidating Trustee shall be responsible of filing information on behalf of the Liquidating Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) or as a disputed ownership fund.

## C. **The Plan Administrator**

### 1. Continued Corporate Existence

(a) Each of the Debtors shall remain in existence unless and until dissolved by Plan Administrator in accordance with the provisions of this Plan.

(b) On the Effective Date or as soon as reasonably practicable thereafter, in connection with the assignment of the Retained Causes of Action that shall vest in the Liquidating Trust (as set forth in the Schedule of Retained Causes of Action), at the discretion of the Liquidating Trustee, one percent (1%) of an Intercompany Interest of any Debtor shall be

transferred to the Liquidating Trustee to confer standing upon the Liquidating Trustee to institute litigation respecting Retained Causes of Action on behalf of the Debtors pursuant to the provisions of any applicable LLC Act. For the avoidance of doubt, the 1% Intercompany Interest transferred to the Liquidating Trust pursuant to this Plan shall not confer any voting or other rights to the Liquidating Trustee other than for the purpose of conferring exclusive derivative standing upon the Liquidating Trustee as described herein.

(c) The Plan Administrator shall give the Liquidating Trustee forty-five (45) days written notice (the "Termination Notice") of its intentions to merge, dissolve, or otherwise terminate the existence of a Wind-Down Debtor. Upon receipt of the Termination Notice, the Liquidating Trustee will evaluate whether prosecution of a pending or contemplated Retained Cause of Action necessitates the continued corporate existence of a Wind-Down Debtor, in which case the Plan Administrator shall take no action with respect to merging, dissolving, or otherwise terminating the existence of such Wind-Down Debtor until such litigation claim is resolved by the Liquidating Trust; *provided, however*, that all costs (including the fees of the Plan Administrator) associated with maintaining the continued corporate existence of any such Wind-Down Debtor beyond forty-five (45) days from the delivery of the Termination Notice shall be borne by the Liquidating Trustee.

(d) As of the Effective Date, the certificate of incorporation, bylaws, articles of organization, certificate of formation, or limited liability company operating agreement, as applicable, of each Debtor shall be deemed amended to the extent necessary to carry out the provisions of the Plan. The entry of the Confirmation Order shall constitute authorization for the Debtors, the Wind-Down Debtors, the Plan Administrator, and the Liquidating Trustee, as applicable, to take or cause to be taken all actions (including, if applicable, corporate actions) necessary or appropriate to implement all provisions of, and to consummate, the Plan prior to, on, and after the Effective Date and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court without further approval, act, or action under any applicable law, order, rule, or regulation.

(e) To the extent that it is determined that additional corporate governance or structural changes may be required to confer standing on the Liquidating Trustee with respect to any Retained Causes of Action, the Plan Administrator will exercise reasonable efforts to cooperate and work with the Liquidating Trustee to achieve and confer such standing so long as any 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.

(f) Tax Reporting

The Plan Administrator shall file any and all tax returns for the Wind-Down Debtors and the Estates, as applicable; *provided, however*, that the Plan Administrator shall have no personal liability for the signing or accuracy of the Debtors' tax returns that are due to be filed after the Effective Date or for any tax liability related thereto.

The Plan Administrator shall be responsible for payment, out of the Wind-Down Budget, of any taxes imposed on the Debtors.

(g) On or after the Effective Date, Debtor Eiger BioPharmaceuticals, Inc. may convert from a Delaware corporation to a Delaware limited liability company (the “Eiger Conversion”), which shall be deemed effective for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Debtors or the Wind-Down Debtors; *provided, however,* that the Debtors or the Wind-Down Debtors may, but will not be required to, take appropriate action to document such conversion under applicable law. The Wind-Down Debtors shall be authorized to adopt any agreements, documents, and instruments and to take any other actions contemplated under the Plan as necessary to consummate the Plan without the need for any approvals, authorizations or consents, except those expressly required under the Plan.

#### **D. Liquidation Transactions**

On or before the Effective Date, the Debtors or the Plan Administrator shall enter into and take any actions that may be necessary or appropriate to effectuate the Sale Transactions or the Wind-Down of the Debtors, as applicable, including but not limited to: (1) the Eiger Conversion; (2) the execution and delivery of 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; (3) the execution and delivery of any appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, duty, or obligation on terms consistent with this Plan; (4) the delivery of Liquidating Trust Assets to the Liquidating Trustee; (5) the filing of appropriate documents with the appropriate governmental authorities pursuant to applicable law; and (6) any and all other actions that the Debtors or the Plan Administrator determine are necessary or appropriate to effectuate the Plan.

##### **1. Wind Down of the Debtors**

Following the Effective Date, the Plan Administrator shall Wind-Down the business affairs and operations of the Debtors. The responsibilities and authority of the Plan Administrator shall include the following: (a) administering the Professional Fee Reserve Account and the Wind-Down Budget on the terms set forth herein; (b) administering and paying taxes, including, among other things, (i) filing tax returns (to the extent not the obligation of any Purchaser), and (ii) representing the interest and account of the Debtors before any taxing authority in all matters; (c) retaining and paying, without the need for retention or fee applications, professionals in connection with the Plan Administrator’s performance of its duties under this Plan; (d) distributing information statements as required for U.S. federal income tax and other applicable tax purposes; (e) complying with any continuing obligations under the Asset Purchase Agreements, as applicable; (f) Filing an application for entry by the Bankruptcy Court of a final decree closing the Chapter 11 Cases; and (g) making distributions to Professionals for Allowed Professional Compensation Claims from the Professional Fee Reserve Account.

The responsibilities and authority of the Liquidating Trustee shall include the following: (a) preserving and liquidating the Debtors’ assets remaining after consummation of the Sale Transactions, if any, including through the prosecution of any Claims or Retained Causes of Action; (b) considering, litigating, or resolving disputed Claims; (c) distributing the Distributable Cash and other assets of the Debtors’ Estates pursuant to the terms of this Plan to Holders of

Allowed Claims and Interests; (d) procuring the necessary insurance to facilitate the Wind-Down, including appropriate D&O Liability Insurance Policies; and (e) performing such other responsibilities as may be vested in the Liquidating Trustee pursuant to this Plan or an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of this Plan.

#### **E. Sources of Consideration for Plan Distributions**

Subject to the provisions of the Plan concerning the Professional Fee Reserve Account and the Wind-Down Budget, the Debtors or the Liquidating Trustee (as applicable) shall fund distributions under the Plan with the Liquidating Trust Assets, including but not limited to, (1) the remaining proceeds from the Sale Transactions, (2) the Debtors' Cash on hand delivered to the Liquidating Trustee, and (3) the recovery, if any, from prosecution or settlement of the Retained Causes of Action, all in accordance with the terms herein.

##### **1. Sale Transactions**

On or before the Effective Date, the Debtors or the Plan Administrator shall take any actions that may be necessary or appropriate to effectuate the Sale Transactions in accordance with the Bid Procedures Order and this Plan.

##### **2. Use of Cash**

The Debtors or the Liquidating Trustee shall use Cash on hand to pay the fees and expenses of administering their respective functions and to fund distributions to Holders of Allowed Claims and Allowed Interests, consistent with the terms of the Plan.

##### **3. Retained Causes of Action**

The Debtors, the Liquidating Trustee, or the Plan Administrator shall use the recovery, if any, from prosecution or settlement of the Retained Causes of Action to fund distributions to certain Holders of Allowed Claims and Allowed Interests, consistent with the terms of the Plan.

#### **F. Vesting of Assets**

Except as otherwise provided in this Plan or the Sale Orders, on and after the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, except for certain Causes of Action (as set forth on the Schedule of Retained Causes of Action), the Wind-Down Budget, the Professional Fee Reserve Account, which shall vest in the Wind-Down Debtors, all property in each of the Estates, including all claims, rights, Causes of Action that shall vest in the Liquidating Trust, and any property acquired by the Debtors under or in connection with this Plan, shall vest in the Liquidating Trust and with the Liquidating Trustee, free and clear of all Claims, Liens, encumbrances, charges, Causes of Action, or other interests. Subject to the terms of this Plan, on or after the Effective Date, the Liquidating Trustee may use, acquire, and dispose of property, and may prosecute, compromise, or settle any Claims and Causes of Action without supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules other than restrictions expressly imposed by this Plan or the Confirmation Order.



On the Effective Date, the attorney-client privilege, the attorney work product doctrine and any similar privilege against disclosure, and all other similar immunities (all together, “Privileges”) belonging to the Debtors or the Estates that concern or in any way relate to (a) any of the Liquidating Trust Assets, or that would apply to communications, documents, or records recorded in magnetic, optical, or other form of electronic medium concerning or in any way relating to any Liquidating Trust Assets, shall vest in the Liquidating Trust, and (b) any of the assets vesting in the Wind-Down Debtors, or that would apply to communications, documents, or records recorded in magnetic, optical, or other form of electronic medium concerning or in any way relating to any such assets, shall vest in the Wind-Down Debtors. The Liquidating Trustee shall have the sole right to waive Privileges that concern or in any way relate to any of the Liquidating Trust Assets or that would apply to communications, documents, or electronic records concerning or in any way relating to any Liquidating Trust Assets. The Plan Administrator shall have the sole right to waive Privileges that concern or in any way relate to any of the assets vesting in the Wind-Down Debtors or that would apply to communications, documents, or electronic records concerning or in any way relating to any such assets.

#### **G. Preservation of Causes of Action**

In accordance with section 1123(b) of the Bankruptcy Code, the Liquidating Trustee or the Plan Administrator, as applicable, shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action of the Debtors, including any actions specifically enumerated in the Schedule of Retained Causes of Action, that are not otherwise transferred or sold pursuant to the Sale Transactions or distributed pursuant to the Plan, whether arising before or after the Petition Date, and the Liquidating Trustee’s or the Plan Administrator’s, as applicable, rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date, other than the Causes of Action released by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article IX hereof, which shall be deemed released and waived by the Debtors as of the Effective Date. No preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation. No Entity (other than the Released Parties) may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Debtors, the Liquidating Trustee, or the Plan Administrator, as applicable, will not pursue any and all available Causes of Action of the Debtors against it.

#### **H. Corporate Action**

On the Effective Date, the Debtors shall not be dissolved unless and until the Plan Administrator, in consultation with the Liquidating Trustee, determines that dissolution will not have any adverse impact on the value of the Debtors’ assets; *provided* that neither the Debtors nor any party released pursuant to Article IX herein shall be responsible for any liabilities that may arise as a result of non-dissolution of the Debtors; *provided further*, that nothing in the Plan shall be construed as relieving the Debtors or the Plan Administrator (as applicable) of their duties to pay U.S. Trustee Statutory Fees as required by the Bankruptcy Code and applicable law until such time as a final decree is entered in the Debtors’ Chapter 11 Cases or the cases are dismissed or converted to cases under chapter 7 of the Bankruptcy Code. The Plan Administrator shall submit

with the appropriate governmental agencies a copy of the Confirmation Order, which Confirmation Order shall suffice for purposes of obtaining a Certificate of Dissolution from the applicable Secretary of State or equivalent body.

Without limiting the foregoing, on the Effective Date and following satisfaction of the Debtors' distribution and funding requirements set forth in the Plan, the Debtors shall have no further duties or responsibilities in connection with implementation of this Plan, and the directors and officers of the Debtors shall be deemed to have resigned in favor of the ongoing administration of the Debtors' affairs by the Plan Administrator. From and after the Effective Date, the Plan Administrator and the Liquidating Trustee shall be authorized to act on behalf of the Estates, as applicable, provided that neither of them shall have duties other than as expressly set forth in the Plan or the Confirmation Order.

#### **I. Cancellation of Existing Securities and Agreements**

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, notes, certificates, indentures, mortgages, securities and other documents evidencing any Claim or Interest, and any rights of any Holder in respect thereof, shall be deemed cancelled and of no further force or effect and the obligations of the Debtors thereunder shall be deemed fully satisfied, released, and discharged and, as applicable, shall be deemed to have been surrendered to the Liquidating Trustee. The Holders of or parties to such cancelled instruments, securities, and other documentation shall have no rights arising from or related to such instruments, securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan.

#### **J. Effectuating Documents; Further Transactions**

Upon entry of the Confirmation Order, the Debtors or the Plan Administrator or the Liquidating Trustee (as applicable) shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, consents, certificates, resolutions, programs, and other agreements or documents, and take such acts and actions as may be reasonable, necessary, or appropriate to effectuate, implement, consummate, and/or further evidence the terms and conditions of this Plan and any transactions described in or contemplated by this Plan. The Debtors or the Plan Administrator or the Liquidating Trustee, all Holders of Claims or Interests receiving distributions pursuant to this Plan, and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents, and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan.

#### **K. Section 1146 Exemption from Certain Taxes and Fees**

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation all such instruments or other

documents governing or evidencing such transfers without the payment of any such tax, recordation fee, or governmental assessment.

**L. Sale Orders**

Notwithstanding anything to the contrary herein, nothing in this Plan shall affect, impair or supersede the Sale Orders or Sale Transactions Documents, each of which remains in full force and effect and governs in the event of any inconsistency with the Plan.

**M. Authority to Act**

Prior to, on, or after the Effective Date (as appropriate), all matters expressly provided for under this Plan that would otherwise require approval of the stockholders, security holders, officers, directors, or other owners of the Debtors shall be deemed to have occurred and shall be in effect prior to, on, or after the Effective Date (as applicable) pursuant to the applicable law of the state(s) in which the Debtors are formed, without any further vote, consent, approval, authorization, or other action by such stockholders, security holders, officers, directors, or other owners of the Debtor or notice to, order of, or hearing before, the Bankruptcy Court.

**N. Separate Plans**

Notwithstanding the combination of separate plans of liquidation for the Debtors set forth in this Plan for purposes of economy and efficiency, this Plan constitutes a separate chapter 11 plan for each Debtor. Accordingly, if the Bankruptcy Court does not confirm this Plan with respect to one or more Debtors, it may still confirm this Plan with respect to any other Debtor that satisfies the Confirmation requirements of section 1129 of the Bankruptcy Code.

**ARTICLE V.**

**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption and Rejection of Executory Contracts and Unexpired Leases**

On the Effective Date, except as otherwise provided herein (which exclusion includes the Indemnification Obligations and the D&O Liability Insurance Policies) or otherwise identified on the Schedule of Assumed Executory Contracts and Unexpired Leases, if any (which shall be included in the Plan Supplement), all Executory Contracts or Unexpired Leases not previously assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court, will be deemed rejected, in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code other than those Executory Contracts or Unexpired Leases that are the subject of a motion to assume that is pending on the Confirmation Date.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Sale Transactions Documents or this Plan, and payment of any Cures relating thereto, shall, upon satisfaction of the applicable requirements of section 365 of the Bankruptcy Code, result in the full, final, and complete release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults or provisions restricting the change in control of ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

## **B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

If the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan and Confirmation Order results in a Claim, then, unless otherwise ordered by the Bankruptcy Court, such Claim shall be forever barred and shall not be enforceable against the Debtors, the Estates, the Plan Administrator, or the Liquidating Trustee, or any of their respective assets and properties unless a Proof of Claim is Filed with the Notice and Claims Agent and served upon counsel to the Plan Administrator and the Liquidating Trustee within thirty (30) days of the Effective Date.

The foregoing applies only to Claims arising from the rejection of an Executory Contract or Unexpired Lease under the Plan and Confirmation Order; any other Claims held by a party to a rejected Executory Contract or Unexpired Lease shall have been evidenced by a Proof of Claim Filed by the applicable Bar Date or shall be barred and unenforceable. Claims arising from the rejection of Executory Contracts or Unexpired Leases under the Plan and Confirmation Order shall be classified as General Unsecured Claims and shall, if Allowed, be treated in accordance with the provisions herein.

**Any Claims arising from the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan and Confirmation Order that are not timely Filed within thirty (30) days of the Effective Date will be disallowed automatically, forever barred from assertion, and shall not be enforceable against, as applicable, the Debtors, the Estates, the Plan Administrator, or the Liquidating Trustee, or any of their respective assets and properties.**

## **C. Reservation of Rights**

Neither the exclusion nor the inclusion by the Debtors of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Supplement, nor anything contained in this Plan, shall constitute an admission by the Debtors that any such contract or lease is or is not an Executory Contract or Unexpired Lease or that the Debtors, the Plan Administrator, or the Liquidating Trustee, or their respective affiliates has any liability thereunder. Except as explicitly provided in this Plan, nothing in this Plan shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtors, the Plan Administrator, or the Liquidating Trustee under any executory or non-executory contract or unexpired or expired lease. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of its assumption under this Plan, the Debtors, or the Wind-Down Debtors, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

## **D. Preexisting Obligations to the Debtors Under Executory Contracts and Unexpired Leases**

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of preexisting obligations owed to the Debtors under such Executory Contracts or Unexpired Leases. In particular, notwithstanding any non-bankruptcy law to the contrary, the Debtors expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties, indemnity or continued

maintenance obligations. The Plan shall constitute a motion to reject all such Executory Contracts or Unexpired Leases that are subject to rejection under this Article V.

Notwithstanding any other provision of this Article V or the Plan, the Debtors shall submit to the Court on before the date of the Combined Hearing, but after the occurrence of the “Closing” as defined in the Lonafarnib Asset Purchase Agreement, an order for entry by the Court providing for rejection of the Merck License on the terms set forth in such order, which order shall be in the form required under the Merck Side Letters.

#### **E. Indemnity Obligations**

Each of the Debtors’ Indemnification Obligations shall not be discharged, impaired, or otherwise affected by the Plan. The Indemnification Obligations shall be deemed Executory Contracts assumed by the Debtors under the Plan. Notwithstanding the foregoing, such Indemnification Obligations shall be subject to typical exclusions for actual fraud, willful misconduct, or gross negligence.

#### **F. D&O Liability Insurance Policies**

Each D&O Liability Insurance Policy to which the Debtors are a party as of the Effective Date shall be deemed an Executory Contract and shall be automatically assumed or assumed and assigned by the applicable Debtor, effective as of the Effective Date, pursuant to sections 365 and 1123 of the Bankruptcy Code. For the avoidance of doubt, coverage for defense and indemnity under the D&O Liability Insurance Policies shall remain available to all individuals within the definition of “Insured” in the D&O Liability Insurance Policies. In addition, after the Effective Date, all officers, directors, agents, or employees of the Debtors who served in such capacity at any time before the Effective Date shall be entitled to the full benefits of the D&O Liability Insurance Policies (including any “tail” policy) in effect or purchased as of the Effective Date for the full term of such policy regardless of whether such officers, directors, agents, and/or employees remain in such positions after the Effective Date, in each case, to the extent set forth in the D&O Liability Insurance Policies.

#### **G. Employment Agreements**

Any Employment Agreement not assumed and assigned pursuant to the Sale Transactions Documents as part of the Sale Transactions shall be rejected by the Plan Administrator on the Effective Date of the Plan.

#### **H. Modifications, Amendments, Supplements, Restatements, or Other Agreements**

Modifications, amendments, supplements, and restatements to a prepetition Executory Contract and/or Unexpired Lease that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease.

**I. Nonoccurrence of Effective Date**

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

**J. Employee Compensation and Benefits**

All employment policies, and all compensation and benefits plans, policies, and programs of the Debtors applicable to their respective employees, retirees, and nonemployee directors, including all savings plans, retirement plans, healthcare plans, disability plans, severance benefit plans, incentive plans, and life and accidental death and dismemberment insurance plans, are deemed to be, and shall be treated as, Executory Contracts under this Plan and, on the Effective Date, shall be rejected pursuant to sections 365 and 1123 of the Bankruptcy Code.

**ARTICLE VI.  
PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Distributions on Account of Claims Allowed as of the Effective Date**

As of the close of business on the Distribution Record Date, the various transfer registers for each of the Classes of Claims or Interests as maintained by the Debtors, or their respective agents, shall be deemed closed, and there shall be no further changes in the record Holders of any of the Claims or Interests. The Disbursing Agent shall have no obligation to recognize any ownership transfer of the Claims or Interests occurring on or after the Distribution Record Date. The Disbursing Agent shall be entitled to recognize and deal for all purposes hereunder only with those record Holders stated on the transfer ledgers as of the close of business on the Distribution Record Date, to the extent applicable.

Except as otherwise provided herein, the Disbursing Agent shall make distributions to Holders of Allowed Claims and Allowed Interests as of the Distribution Record Date at the address for each such Holder as indicated on the Debtors' records as of the date of any such distribution; *provided* that the manner of such distributions shall be determined at the discretion of the Disbursing Agent; *provided, further*, that to the extent a Proof of Claim has been filed, the address for each Holder of an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim Filed by that Holder. The Disbursing Agent shall make all distributions for Class 3 Claims to the Prepetition Term Loan Agent, who shall then distribute such individual amounts to the Prepetition Term Loan Secured Parties in accordance with the Prepetition Term Loan Documents.

The Disbursing Agent will implement a procedure to ensure post-petition interest accruing on Class 4 Claims is calculated using the appropriate contractual rate, as applicable, through the date on which a distribution is made on account of the Claim.

**B. Compliance with Tax Requirements**

In connection with this Plan, any Person issuing any instrument or making any distribution or payment in connection therewith, shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority. In the case of a non-Cash

distribution that is subject to withholding, the distributing party may require the intended recipient of such distribution to provide the withholding agent with an amount of Cash sufficient to satisfy such withholding tax as a condition to receiving such distribution or withhold an appropriate portion of such distributed property and either (1) sell such withheld property to generate Cash necessary to pay over the withholding tax (or reimburse the distributing party for any advance payment of the withholding tax) or (2) pay the withholding tax using its own funds and retain such withheld property. The distributing party shall have the right not to make a distribution under this Plan until its withholding or reporting obligation is satisfied pursuant to the preceding sentences. Any amounts withheld pursuant to this Plan shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

Any party entitled to receive any property as an issuance or distribution under this Plan shall, upon request, deliver to the withholding agent or such other Person designated by the Liquidating Trustee the appropriate IRS Form or other tax forms or documentation requested by the Liquidating Trustee to reduce or eliminate any required federal, state, or local withholding. If the party entitled to receive such property as an issuance or distribution fails to comply with any such request for a one hundred eighty (180) day period beginning on the date after the date such request is made, the amount of such issuance or distribution shall irrevocably revert to the Liquidating Trustee and any Claim in respect of such distribution under this Plan shall be discharged and forever barred from assertion against such Debtor, the Plan Administrator, or the Liquidating Trustee or its respective property.

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

### **C. Date of Distributions**

Distributions shall be made on or after the Effective Date to Holders of Allowed Claims or Allowed Interests. In the event that any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on or as soon as reasonably practicable after the next succeeding Business Day, but shall be deemed to have been completed as of the required date. Except as otherwise provided in the Plan, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date.

### **D. Disbursing Agent**

Except as may be otherwise provided in the Sale Orders or Cash Collateral Order, all distributions under this Plan shall be made by the Disbursing Agent on and after the Effective Date and as provided herein. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties.

#### **E. Rights and Powers of Disbursing Agent**

The Disbursing Agent may (1) effect all actions and execute all agreements, instruments, and other documents necessary to carry out the provisions of this Plan; (2) make all distributions contemplated hereby; and (3) perform such other duties as may be required of the Disbursing Agent pursuant to this Plan or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

#### **F. Surrender of Instruments**

As a condition precedent to receiving any distribution under this Plan, each holder of a certificated instrument or note must surrender such instrument or note held by it to the Liquidating Trustee or the Liquidating Trustee's designee. Any holder of such instrument or note that fails to (1) surrender the instrument or note; or (2) execute and deliver an affidavit of loss or indemnity reasonably satisfactory to the Liquidating Trustee and furnish a bond in form, substance, and amount reasonably satisfactory to the Liquidating Trustee within six (6) months of being entitled to such distribution shall be deemed to have forfeited all rights and claims and may not participate in any distribution hereunder.

#### **G. Delivery of Distributions and Undeliverable or Unclaimed Distributions**

Subject to applicable Bankruptcy Rules, all distributions to Holders of Allowed Claims or Allowed Interests shall be made by the Disbursing Agent, who shall transmit such distributions to the applicable Holders of Allowed Claims or Interests or their designees.

If any distribution to a Holder of an Allowed Claim (1) is returned as undeliverable for lack of a current address or otherwise; or (2) is not cashed or otherwise presented for collection by the Holder of the Allowed Claim within ninety (90) calendar days after the mailing of such distribution, the Liquidating Trustee shall be authorized to cancel such distribution check and file with the Bankruptcy Court the name and last known address of the Holder of undeliverable distribution or uncashed distribution, as applicable. If, after the passage of thirty (30) calendar days after such Filing, the payment or distribution on the Allowed Claim still cannot be made, then (1) the Holder of such Claim shall cease to be entitled to the undeliverable distribution or uncashed distribution, which will revert to the Liquidating Trustee for distribution in accordance with the terms of this Plan; and (2) the Allowed Claim of such Holder shall be deemed disallowed and expunged for purposes of further distributions under the Plan.

#### **H. Manner of Payment**

Except as specifically provided herein, at the option of the Debtors or the Liquidating Trustee, as applicable, any Cash payment to be made under this Plan may be made by a check or wire transfer or as otherwise required or provided in applicable agreements or customary practices of the Debtors.



**I. Foreign Currency Exchange Rate**

As of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in *The Wall Street Journal* on the Petition Date.

**J. Setoffs and Recoupment**

The Debtors or the Liquidating Trustee, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), and applicable bankruptcy and/or non-bankruptcy law, without the approval of the Bankruptcy Court and upon no less than fourteen (14) calendar days' notice to the applicable Holder of a Claim, or as may be agreed to by the Holder of a Claim, may, but shall not be required to, set off against or recoup against any Allowed Claim and the distributions to be made pursuant to this Plan on account of such Allowed Claim, any claims of any nature whatsoever that the Debtors or their Estates may have against the Holder of such Allowed Claim; *provided* that neither the failure to effect such a setoff or recoupment nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or the Liquidating Trustee of any such claim the Debtors or their Estates may have against the Holder of such Claim.

**K. Minimum Distribution**

No payment of Cash in an amount of less than one hundred U.S. dollars (\$100.00) shall be required to be made on account of any Allowed Claim. Such undistributed amount may instead be used in accordance with the Plan and the Wind-Down Budget. If the Cash available for the final distribution is less than the cost to distribute such funds, the Liquidating Trustee may donate such funds to the unaffiliated charity of its choice.

**L. Allocations**

Except as otherwise provided in this Plan or as otherwise required by law, distributions with respect to an Allowed Claim shall be allocated first to the principal portion of such Allowed Claim (as determined for U.S. federal income tax purposes) and, thereafter, to the remaining portion of such Allowed Claim, if any.

**M. Distributions Free and Clear**

Except as otherwise provided in this Plan, any distribution or transfer made under this Plan, including distributions to any Holder of an Allowed Claim, shall be free and clear of any Liens, Claims, encumbrances, charges, and other interests, and no other entity shall have any interest, whether legal, beneficial, or otherwise, in property distributed or transferred pursuant to this Plan.

**N. Claims Paid or Payable by Third Parties**

1. Claims Paid by Third Parties

If a Holder of a Claim receives a payment or other satisfaction of its Claim other than through the Debtors or the Liquidating Trustee on account of such Claim, such Claim shall be

reduced by the amount of such payment or satisfaction without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, and if the Claim was paid or satisfied in full other than through the Debtors or the Liquidating Trustee, then such Claim shall be disallowed and any recovery in excess of a single recovery in full shall be paid over to the Liquidating Trustee without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment or satisfaction from a party that is not the Debtors or the Liquidating Trustee on account of such Claim, such Holder shall, within fourteen (14) calendar days of receipt thereof, repay or return the distribution to the Liquidating Trustee, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan.

2. Claims Payable by Third Parties

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' Insurance Policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such Insurance Policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

3. Applicability of Insurance Policies

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Except as set forth in Article IX herein, nothing in this Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Entity, including the Liquidating Trustee, may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

**O. No Post-Petition Interest on Claims**

Unless otherwise specifically provided for in this Plan or the Confirmation Order, or required by applicable bankruptcy and non-bankruptcy law, post-petition interest shall not accrue or be paid on any prepetition Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on such Claim.

**ARTICLE VII.  
PROCEDURES FOR RESOLVING CONTINGENT,  
UNLIQUIDATED, AND DISPUTED CLAIMS**

**A. Allowance of Claims**

After the Effective Date, the Liquidating Trustee shall have and retain any and all rights and defenses that the Debtors had with respect to any Claim or Interest immediately prior to the Effective Date.

**B. Claims Administration Responsibilities**

Except as otherwise specifically provided in the Plan, after the Effective Date, the Liquidating Trustee shall have the sole authority to: (1) File, withdraw, or litigate to judgment, objections to Claims or Interests; (2) settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

**C. Estimation of Claims and Interests**

Before or after the Effective Date, the Debtors or the Liquidating Trustee may (but are not required to) at any time request that the Bankruptcy Court estimate any Disputed Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection.

Notwithstanding any provision otherwise herein, a Claim that has been expunged or disallowed from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars (\$0.00) unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions), and the Debtors or the Liquidating Trustee (as applicable) may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim.

**D. Adjustment to Claims or Interests Without Objection**

Any Claim that has been paid, satisfied, or assumed by the Purchaser(s) in the Sale Transactions, or any Claim that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Debtors or the Liquidating Trustee (as applicable) without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

**E. Time to File Objections to Claims**

Except as otherwise provided herein, any objections to Claims shall be Filed on or before the Claims Objection Bar Date (as such date may be extended upon presentment of an order to the Bankruptcy Court by the Debtors or the Liquidating Trustee).

**F. Disallowance of Claims or Interests**

Except as otherwise expressly set forth herein, all Claims and Interests of any Entity from which property is sought by the Debtors under sections 542, 543, 550, or 553 of the Bankruptcy Code or that the Debtors, the Liquidating Trustee allege is a transferee of a transfer that is avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall be disallowed if: (1) the Entity, on the one hand, and the Debtors or the Liquidating Trustee, on the other hand, agree or the Bankruptcy Court has determined by Final Order that such Entity or transferee is liable to turn over any property or monies under any of the aforementioned sections of the Bankruptcy Code; and (2) such Entity or transferee has failed to turn over such property by the date set forth in such agreement or Final Order.

**G. Disallowance of Late Claims**

Except as provided herein or otherwise agreed to by the Liquidating Trustee, any Holder of a Claim Filed via Proof of Claim after the Bar Date shall not receive any distributions on account of such Claims, unless on or before the Combined Hearing such late Claim has been deemed timely Filed by a Final Order.

**H. Disputed Claims Process**

All Claims held by Persons or Entities against whom or which the Debtor has commenced a proceeding asserting a Cause of Action under sections 542, 543, 544, 545, 547, 548, 549, or 550 of the Bankruptcy Code or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 548, 549 or 724(a) of the Bankruptcy Code shall be deemed Disputed Claims pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims shall not be entitled to vote to accept or reject this Plan. A Claim deemed Disputed pursuant to this Article VII.H. shall continue to be Disputed for all purposes until the relevant proceeding against the Holder of such Claim has been settled or resolved by a Final Order and any sums due to the Debtors or the Liquidating Trustee from such Holder have been paid.

**I. Amendments to Claims**

Except as provided herein, on or after the Effective Date, without the prior authorization of the Bankruptcy Court, the Plan Administrator, or the Liquidating Trustee, as applicable, a Claim may not be Filed or amended, and any such new or amended Claim Filed shall be deemed disallowed in full and expunged without any further notice to or action, order, or approval of the Bankruptcy Court.

**J. No Distributions Pending Allowance**

If an objection to a Claim, Proof of Claim, or portion thereof is Filed, no payment or distribution provided under the Plan shall be made on account of such Claim, Proof of Claim, or portion thereof unless and until the Disputed Claim becomes an Allowed Claim.

**K. Distributions After Allowance**

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. Within ten (10) days after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Disbursing Agent shall provide to the Holder of such Claim the distribution to which such Holder is entitled under the Plan, unless otherwise provided by order of the Bankruptcy Court. No interest shall accrue or be paid on any Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Claim unless the Plan provides otherwise.

**ARTICLE VIII.  
CONDITIONS PRECEDENT TO THE EFFECTIVE DATE**

**A. Conditions Precedent to the Effective Date**

The following shall be conditions precedent to the occurrence of the Effective Date:

- (a) The Bankruptcy Court shall have entered an order approving the Disclosure Statement as containing adequate information with respect to the Plan within the meaning of section 1125 of the Bankruptcy Code;
- (b) the Plan, the Disclosure Statement, and the other Definitive Documents shall be in full force and effect;
- (c) the Bankruptcy Court shall have entered the Confirmation Order, which shall have become a Final Order or as to which any stay of the Confirmation Order pursuant to any Bankruptcy Rule is waived by the Bankruptcy Court;
- (d) the final version of each of the Plan and the Plan Supplement shall have been Filed;
- (e) the Sale Transactions shall have been consummated substantially on the terms described in the Bid Procedures Order and the Debtors shall have received the proceeds therefrom;
- (f) the Debtors shall have implemented the Liquidation Transactions and all transactions contemplated in this Plan in a manner consistent with the Plan;
- (g) the Debtors shall have fully funded the Professional Fee Reserve Account and the Wind-Down Budget;

- (h) the Debtors shall have obtained all authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Plan;
- (i) the Plan Administrator shall have been appointed in accordance with the terms hereof and shall have accepted his or her appointment;
- (j) the Liquidating Trust shall have been formed; and
- (k) the Liquidating Trustee shall have been appointed in accordance with the terms hereof and shall have accepted his or her appointment.

**B. Waiver of Conditions Precedent to the Effective Date**

Unless otherwise specifically provided for in the Plan, the conditions set forth in Article VIII.A of the Plan may be waived, in whole or in part, by the Debtors.

**ARTICLE IX.  
RELEASE, INJUNCTION, AND RELATED PROVISIONS**

**A. Debtor Releases**

Notwithstanding anything contained in the Plan to the contrary, pursuant to section 1123(b) of the Bankruptcy Code, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, effective on the Effective Date, each Released Party is hereby deemed to be hereby released and discharged by the Debtors and their Estates, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other entities who may purport to assert any causes of action, directly or derivatively, by, through, for, or because of the foregoing Entities on behalf of the Debtors, from any and all derivative Claims and Causes of Action asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtors or their Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, a Debtor or other Entity, or that any Holder of any Claim against, or Interest in, a Debtor or other Entity could have asserted on behalf of the Debtors, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the capital structure, management, ownership, or operation thereof), the assertion or enforcement of rights and remedies against the Debtors, the Debtors' in- or out-of-court restructuring efforts, any Avoidance Actions (but excluding Avoidance Actions brought as counterclaims or defenses to Claims asserted against the Debtors), intercompany transactions, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Disclosure Statement, the Plan (including, for the avoidance of doubt, the Plan Supplement), Sale Transactions, or any aspect of the Liquidation Transactions, including any contract, instrument, release, or other agreement or document (including any legal opinion requested by any Entity regarding any transaction, contract, instrument, document or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) relating to any of the foregoing, created or

entered into in connection with the Disclosure Statement, the Plan, the Plan Supplement, and the Sale Transactions, before or during the Chapter 11 Cases, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Effective Date, except for claims related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence of such Person. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Effective Date obligations of any party or Entity under the Plan, the Confirmation Order, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or any Claim or obligation arising under the Plan. Notwithstanding anything to the contrary in the foregoing, the releases under this section only release Claims held by the Debtors or Claims that could be asserted by the Debtors under applicable law.

#### **B. Releases by the Releasing Parties**

Except as otherwise expressly set forth in the Plan or the Confirmation Order, on and after the Effective Date, and with respect to all other Releasing Parties, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is, and is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably and forever, released by each Releasing Party from any and all Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise, including any derivative claims asserted on behalf of the Debtors, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the capital structure, management, ownership, or operation thereof), the Debtors' in- or out-of-court restructuring efforts, any Avoidance Actions (but excluding Avoidance Actions brought as counterclaims or defenses to Claims asserted against the Debtors), intercompany transactions, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Disclosure Statement, the Plan (including, for the avoidance of doubt, the Plan Supplement), the Sale Transactions, or any aspect of the Liquidation Transactions, including any contract, instrument, release, or other agreement or document (including any legal opinion requested by any Entity regarding any transaction, contract, instrument, document or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) relating to any of the foregoing, created or entered into in connection with the Disclosure Statement, the Plan, the Plan Supplement, the Sale Transactions, before or during the Chapter 11 Cases, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release or act to modify (1) any post Effective Date obligations of any party or Entity under the Plan, (2) the Confirmation Order, or (3) any document,

instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or any Claim or obligation arising under the Plan.

### C. Exculpations

Except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is hereby exculpated from any Cause of Action for any claim related to any act or omission taking place between the Petition Date and the Effective Date in connection with, relating to, or arising out of, the Chapter 11 Cases, the Disclosure Statement, the Plan, the Sale Transactions, or any aspect of the Liquidation Transaction, including any contract, instrument, release or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Disclosure Statement or the Plan, the Sale Transactions, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the administration and implementation of the Plan, or the distribution of property under the Plan or any other related agreement, except for claims related to any act or omission that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan.

### D. Injunction

Except as otherwise provided in the Plan or the Confirmation Order, all Entities who have held, hold, or may hold Claims, Interests, Causes of Action, or liabilities that: (1) are subject to compromise and settlement pursuant to the terms of the Plan; (2) have been released pursuant to the Plan; (3) were purchased and released by a Purchaser in connection with the Sale Transactions; (4) are subject to exculpation pursuant to the Plan; or (5) are otherwise discharged, satisfied, stayed, released, or terminated pursuant to the terms of the Plan, are permanently enjoined and precluded, from and after the Effective Date, from commencing or continuing in any manner, any action or other proceeding, including on account of any Claims, Interests, Causes of Action, or liabilities that have been compromised or settled against any of the Debtors or any Entity so released or exculpated (or the property or estate of any Entity, directly or indirectly, so released or exculpated) on account of, or in connection with or with respect to, any discharged, released, settled, compromised, or exculpated Claims, Interests, Causes of Action, or liabilities, including being permanently enjoined and precluded, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Plan Administrator, the Liquidating Trustee, the Released Parties, or Exculpated Parties (as applicable): (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (3) creating, perfecting, or enforcing any lien or encumbrance of any kind against such Entities or the property or the estate of such Entities on account of or in connection with or



with respect to any such Claims or Interests; (4) asserting any right of setoff or subrogation of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such Entity has timely asserted such setoff right in a document filed with the Bankruptcy Court explicitly preserving such setoff, and notwithstanding an indication of a Claim or Interest or otherwise that such Entity asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims or Interests released or settled pursuant to the Plan. For the avoidance of doubt, nothing in the foregoing paragraph will act as a discharge injunction.

Upon the Bankruptcy Court's entry of the Confirmation Order, all Holders of Claims and Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of this Plan by the Debtors, the Plan Administrator, the Liquidating Trustee, and their respective affiliates, employees, advisors, officers and directors, or agents.

#### **E. No Discharge**

Because the Debtors are liquidating and will not engage in business after consummation of the Plan, they are not entitled to a discharge of obligations pursuant to section 1141 of the Bankruptcy Code with regard to any Holders of Claims or Interests.

#### **F. Release of Liens**

Except as otherwise provided herein or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date in accordance with the terms of the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estate shall be fully released and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Debtors and their successors and assigns.

If any Holder of an Other Secured Claim or any agent for such Holder has filed or recorded publicly any Liens and/or security interests to secure such Holder's Other Secured Claim, as soon as practicable on or after the date such Holder has been satisfied in full pursuant to the Plan, such Holder (or the agent for such Holder) shall take any and all steps requested by the Liquidating Trustee that are necessary or desirable to record or effectuate the cancellation and/or extinguishment of such Liens and/or security interests, including the making of any applicable filings or recordings, and the Liquidating Trustee shall be entitled to make any such filings or recordings on such Holder's behalf. The presentation or filing of the Confirmation Order to or with any federal, state, provincial, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

### **G. Gatekeeper Provision**

No party may commence, continue, amend, or otherwise pursue, join in, or otherwise support any other party commencing, continuing, amending, or pursuing, a Cause of Action of any kind against the Debtors or the Plan Administrator, the Liquidating Trustee, the Exculpated Parties, or the Released Parties that relates to, or is reasonably likely to relate to any act or omission in connection with, relating to, or arising out of, a Cause of Action subject to Article IX.A, Article IX.B, and Article IX.C without first (1) requesting a determination from the Bankruptcy Court, after notice and a hearing, that such Cause of Action represents a colorable claim against a Debtor or the Plan Administrator, Liquidating Trustee, Exculpated Party, or Released Party and is not a Claim that the Debtors released under the Plan, which request must attach the complaint or petition proposed to be filed by the requesting party and (2) obtaining from the Bankruptcy Court specific authorization for such party to bring such Cause of Action against any such Debtor or Plan Administrator, Liquidating Trustee, Exculpated Party, or Released Party. For the avoidance of doubt, any party that obtains such determination and authorization and subsequently wishes to amend the authorized complaint or petition to add any Causes of Action not explicitly included in the authorized complaint or petition must obtain authorization from the Bankruptcy Court before filing any such amendment in the court where such complaint or petition is pending. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a Cause of Action is colorable and, only to the extent legally permissible, will have jurisdiction to adjudicate the underlying colorable Cause of Action.

## **ARTICLE X. RETENTION OF JURISDICTION**

On and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction, pursuant to 28 U.S.C. §§ 1334 and 157, over all matters arising in or related to the Chapter 11 Cases for, among other things, the following purposes:

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims or Interests.
2. Resolve any cases, controversies, suits, or disputes that may arise in connection with Claims, including Claim objections, allowance, disallowance, subordination, estimation and distribution.
3. Decide and resolve all matters related to the granting and denying, in whole or in part of, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan.
4. Resolve any matters related to: (a) the assumption or assumption and assignment of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any cure amount arising therefrom; and/or (b) any dispute regarding whether a contract or lease is or was executory or expired.

5. Adjudicate, decide or resolve any motions, adversary proceedings, contested, or litigated matters, and any other matters, and grant or deny any applications involving the Debtors that may be pending on the Effective Date.

6. Adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code.

7. Adjudicate, decide or resolve any motions, adversary proceedings, contested, or litigated matters.

8. Enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan or the Disclosure Statement.

9. Resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the interpretation or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan.

10. Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with enforcement of the Plan.

11. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the releases, injunctions, and other provisions contained in the Plan and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions.

12. Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated.

13. Determine any other matters that may arise in connection with or related to the Cash Collateral Order and the Debtors' use of cash collateral, the Sale Transactions Documents, the Disclosure Statement, the Plan, and the Confirmation Order.

14. Ensure that distributions to Holders of Allowed Claims or Allowed Interests are accomplished pursuant to the provisions of the Plan.

15. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by any Holder for amounts not timely repaid.

16. Adjudicate any and all disputes arising from or relating to distributions under the Plan.

17. Consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order.

18. Hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or the Confirmation Order.

19. Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code.
20. To recover all assets of the Debtors and property of the Debtors' Estates, wherever located.
21. To hear and determine any Causes of Action that may be brought by the Liquidating Trustee.
22. To hear and determine any other rights, claims, or Causes of Action held by or accruing to the Debtors or the Liquidating Trustee pursuant to the Bankruptcy Code or any applicable state or federal statute or legal theory.
23. Enter an order or final decree concluding or closing the Chapter 11 Cases.
24. Enforce all orders previously entered by the Bankruptcy Court.
25. Hear any other matter over which the Bankruptcy Court has jurisdiction.

#### **ARTICLE XI.**

#### **MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

##### **A. Modification and Amendment**

This Plan may be amended, modified, or supplemented by the Debtors in the manner provided for by section 1127 of the Bankruptcy Code or as otherwise permitted by law, without additional disclosure pursuant to section 1125 of the Bankruptcy Code. In addition, after the Confirmation Date, the Debtors may remedy any defect or omission or reconcile any inconsistencies in this Plan or the Confirmation Order with respect to such matters as may be necessary to carry out the purposes of effects of this Plan, and any Holder of a Claim or Interest that has accepted this Plan shall be deemed to have accepted this Plan as amended, modified, or supplemented.

##### **B. Effect of Confirmation on Modifications**

Entry of the Confirmation Order shall mean that all modifications or amendments to the Plan since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

##### **C. Revocation or Withdrawal of Plan**

The Debtors reserve the right to revoke or withdraw this Plan prior to the Effective Date as to any or all of the Debtors. If, with respect to a Debtor, this Plan has been revoked or withdrawn prior to the Effective Date, or if Confirmation or the occurrence of the Effective Date as to such Debtor does not occur on the Effective Date, then, with respect to such Debtor: (1) this Plan shall be null and void in all respects; (2) any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases affected by this Plan, and any

document or agreement executed pursuant to this Plan shall be deemed null and void; and (3) nothing contained in this Plan shall (a) constitute a waiver or release of any Claim by or against, or any Interest in, such Debtor or any other Person, (b) prejudice in any manner the rights of such Debtor or any other Person, or (c) constitute an admission of any sort by any Debtor or any other Person.

## **ARTICLE XII. MISCELLANEOUS PROVISIONS**

### **A. Immediate Binding Effect**

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), 7062, or otherwise, upon the occurrence of the Effective Date, the terms of this Plan shall be immediately effective and enforceable and deemed binding upon and inure to the benefit of the Debtors or the Plan Administrator, the Liquidating Trustee, the Holders of Claims or Interests, the Released Parties, and each of their respective successors and assigns. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable thereafter.

### **B. Additional Documents**

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors or the Liquidating Trustee (as applicable) and all Holders of Claims or Interests receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may reasonably be necessary or advisable to effectuate the provisions and intent of the Plan or the Confirmation Order.

### **C. Substantial Consummation**

On the Effective Date, this Plan shall be deemed to be substantially consummated (within the meaning set forth in section 1101 of the Bankruptcy Code) pursuant to section 1127(b) of the Bankruptcy Code.

### **D. Reservation of Rights**

The Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order. None of the Filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by the Debtors with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of the Debtors with respect to the Holders of Claims or Interests prior to the Effective Date.

### **E. Successors and Assigns**

The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, beneficiaries or guardian, if any, of each Entity.

**F. Determination of Tax Liabilities**

As of the Effective Date, the Plan Administrator (to the extent not the responsibility of the Purchaser(s)) will be responsible for preparing and filing any tax forms or returns on behalf of the Debtors' Estates; provided that neither the Plan Administrator nor the Liquidating Trustee shall be responsible for preparing or filing any tax forms for Holders of Interests in the Debtors (which Interests shall be cancelled pursuant to this Plan), but shall provide such Holders with any information reasonably required to prepare such forms. The Debtors or the Plan Administrator shall have the right to request an expedited determination of any tax liability pursuant to section 505 of the Bankruptcy Code, including on any unpaid liability of the Debtors' Estates for any tax incurred during the administration of these Chapter 11 Cases.

**G. Dissolution of the Committee**

On the Effective Date, any duly appointed Statutory Committee will dissolve and the members thereof will be released and discharged from all duties and obligations arising from or related to these Chapter 11 Cases.

**H. Books and Records**

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.

**I. Notices**

In order for all notices, requests, and demands to or upon the Debtors or the Plan Administrator, or the Liquidating Trustee, as the case may be, to be effective such notices, requests and demands shall be in writing (including by electronic mail) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by email, when received, and served on or delivered to the following parties:

<b>Debtors</b>	<b>Counsel to the Debtors</b>
Eiger BioPharmaceuticals Inc. 2100 Ross Avenue, Dallas, Texas 75201,  Attention: Douglas Staut Chief Restructuring Officer Email: dstaut@alvarezandmarsal.com	Sidley Austin LLP 787 Seventh Avenue New York, New York 10019 Facsimile: (212) 839-5599  Attn: William E. Curtin Anne G. Wallace Email: wcurtin@sidley.com anne.wallace@sidley.com
<b>Plan Administrator</b>	<b>Counsel to the Plan Administrator</b>
To be provided.	To be provided.

Liquidating Trustee	Counsel to the Liquidating Trustee
To be provided.	To be provided.
Counsel to the Prepetition Term Loan Agent	
<p data-bbox="574 405 1047 548">Bradley Arant Boult Cummings LLP                      1221 Broadway, Suite 2400                      Nashville, Tennessee 37203                      Facsimile: (615) 252-4714</p> <p data-bbox="630 590 992 657">Attn: Roger G. Jones                      Email: rjones@bradley.com</p> <p data-bbox="565 699 1057 842">Kramer Levin Naftalis &amp; Frankel LLP                      1177 Avenue of the Americas                      New York, New York 10036                      Facsimile: (212) 715-8000</p> <p data-bbox="594 884 1027 1098">Attn: Adam C. Rogoff                      P. Bradley O’Neill                      Andrew J. Citron                      Email: arogoff@kramerlevin.com                      boneill@kramerlevin.com                      acitron@kramerlevin.com</p> <p data-bbox="651 1140 971 1245">Forshey Prostok, LLP,                      777 Main St. Suite 1550,                      Fort Worth, TX 76102</p> <p data-bbox="570 1287 1052 1348">Attn: Jeff Prostok                      Email: jprostok@forsheyprostok.com</p>	

After the Effective Date, Persons or Entities that wish to continue to receive documents pursuant to Bankruptcy Rule 2002 must File a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Plan Administrator and the Liquidating Trustee are authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities that Filed such renewed requests.

**J. Term of Injunctions or Stays**

Except as otherwise provided in this Plan, to the maximum extent permitted by applicable law and subject to the Bankruptcy Court’s post-confirmation jurisdiction to modify the injunctions and stays under this Plan (1) all injunctions with respect to or stays against an action against property of the Debtors or the Debtors’ Estates arising under or entered during the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code, and in existence on the date the Confirmation Order is entered, shall remain in full force and effect until such property is no longer

property of the Debtors or the Debtors' Estates; and (2) all other injunctions and stays arising under or entered during the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code shall remain in full force and effect until the earliest of (a) the date that the Chapter 11 Cases are closed pursuant to a final order of the Bankruptcy Court, or (b) the date that the Chapter 11 Cases are dismissed pursuant to a final order of the Bankruptcy Court. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect indefinitely.

#### **K. Entire Agreement**

On the Effective Date, the Plan and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

#### **L. Plan Supplement**

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. Copies of such exhibits and documents shall be made available upon written request to the Debtors' counsel or the Liquidating Trustee's counsel (as applicable) at the address above or by downloading such exhibits and documents free of charge from the Notice and Claims Agent's website at <https://veritaglobal.net/eiger>. All documents in the Plan Supplement are considered an integral part of the Plan and shall be deemed approved by the Bankruptcy Court pursuant to the Confirmation Order.

#### **M. Governing Law**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Texas, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control), and corporate governance matters.

#### **N. Nonseverability of Plan Provisions**

If any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation.

The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is the following: (1) valid and enforceable pursuant to its terms; (2) integral to the



Plan and may not be deleted or modified without the consent of the Debtors or the Liquidating Trustee (as applicable); and (3) nonseverable and mutually dependent.

**O. Votes Solicited in Good Faith**

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors and each of their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, managers, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code, and, therefore, neither any of such parties or individuals will have any liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan.

**P. Closing of the Chapter 11 Cases**

After the full administration of the Chapter 11 Cases, the Plan Administrator shall promptly File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022, a motion pursuant to rule 3022-1(a) of the Bankruptcy Local Rules for the Northern District of Texas, and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases.

*[Remainder of page intentionally left blank.]*

Dated: September 5, 2024

Respectfully submitted,

*Douglas Staut*

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By: Douglas Staut  
Chief Restructuring Officer  
Eiger BioPharmaceuticals, Inc.  
EBPI Merger Inc.  
EB Pharma LLC  
Eiger BioPharmaceuticals Europe Limited  
EigerBio Europe Limited

[Signature Page to Plan of Liquidation]

**Exhibit B**

**Confirmation Order**

*(See attached.)*




CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed September 5, 2024

  
United States Bankruptcy Judge

**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)

**ORDER APPROVING THE DEBTORS'  
AMENDED DISCLOSURE STATEMENT AND  
CONFIRMING THE FIFTH AMENDED JOINT PLAN OF LIQUIDATION  
OF EIGER BIOPHARMACEUTICALS, INC. AND ITS DEBTOR AFFILIATES**

<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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The debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) having:<sup>2</sup>

- a. commenced, on April 1, 2024 (the “Petition Date”), these chapter 11 cases (these “Chapter 11 Cases”) by filing 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”);
- b. continued to operate their businesses and manage their properties during these Chapter 11 Cases as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;
- c. filed, on the Petition Date, the:
  - i. *Declaration of David Apelian in Support of the Chapter 11 Petitions and First Day Pleadings* [Docket No. 19]; and
  - ii. *Debtors’ Motion for Entry of an Order (I)(A) Approving the Bid Procedures; (B) Authorizing the Debtors to Select Sentyln Therapeutics, Inc. as the Zokinvy Stalking Horse Purchaser & Approving Bid Protections; (C) Approving the Bid Protections Relating to the Remaining Assets Stalking Horse Purchaser(s), If Any; (D) Establishing Bid Deadlines, Auction(s), and Sale Hearing(s); (E) Approving the Form and Manner of Sale Notice; (F) Approving Assignment and Assumption Procedures; (G) Approving the Form and Manner of Potential Assumption and Assignment Notice; (II)(A) Authorizing the Sale of the Assets Free and Clear; and (B) Approving the Assumption and Assignment of Designated Contracts; and (III) Granting Related Relief* [Docket No. 13] (the “Bidding Procedures Motion”), which was approved by this Bankruptcy Court’s order dated April 15, 2024 [Docket No. 94];
- d. obtained, on April 24, 2024, the *Order (I) Approving the Sale of the Debtors’ Zokinvy Assets, (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (III) Granting Related Relief* [Docket No. 162] (the “Zokinvy Sale Order”), approving the sale of Zokinvy free and clear to Sentyln Therapeutics, Inc.;
- e. obtained, on June 27, 2024, the *Order (I) Approving the Sale of the Debtors’ Avexitide Assets, (II) Authorizing Assumption and Assignment of Certain Executory Contracts*

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Fourth Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 606-1], attached hereto as **Exhibit A** (the “Fourth Amended Plan” and, as may be altered, amended, modified, or supplemented from time to time in accordance with the terms thereof and this Order, including all exhibits and schedules thereto, the “Plan”), 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”), or the Voting Report (as defined herein), as applicable. The rules of interpretation set forth in Section I.B of the Plan shall apply herein.

- and Unexpired Leases Related Thereto, and (III) Granting Related Relief* [Docket No. 376] (the “Avexitide Sale Order”), approving the sale of Avexitide free and clear to Amylyx Pharmaceuticals, Inc.;
- f. filed, on July 15, 2024, the
- i. *Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 424];
  - ii. *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. 425]; and
  - iii. *Debtors’ Motion for Entry an Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing; (II) Conditionally Approving the Disclosure Statement; (III) Establishing Objection Deadlines and Related Procedures; (IV) Approving the Notice Materials; and (V) Granting Related Relief* [Docket No. 426];
- g. filed, on July 28, 2024, the
- i. *Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 455-1];
  - ii. *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. 456-1]; and
  - iii. *Notice of Filing of Amended Disclosure Statement Order* [Docket No. 457];
- h. filed, on July 29, 2024, the
- i. *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. 463-1];
- i. obtained, on July 30, 2024, the *Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing; (II) Conditionally Approving the Disclosure Statement, (III) Establishing Objection Deadlines and Related Procedures; (IV) Approving the Notice Materials; and (V) Granting Related Relief* [Docket No. 473] (the “Disclosure Statement Order”), conditionally approving the Disclosure Statement, and approving the solicitation procedures and the tabulation rules set forth in the Disclosure Statement Order (collectively, the “Solicitation Procedures”) and related notices, forms, and ballots (collectively, the “Solicitation Packages”);
- j. filed, on July 30, 2024, the

- i. *Notice of Filing of Solicitation Version of Amended Plan* [Docket No. 475]; and
- ii. *Notice of Filing of Solicitation Version of Further Amended Disclosure Statement* [Docket No. 476];
- k. caused, on or about August 2, 2024, the Solicitation Packages, plus the notice of the combined hearing for confirmation of the Plan (“Confirmation”) and approval of the Disclosure Statement (the “Combined Hearing Notice”) to be distributed in accordance with the terms of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Bankruptcy Local Rules for the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Local Rules”), the Disclosure Statement Order, and the Solicitation Procedures, *see Certificate of Service* [Docket No. 508];
- l. caused, on or about August 2, 2024, the: (a) *Notice of Non-Voting Status to Holders of Unimpaired Claims Conclusively Deemed to Accept the Plan*; and (b) the *Release Opt-Out Form* (together, the “Notice of Non-Voting Status and Release Opt-Out Forms”) and, together with the Combined Hearing Notice, the “Notices”) to be served on all Holders of Claims or potential Claims in the non-voting classes, which informed recipients of (i) their status as Holders or potential Holders of Claims in non-voting classes, (ii) provided the full text of the releases, exculpation, and injunction provisions set forth in the Plan, (iii) included a form by which Holders could elect to opt out of the Third Party Release (as defined below) included in the Plan by checking a prominently featured and clearly labeled box, (iv) where applicable, provided information on how certain Holders could opt out electronically, (v) provided the deadline for release opt outs, and (vi) enclosed a postage prepaid, return-addressed envelope in which Holders could return their opt out elections to the Notice and Claims Agent, *see Certificate of Service* [Docket No. 508];<sup>3</sup>
- m. published the Combined Hearing Notice in *The New York Times* (National Edition) and the *San Francisco Chronicle* on August 2, 2024, as evidenced by the *Affidavit of Publication of Notice of (I) Combined Hearing on the Amended Disclosure Statement and Confirmation of the Amended Joint Plan, and (II) Notice of Objection and Opt Out Rights in the New York Times and San Francisco Chronicle* [Docket No. 494] (the “Publication Affidavit”);

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<sup>3</sup> As discussed in the Voting Report (defined herein), Class 1 (Other Secured Claims) included one creditor who also was a Holder of Class 4 Claims. That Class 1 Holder received a Solicitation Package in connection with its Class 4 Claims and therefore had the opportunity to opt-out of the releases. Per prior agreement, each Holder of an Allowed Intercompany Claim in Class 5 agreed to waive entitlement to a distribution on account of such Claim. Thus, Class 5 (Intercompany Claims) did not receive the Non-Voting Package (as defined in the Disclosure Statement Order). Holders of Claims in Class 4 received the Solicitation Package and Combined Hearing Notice at the time of solicitation. The Solicitation Package and Combined Hearing Notice included the full text of the releases, exculpation, and injunction provisions set forth in the Plan and included opt-out information.

- n. filed, on August 14, 2024, the *Certificate of Service* [Docket No. 508], certifying the service of the Solicitation Packages (together with all the exhibits thereto) (the “First Solicitation Packages Affidavit”);
- o. filed, on August 15, 2024, the
  - i. *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] (the “Second Amended Plan”); and
  - ii. *Notice of Filing Plan Supplement* [Docket No. 525] (the “First Plan Supplement” and which, for purposes of the Plan and this Confirmation Order, is included in the definition of “Plan”);
- p. obtained, on August 21, 2024, the *Revised Order (I) Authorizing the Sale of the Lonafarnib And Lambda Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (II) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases, (III) Granting the Purchaser the Protections Afforded to a Good Faith Purchaser, (IV) Approving Purchaser Protections in Connection with the Sale of the Lonafarnib and Lambda Assets, and (V) Granting Related Relief* [Docket No. 558] (the “Lonafarnib and Lamba Sale Order,” and collectively with the Zokinvy Sale Order, the Avexitide Sale Order, and any other order approving the sale of certain of the Debtors’ assets pursuant to section 363 of the Bankruptcy Code, the “Sale Orders”), approving the sale of Lonafarnib and Lambda free and clear to Eiger InnoTherapeutics, Inc.;
- q. obtained, on August 23, 2024, the *Order Estimating Claim of Innovatus Life Sciences Lending Fund I, LP for the Purposes of Establishing Sufficient Reserves to Unimpaired Claim* [Docket No. 561];
- r. filed, on August 28, 2024, the
  - i. *Third Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 571-1];
  - ii. *Debtors’ Memorandum of Law in Support of Confirmation of the Third Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 573] (the “Initial Confirmation Brief”);
  - iii. *Declaration of Douglas Staut, Chief Restructuring Officer, in Support of Confirmation of the Third Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 574] (the “Staut Declaration”); and
  - iv. the *Supplemental Certificate of Service* [Docket No. 508], certifying the service of the Solicitation Packages (together with all the exhibits thereto) (the



“Supplemental Solicitation Packages Affidavit,” and together with the First Solicitation Packages Affidavit, the “Solicitation Packages Affidavit”);

- s. filed, on September 3, 2024, the
- i. the *Notice of Filing of Second Plan Supplement* [Docket No. 598] (the “Second Plan Supplement,” and together with the First Plan Supplement, the “Plan Supplement”);
  - ii. *Fourth Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 606-1];
  - iii. *Declaration of Adam J. Gorman in Support of Confirmation of the Fourth Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 607] (the “Voting Report”), which accounts for ballots received up to the Voting Deadline (as defined below);
  - iv. *Declaration of Jon Muenz in Support of Confirmation of the Fourth Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 608] (the “Muenz Declaration”); and
  - v. *Declaration of Michael Shanahan in Support of Confirmation of the Fourth Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 609] (the “Shanahan Declaration” and collectively with the Staut Declaration, the Voting Report, and the Muenz Declaration the “Declarations in Support”); and
- t. filed, on September 4, 2024 the *Debtors’ Supplemental Memorandum of Law in Support of Confirmation of the Fourth Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 620](the “Supplemental Confirmation Brief”).

And this Bankruptcy Court having:

- a. entered the Disclosure Statement Order on July 30, 2024;
- b. set August 30, 2024, at 4:00 p.m. (prevailing Central Time) as the deadline for Holders of Interests in Class 6<sup>4</sup> to accept or reject the Plan (the “Voting Deadline”);

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<sup>4</sup> As discussed in the Initial Confirmation Brief, Class 4 (General Unsecured Claims) was classified as Impaired under the version of the Plan used for solicitation, the Second Amended Plan, *inter alia*, amended the treatment of Class 4 to provide for post-petition interest through the date on which a distribution is made on account of such Claim, resulting in the unimpairment of Class 4.

- c. set August 30, 2024, at 4:00 p.m. (prevailing Central Time) as the deadline to file and serve objections to the confirmation of the Plan and the adequacy of the Disclosure Statement (the “Plan Objection Deadline”);
- d. set September 5, 2024, at 9:30 a.m. (prevailing Central Time) as the date and time for the commencement of the Combined Hearing;
- e. reviewed the Plan, the Disclosure Statement, the Plan Supplement, the Solicitation Packages Affidavit, the Declarations in Support, the Initial Confirmation Brief, the Supplemental Confirmation Brief, the Combined Hearing Notice, and all Filed pleadings, exhibits, statements, responses, and comments regarding approval of the Disclosure Statement and Confirmation, including all objections, statements, and reservations of rights filed by parties in interest on the docket in these Chapter 11 Cases;
- f. held the Combined Hearing on September 5, 2024 at 9:30 a.m. (prevailing Central Time);
- g. considered all oral representations, live testimony, written direct testimony, exhibits, documents, filings, and other evidence presented at the Combined Hearing;
- h. overruled any and all outstanding objections to approval of the Disclosure Statement, the Plan, Confirmation, and all statements and reservations of rights not consensually resolved, agreed to, or withdrawn, unless otherwise indicated;
- i. taken judicial notice of all papers and pleadings filed in these Chapter 11 Cases, all evidence proffered or adduced in these Chapter 11 Cases, and all arguments made at hearings held before the Bankruptcy Court during the pendency of these Chapter 11 Cases; and
- j. entered rulings on the record at the Combined Hearing.

NOW THEREFORE, the Bankruptcy Court having found that notice of the Combined Hearing and the opportunity for any party in interest to object to approval of the Disclosure Statement and Confirmation have been adequate and appropriate as to all parties affected or to be affected by the Plan and the transactions contemplated thereby; and the legal and factual bases set forth in the documents filed in support of approval of the Disclosure Statement and Confirmation and other evidence presented at the Combined Hearing and the record in these Chapter 11 Cases establish just cause for the relief granted herein; and after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court makes and issues the following findings of fact and conclusions of law, and orders:

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

**IT IS HEREBY DETERMINED, FOUND, ADJUDGED, DECREED, AND ORDERED THAT:**

**A. Findings and Conclusions.**

1. The findings and conclusions set forth herein and in the record of the Combined Hearing constitute the Bankruptcy Court's findings of fact and conclusions of law under rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the following conclusions of law constitute findings of fact, or vice versa, they are adopted as such.

**B. Jurisdiction, Venue, and Core Proceeding.**

2. This Bankruptcy Court has jurisdiction over these Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of whether the Disclosure Statement and the Plan comply with the applicable provisions of the Bankruptcy Code constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2). This Bankruptcy Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper in this district pursuant to sections 1408 and 1409 of title 28 of the United States Code.

**C. Eligibility for Relief.**

3. The Debtors were and are entities eligible for relief under section 109 of the Bankruptcy Code.

**D. Commencement and Joint Administration of these Chapter 11 Cases.**

4. On the Petition Date, each of the Debtors commenced voluntary cases under chapter 11 of the Bankruptcy Code. In accordance with the *Order Directing Joint Administration of Chapter 11 Cases* [Docket No. 81], these Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b)

and Bankruptcy Local Rule 1015-1. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner.

**E. Appointment of the Creditors' Committee and the Equity Committee.**

5. On June 10, 2024, the Office of the United States Trustee for the Northern District of Texas (the "U.S. Trustee") appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code [Docket No. 322] (the "Unsecured Creditors Committee"). On June 25, 2024, the U.S. Trustee appointed an official committee of equity security holders pursuant to section 1102 of the Bankruptcy Code [Docket No. 359] (the "Equity Committee"). The U.S. Trustee amended the appointment of certain members of the Equity Committee on July 23, 2024 [Docket No. 438].

**F. Burden of Proof—Confirmation of the Plan**

6. The Debtors, as proponents of the Plan, have met their burden of proving the applicable elements under sections 1129(a) and 1129(b) of the Bankruptcy Code by a preponderance of the evidence, which is the applicable standard for Confirmation. In addition, and to the extent applicable, the Plan is confirmable under the clear and convincing evidentiary standard.

**G. Judicial Notice.**

7. The Bankruptcy Court takes judicial notice of (and deems admitted into evidence for purposes of Confirmation of the Plan) the docket of these Chapter 11 Cases maintained by the clerk of the Bankruptcy Court or its duly appointed agent, including all pleadings and other documents on file, all orders entered, all hearing transcripts, and all evidence and arguments made, proffered, or adduced at the hearings held before the Bankruptcy Court during the pendency of these Chapter 11 Cases.

## **H. Notice.**

8. As evidenced by the Solicitation Packages Affidavit and the Voting Report, the Debtors provided due, adequate, and sufficient notice of the commencement of these Chapter 11 Cases, the Disclosure Statement, the Plan, the Combined Hearing, and the opportunity to opt out of the Third Party Release (as defined below), together with all deadlines for voting to accept or reject the Plan as well as objecting to the Disclosure Statement and the Plan. Further, the Combined Hearing Notice was published in *The New York Times* (National Edition) and the *San Francisco Chronicle* on August 2, 2024, in compliance with Bankruptcy Rule 2002(l), as evidenced by the Publication Affidavit. Such notice was adequate and sufficient under the facts and circumstances of these Chapter 11 Cases in compliance with the Bankruptcy Code, the Bankruptcy Rules, including Bankruptcy Rules 2002 and 3017, the Bankruptcy Local Rules, and the Disclosure Statement Order. No other or further notice is or shall be required.

## **I. Disclosure Statement.**

9. The Disclosure Statement contains (a) sufficient information of a kind necessary to satisfy the disclosure requirements of all applicable nonbankruptcy laws, rules, and regulations, including the Securities Act, and (b) “adequate information” (as such term is defined in section 1125(a) of the Bankruptcy Code and used in section 1126(b)(2) of the Bankruptcy Code) with respect to the Debtors, the Plan, and the transactions contemplated therein. The filing of the Disclosure Statement with the clerk of the Bankruptcy Court satisfied Bankruptcy Rule 3016(b).

**J. Ballots.**

10. Holders of Interests in Class 6 are entitled to vote to accept or reject the Plan (the “Voting Class”).<sup>5</sup>

11. The forms of ballot attached as Exhibits 5B, 5C, and 5D to the Disclosure Statement Order (collectively, the “Ballots”) that the Debtors used to solicit votes to accept or reject the Plan from Holders in the Voting Class adequately addressed the particular needs of these Chapter 11 Cases and were appropriate for Holders in the Voting Class to vote to accept or reject the Plan.

**K. Solicitation.**

12. As described in the Voting Report, the solicitation of votes on the Plan complied with the Solicitation Procedures set forth in the Disclosure Statement Order, was appropriate and satisfactory based upon the circumstances of these Chapter 11 Cases, and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and any other applicable rules, laws, and regulations, including the registration requirements under the Securities Act.

13. As described in the Voting Report and the Solicitation Packages Affidavit, as applicable, the Solicitation Packages, including the Disclosure Statement (including the Plan and other exhibits thereto), the Solicitation Procedures, and the appropriate Ballot were transmitted and served, including to all Holders in the Voting Class, in compliance with the Bankruptcy Code, including sections 1125 and 1126 thereof, the Bankruptcy Rules, including Bankruptcy Rules 3017 and 3018, the Bankruptcy Local Rules, the Disclosure Statement Order, and any applicable nonbankruptcy law. Transmission and service of the Solicitation Packages was timely, adequate,

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<sup>5</sup> As discussed in the Initial Confirmation Brief, Class 4 (General Unsecured Claims) was classified as Impaired under the version of the Plan used for solicitation, the Second Amended Plan, *inter alia*, amended the treatment of Class 4 to provide for post-petition interest through the date on which a distribution is made on account of such Claim, resulting in the unimpairment of Class 4.

and sufficient under the facts and circumstances of these Chapter 11 Cases. No further notice is required.

14. As set forth in the Voting Report and the Solicitation Packages Affidavit, the Solicitation Packages were distributed to the Holders in the Voting Class that held an Interest as of July 22, 2024 (the “Voting Record Date”). The establishment and notice of the Voting Record Date were reasonable and sufficient.

15. The period during which the Debtors solicited acceptances or rejections to the Plan was a reasonable and sufficient period of time for each Holder in a Voting Class to make an informed decision to accept or reject the Plan.

16. Under section 1126(f) of the Bankruptcy Code, Holders of Claims in Classes 1, 2, 3, 4, and 5 (the “Non-Voting Classes”) are Unimpaired and conclusively presumed to have accepted the Plan.<sup>6</sup>

17. The Debtors served the Notice of Non-Voting Status and Release Opt-Out Forms and the Combined Hearing Notice on all Holders of Claims or potential Claims in the Non-Voting Classes.<sup>7</sup> The Notice of Non-Voting Status and Release Opt-Out Forms informed recipients of (a) their status as Holders or potential Holders of Claims in non-voting classes, (b) provided the full text of the releases, exculpation, and injunction provisions set forth in the Plan, (c) included a

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<sup>6</sup> As noted in the Voting Report, twelve (12) Holders of Class 4 Claims submitted Ballots, and all such Holders unanimously accepted the Plan. Two (2) Holders abstained from submitting a Ballot.

<sup>7</sup> Holders of Claims in Class 4 (General Unsecured Claims) received Solicitation Packages. The Second Amended Plan, *inter alia*, amended the treatment of Class 4 to provide for post-petition interest through the date on which a distribution is made on account of such Claim, resulting in the unimpairment of Class 4. The Solicitation Packages and Combined Hearing Notice included the full text of the releases, exculpation, and injunction provisions set forth in the Plan and included opt-out information. As discussed in the Voting Report, Class 1 (Other Secured Claims) included one creditor who also was a Holder of Class 4 Claims. That Class 1 Holder received a Solicitation Package in connection with its Class 4 Claims and therefore had the opportunity to opt-out of the releases. Per prior agreement, each Holder of an Allowed Intercompany Claim in Class 5 agreed to waive entitlement to a distribution on account of such Claim. Thus, Class 5 (Intercompany Claims) did not receive the Non-Voting Package (as defined in the Disclosure Statement Order).

form by which Holders could elect to opt out of the Third Party Release (as defined below) included in the Plan by checking a prominently featured and clearly labeled box, (d) where applicable, provided information on how certain Holders could opt out electronically, (e) provided the deadline for release opt outs, and (f) enclosed a postage prepaid, return-addressed envelope in which Holders could return their opt out elections to the Notice and Claims Agent.

18. The Notices adequately summarized the material terms of the Plan, including classification and treatment of Claims and Interests and the Third Party Release. Further, because an opt out form was included in both the Ballots and the Notices, every known stakeholder was provided with the means by which to opt out of the Third Party Release.

**L. Voting.**

19. As evidenced by the Voting Report, votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith, and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, the Disclosure Statement, and any applicable non-bankruptcy law. Class 6 voted to accept the Plan in accordance with section 1126 of the Bankruptcy Code. Based on the foregoing, and as evidenced by the Voting Report, at least one Impaired Class of Claims (excluding the acceptance by any insiders of the Debtors) has voted to accept the Plan in accordance with the requirements of sections 1124 and 1126 of the Bankruptcy Code.

**M. Plan Supplement.**

20. On August 16, 2024, the Debtors filed the First Plan Supplement with the Bankruptcy Court, and on September 3, the Debtors filed the Second Plan Supplement. The Plan Supplement (including as it may be subsequently modified, supplemented, or otherwise amended pursuant to its terms) complies with the Bankruptcy Code and the terms of the Plan, and the Debtors provided good and proper notice of the filing in accordance with the Bankruptcy Code,



the Bankruptcy Rules, the Bankruptcy Local Rules, and the facts and circumstances of these Chapter 11 Cases. The notice parties and Holders of Claims and Interests were provided due, adequate, and sufficient notice of the Plan Supplement. No other or further notice is or will be required with respect to the Plan Supplement. The Plan Supplement consists of the following documents: (a) the Liquidation Analysis; (b) the Schedule of Assumed Executory Contracts and Unexpired Leases; (c) the Schedule of Retained Causes of Action; (d) the Liquidating Trust Agreement, which discloses the identity of the Liquidating Trustee; (e) the Plan Administrator Agreement, which discloses the identity and compensation of the Plan Administrator; (f) the identity of any insiders to be employed by the Plan Administrator; and (g) any other documentation necessary to effectuate the Plan or that is contemplated by the Plan. All documents included in the Plan Supplement are integral to, part of, and incorporated by reference into the Plan. Subject to the terms of the Plan and this Confirmation Order, the Debtors shall have the right to alter, amend, update, or modify the Plan Supplement through the Effective Date.

**N. Plan Modifications.**

21. Pursuant to section 1127 of the Bankruptcy Code, any modifications to the Plan, including those set forth in the Fourth Amended Plan filed on September 3, 2024, and any additional modifications to the Plan set forth in this Confirmation Order or in any Plan filed prior to the entry of this Confirmation Order (collectively, the “Plan Modifications”) constitute technical or clarifying changes, changes with respect to particular Claims by agreement with Holders of such Claims, or modifications that do not otherwise materially and adversely affect or change the treatment of any other Claim or Interest under the Plan. These Plan Modifications are consistent with the disclosures previously made pursuant to the Disclosure Statement and Solicitation Packages served pursuant to the Disclosure Statement Order, and notice of these Plan

Modifications was adequate and appropriate under the facts and circumstances of these Chapter 11 Cases.

22. In accordance with Bankruptcy Rule 3019, the Plan Modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or the re-solicitation of votes under section 1126 of the Bankruptcy Code, and they do not require that Holders of Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. Accordingly, the Plan, as modified, is properly before this Bankruptcy Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

**O. Objections Overruled.**

23. Any resolution or disposition of objections to approval of the Disclosure Statement and/or Confirmation of the Plan that have not been withdrawn, waived, or settled are hereby **OVERRULED** and **DENIED** on the merits, with prejudice.

**P. Global Settlement**

24. In connection with a global settlement between the Debtors and their Estates, the Prepetition Term Loan Secured Parties, and the Equity Committee (collectively, the “Global Settlement Parties”), the Global Settlement Parties have agreed to the following (collectively, the “Global Settlement”):

25. Global Releases. Effective upon the entry of this Confirmation Order, each Global Settlement Party and its Related Parties, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, is deemed to be conclusively, absolutely, unconditionally, irrevocably, and forever released by each other Global Settlement Party and its Related Parties and hereby conclusively, absolutely, unconditionally, irrevocably, and forever releases and discharges each other Global Settlement Party and its Related Parties from any and all Causes of Action,

whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise, including, without limitation, any “lender liability” claims and any claims or causes of action related to the Prepetition Term Loan Credit Agreement, and including, without limitation, any and all rights to surcharge the interests of the Prepetition Term Loan Agent or the Prepetition Term Loan Secured Parties pursuant to Section 506(c) of the Bankruptcy Code or any other applicable principle of equity or law, and including, without limitation, any derivative claims that have been or may be asserted on behalf of the Debtors, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the capital structure, management, ownership, or operation thereof), the Debtors’ in- or out-of-court restructuring efforts, intercompany transactions, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Disclosure Statement, the Plan (including, for the avoidance of doubt, the Plan Supplement), the Sale Transactions, the Prepetition Term Loan Credit Agreement, or any aspect of the Liquidation Transactions, including, without limitation, any contract, instrument, release, or other agreement or document (including any legal opinion requested by any Entity regarding any transaction, contract, instrument, document or other agreement contemplated by the Plan or the reliance by any Global Settlement Party or its Related Parties on the Plan or the Confirmation Order in lieu of such legal opinion) relating to any of the foregoing, created or entered into in connection with the Disclosure Statement, the Plan, the Plan Supplement, the Sale Transactions, for actions, in each case, occurring before or during the Chapter 11 Cases, the filing of the Chapter 11 Cases, the pursuit of Consummation, the administration and implementation of the Plan, including, without limitation, the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction,

agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Effective Date, notwithstanding any cause of action listed in the schedule of Retained Causes of Action found in the Debtors' Plan Supplement. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release or act to modify (1) any post Effective Date obligations of any party or Entity under the Plan or (2) any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or any Claim or obligation arising under the Plan. By entry of this Order, (i) the Debtors' objection to the Prepetition Term Loan Agent's proof of claim (Claim No. 55) is deemed withdrawn and Holders of Prepetition Term Loan Claims shall have Allowed Claims entitled to treatment pursuant to Class 3 and legal fees and expenses as provided for in paragraph 30 herein, and (ii) the Challenge Period (as defined in the Cash Collateral Order) is deemed to have expired without any Challenge (as defined in the Cash Collateral Order) being brought. Nothing herein shall waive or affect the rights of the collateral agent or lenders under the Debtors' Prepetition Term Loan Credit Agreement or their Related Parties to distribution on account of their Class 6 Interests, which shall also be Allowed.

26. For the avoidance of doubt, the releases approved pursuant to this Confirmation Order shall supersede any prior agreement related to releases, including any releases approved by a prior Final Order.

27. Setoff of Claims Against Current Directors or Officers. Notwithstanding anything to the contrary herein or in the Plan, any counterclaims or defenses may be asserted as a setoff against a Proof of Claim Filed by a current director or officer; *provided* that such counterclaims or defenses may not arise from or relate to a breach of fiduciary duties.

28. Claims Against Former Directors or Officers. Notwithstanding the language contained in paragraph 25 hereof, no Claims or Causes of Action against any former director or officer shall be waived or released by the Debtors.

29. Pending Appeals. The Prepetition Term Loan Agent shall (i) take reasonable steps to seek that all pending deadlines in any pending appeal of any Order entered in these Chapter 11 Cases (each, and “Appeal”) be held in abeyance upon the entry of the Confirmation Order, and (ii) withdraw the Appeals, with all parties thereto bearing their own costs, as soon as practicable upon entry of the Confirmation Order.

30. Prepetition Term Loan Secured Parties’ Fees. The Equity Committee shall have the sole right to review and object to payment of Prepetition Term Loan Secured Parties’ legal fees and expenses. The Equity Committee hereby agrees that so long as Prepetition Term Loan Secured Parties’ fees and expenses incurred for services rendered during the period July 1, 2024 through September 13, 2024 do not exceed \$2.5 million, such fees shall not be subject to objection. In the event that fees and expenses during such period (or for any period from and after September 14, 2024) exceed \$2.5 million in the aggregate, such excess amount shall be subject to the reasonable review and objection rights of the Equity Committee.

31. Payment Prior to the Effective Date. The Debtors are authorized to pay, prior to the Effective Date, the Prepetition Term Loan Claim in accordance with the Plan treatment for such Claim (Class 3) in order to avoid any further interest accruals and attorneys’ fees, as provided for herein and in the Plan.

**Q. Plan Complies with Bankruptcy Code Requirements—Section 1129(a)(1).**

32. The Plan complies with all applicable provisions of the Bankruptcy Code, as required by section 1129(a)(1) of the Bankruptcy Code, including sections 1122 and 1123 thereof.

Additionally, the Plan and all Plan Modifications are dated and identify the Entities submitting them, thereby satisfying Bankruptcy Rule 3016(a).

**(a) Proper Classification—Sections 1122 and 1123.**

33. The Plan satisfies the requirements of sections 1122(a) and 1123(a)(1) of the Bankruptcy Code. Article III of the Plan provides for the separate classification of Claims and Interests into six (6) Classes. Valid business, factual, and legal reasons exist for the separate classification of such Classes of Claims and Interests. The classifications were not implemented for any improper purpose and do not unfairly discriminate between, or among, Holders of Claims or Interests. Each Class of Claims and Interests contains only Claims or Interests that are substantially similar to the other Claims or Interests within that Class.

**(b) Specified Unimpaired Classes—Section 1123(a)(2).**

34. The Plan satisfies the requirements of section 1123(a)(2) of the Bankruptcy Code. Article III of the Plan specifies that Claims in the following Classes (the “Unimpaired Classes”) are Unimpaired under the Plan within the meaning of section 1124 of the Bankruptcy Code.

<b>Class</b>	<b>Designation</b>
1	Other Secured Claims
2	Other Priority Claims
3	Prepetition Term Loan Claims
4	General Unsecured Claims
5	Intercompany Claims

35. Additionally, Article II of the Plan specifies that Allowed Administrative Claims (including Professional Compensation Claims) and Allowed Priority Tax Claims will be paid in full (unless a Holder of such Claim consents to alternative treatment) in accordance with the terms of the Plan, although these Claims are not separately classified under the Plan.

36. Holders of Claims in Classes 1, 2, 3, 4, and 5 are Unimpaired and conclusively presumed to have accepted the Plan and are not entitled to vote to accept or reject the Plan.

**(c) Specified Treatment of Impaired Classes—Section 1123(a)(3).**

37. The Plan satisfies the requirements of section 1123(a)(3) of the Bankruptcy Code. Article III of the Plan specifies that Interests in the following Classes (the “Impaired Classes”) are Impaired under the Plan within the meaning of section 1124 of the Bankruptcy Code, and describes the treatment of such Classes:

<b>Class</b>	<b>Designation</b>
6	Existing Equity Interests

38. While Class 4 (General Unsecured Claims) was classified as Impaired under the version of the Plan used for solicitation, the Second Amended Plan amended the treatment of Class 4 to provide for post-petition interest through the date on which a distribution is made on account of such Claim, resulting in the unimpairment of Class 4. Thus, Class 6 is the only Impaired class and the only Class entitled to vote on the Plan.

**(d) No Discrimination—Section 1123(a)(4).**

39. The Plan satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code. The Plan provides for the same treatment by the Debtors for each Claim or Interest in each respective Class unless the Holder of a particular Claim or Interest has agreed to a less favorable treatment of such Claim or Interest.

**(e) Adequate Means for Implementation—Section 1123(a)(5).**

40. The Plan satisfies the requirements of section 1123(a)(5) of the Bankruptcy Code. The provisions in Article IV and elsewhere in the Plan provide in detail adequate and proper means for the Plan’s implementation, including regarding: (a) the consummation of the Plan, including the wind-down and dissolution of the Debtors and the vesting of the assets in the Wind-Down Debtors or Liquidating Trust, as applicable; (b) the Sale Transactions; (c) the sources of consideration for Plan distributions, including the Sale Transactions, Cash, and Retained Causes

of Action; (d) the appointment of the Plan Administrator and the Liquidating Trustee; (e) the authorization for the Debtors, the Plan Administrator, and/or the Liquidating Trustee, as applicable, to take all actions contemplated under or necessary, advisable, or appropriate to implement or effectuate the Plan; (f) the settlement and discharge of Claims and Interests as set forth in the Plan; (g) the good faith compromise and settlement of all claims or controversies; (h) the preservation and vesting of certain Retained Causes of Action in the Wind-Down Debtors or the Liquidating Trust, as applicable; (i) the treatment of Executory Contracts and Unexpired Leases; (j) the dissolution of the Debtors; (k) the effectuation and implementation of documents and further transactions; (l) the cancellation of existing securities and agreements; and (m) the authorization, approval, and entry of corporate actions under the Plan.

**(f) Non-Voting Equity Securities—Section 1123(a)(6).**

41. The Plan satisfies the requirements of section 1123(a)(6) of the Bankruptcy Code. The Plan does not provide for the issuance of equity or other securities of the Debtors, including non-voting equity securities.

**(g) Directors and Officers—Section 1123(a)(7).**

42. The Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code. In accordance with Article IV.H of the Plan, as of the Effective Date, the existing directors and officers of the Debtors shall be deemed to have resigned without any further action required. From and after the Effective Date, the Plan Administrator and the Liquidating Trustee shall be authorized to act on behalf of the Estates, as applicable, *provided* that the Plan Administrator or the Liquidating Trustee shall have no duties other than as expressly set forth in the Plan, this Confirmation Order, or any agreement governing the Plan Administrator's or the Liquidating



Trustee's duties and responsibilities, as applicable. The appointment of the Plan Administrator and the Liquidating Trustee is consistent with the interests of creditors and with public policy.

**(h) Debtor Is Not an Individual—Section 1123(a)(8) and 1123(c).**

43. The Debtors are not individuals. Accordingly, the requirements of sections 1123(a)(8) and 1123(c) of the Bankruptcy Code are inapplicable.

**(i) Impairment / Unimpairment of Classes—Section 1123(b)(1).**

44. The Plan is consistent with section 1123(b)(1) of the Bankruptcy Code. Article III of the Plan leaves each Class of Claims or Interests Impaired or Unimpaired.

**(j) Treatment of Executory Contracts and Unexpired Leases—Section 1123(b)(2).**

45. The Plan is consistent with section 1123(b)(2) of the Bankruptcy Code. Article V of the Plan provides for the automatic rejection of the Debtors' Executory Contracts and Unexpired Leases (other than the Indemnification Obligations and the D&O Liability Insurance Policies) not previously rejected, assumed, or assumed and assigned during these Chapter 11 Cases under section 365 of the Bankruptcy Code, nor scheduled to be assumed under the Plan, the Plan Supplement, or the Sale Orders.

46. The Debtors' determinations regarding the assumption and rejection of Executory Contracts and Unexpired Leases are based on and within the sound business judgment of the Debtors, are necessary to the implementation of the Plan, and are in the best interests of the Debtors, their Estates, Holders of Claims, and other parties in interest in these Chapter 11 Cases.

**(k) Settlement, Releases, Exculpation, Injunction, and Preservation of Claims and Causes of Action—Section 1123(b)(3).**

47. In accordance with section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good-

faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies released, settled, compromised, discharged, satisfied, or otherwise resolved pursuant to the Plan. In addition, the compromises and settlements embodied in the Plan preserve value by enabling the Debtors to avoid extended, value-eroding litigation that could delay the Debtors' emergence from chapter 11, and the compromises and settlements in the Plan are fair, equitable, reasonable, and in the best interests of the Debtors and their Estates.

48. **Debtor Releases.** The release of Claims and Causes of Action by the Debtors, as described in Article IX.A of the Plan in accordance with section 1123(b) of the Bankruptcy Code (the "Debtor Releases"), represents a valid exercise of the Debtors' business judgment. The Debtor Releases are integral to the Plan and are fair, reasonable, and in the best interests of the Debtors, the Estates and Holders of Claims or Interests. Also, the Debtor Releases are: (a) reflective of the significant contributions the Released Parties made to a highly complex and contentious restructuring, including the negotiation, formulation, and the effectuation of the Sale Transactions and transactions contemplated in the Plan; (b) given, and made, after due notice and opportunity for a hearing; and (d) a bar to the Debtors asserting a Claim or Cause of Action released by Article IX.A of the Plan. The scope of the Debtor Releases is appropriately tailored under the facts and circumstances of these Chapter 11 Cases. Moreover, the Debtor Releases are appropriate in light of, among other things, the critical nature of the Debtor Releases to the Plan.

49. The Debtor Releases appropriately offer protection to parties that participated in the Debtors' restructuring process. Each of the Released Parties made significant concessions and contributions to these Chapter 11 Cases. The Debtor Releases for the Debtors' directors and officers as of the Petition Date are appropriate because the Debtors' directors and officers share an identity of interest with the Debtors, supported the Plan and these Chapter 11 Cases, and actively

participated in meetings and negotiations during these Chapter 11 Cases to facilitate the negotiation and consummation of the transactions contemplated by the Plan. Further, such parties may assert indemnification claims against the Debtors with respect to claims subject to the Debtor Releases.

50. **Third Party Release.** The release of Claims and Causes of Action by the Releasing Parties, as described in Article IX.B of the Plan (the “Third Party Release”), was consensually provided after due notice and an opportunity for a hearing and is an essential provision of the Plan. The Third Party Release is a critical and integral component of the Plan, thereby preventing significant and time-consuming litigation regarding parties’ respective rights and interests. The Third Party Release provides finality for the Debtors, their Estates, the Plan Administrator, the Liquidating Trustee, and the other Released Parties regarding the parties’ respective obligations under the Plan and the transactions contemplated therein. The Third Party Release was instrumental in developing a Plan that maximized value for all of the Debtors’ stakeholders. As such, the Third Party Release appropriately offers certain protections to parties who constructively participated in the Debtors’ chapter 11 process by, among other things, supporting the Plan.

51. Notice of the Third Party Release was provided to all Holders of Claims and Interests and such notice was adequate and appropriate under the facts and circumstances of these Chapter 11 Cases. The Combined Hearing Notice was sent to Holders of Claims and Interests and published in *The New York Times* (National Edition) and the *San Francisco Chronicle* on August 2, 2024, and the Ballots and Notices, as applicable, sent to Holders of Claims and Interests unambiguously stated that the Plan contains the Third Party Release and that each such Holder of Claims or Interests may elect not to grant such Third Party Release. The release provisions of the Plan were conspicuous and emphasized with boldface type in the Plan, the Disclosure Statement,

the Ballots, and the Notices. Further, opt-out information was provided in the Notices. The Third Party Release provides appropriate and specific disclosure with respect to the Claims and Causes of Action that are subject to the Third Party Release, and no other disclosure or notice is necessary.

52. The Third Party Release is: (a) consensual; (b) a good faith settlement and compromise of the Claims released by the Third Party Release; (c) in the best interests of the Debtors and all Holders of Claims and Interests; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; (f) a bar to any of the Releasing Parties' asserting any Claim or Cause of Action released pursuant to the Third Party Release; (g) specific in language and scope; and (h) consistent with sections 105, 524, 1123, 1129 and 1141 and other applicable provisions of the Bankruptcy Code. Therefore, the Third Party Release is reasonable, appropriate, and consistent with the provisions of the Bankruptcy Code and applicable law.

53. The only Holders of Claims and Interests that have opted out of the Third Party Release are those set forth in the tabulation summary attached as **Exhibit A** to the Voting Report. The only non-voting parties that have opted out of the Third Party Release are those set forth in the opt-out election summary attached as **Exhibit C** to the Voting Report.

54. **Exculpation.** The exculpation provision included at Article IX.C of the Plan (the "Exculpation") is necessary and appropriate to the Plan. The Exculpation is narrowly tailored to protect estate fiduciaries from inappropriate litigation and to exclude actions found to have constituted actual fraud, willful misconduct, or gross negligence. The Exculpated Parties subject to the Exculpation have, and upon entry of this Confirmation Order, will be deemed to have participated in good faith and in compliance with all applicable laws with regard to the negotiation and implementation of, among others, these Chapter 11 Cases, the Disclosure Statement, the Plan, the Sale Transactions, or any aspect of the Liquidation Transactions, including any contract,

instrument, release or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or this Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Disclosure Statement or the Plan, the Sale Transactions, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the administration and implementation of the Plan, or the distribution of property under the Plan or any other related agreement, except for claims related to any act or omission that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpation, including its carve-out for actual fraud, gross negligence, or willful misconduct, is consistent with established practice in this jurisdiction and others.

55. **Injunction.** The injunction provision set forth in Article IX.D of the Plan is essential to the Plan and necessary to preserve and enforce the Debtor Releases, the Third Party Release, and the Exculpation, each as set forth in Articles IX.A, IX.B, and IX.C of the Plan respectively.

56. In accordance with section 1123(b) of the Bankruptcy Code, the Wind-Down Debtors or the Liquidating Trust, as applicable, shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Retained Causes of Action and Causes of Action of the Debtors that are not otherwise transferred or sold pursuant to the Sale Transactions, whether arising before or after the Petition Date, and the Wind-Down Debtors' or the Liquidating Trust's rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the

occurrence of the Effective Date, other than the Causes of Action released by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article IX of the Plan, which shall be deemed released and waived by the Debtors as of the Effective Date. No Causes of Action shall be retained or preserved by the Debtors against the Debtors' directors and officers. No Entity (other than the Released Parties) may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Wind-Down Debtors or the Liquidating Trust will not pursue any and all available Causes of Action of the Debtors against it.

57. The release and discharge of mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates, as described in Article IX.F of the Plan (the "Lien Release") is necessary to implement the Plan.<sup>8</sup> The provisions of the Lien Release are appropriate, fair, equitable, reasonable, and in the best interests of the Debtors, the Estates, and Holders of Claim and Interests.

58. The releases, injunctions, and exculpations set forth in the Plan are fair, equitable, reasonable, and in the best interests of the Debtors, their Estates, and all Holders of Claims or Interests. The record at the Combined Hearing and in these Chapter 11 Cases is sufficient to support the releases, injunctions, and exculpations provided for in Article IX of the Plan. Accordingly, the Plan is consistent with section 1123(b)(3) of the Bankruptcy Code.

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<sup>8</sup> All parties' rights, defenses, and Causes of Action related to the Prepetition Term Loan Claims shall be reserved pending the Bankruptcy Court's determination of the Aggregate Allowed Prepetition Term Loan Claims Amount.

**(l) Treatment of Rights of Holders of Claims—1123(b)(5)**

59. The Plan is consistent with section 1123(b)(5) of the Bankruptcy Code. Article III of the Plan modifies or leaves unaffected, as is applicable, the rights of certain Holders of Claims, as permitted by section 1123(b)(5) of the Bankruptcy Code.

**(m) Additional Plan Provisions—Section 1123(b)(6).**

60. The other discretionary provisions in the Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1123(b)(6) of the Bankruptcy Code.

**R. Debtors Complied with Bankruptcy Code Requirements—Section 1129(a)(2).**

61. The Debtors complied with the applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Bankruptcy Court, and thus, satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code. Specifically, each Debtor:

- a. is an eligible debtor under section 109 of the Bankruptcy Code and a proper proponent of the Plan under section 1121(a) of the Bankruptcy Code;
- b. has complied with applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Bankruptcy Court; and
- c. complied with the applicable provisions of the Bankruptcy Code, including sections 1125 and 1126, the Bankruptcy Rules, the Bankruptcy Local Rules, any applicable non-bankruptcy law, rule and regulation, the Disclosure Statement Order, and all other applicable law, in transmitting the Solicitation Packages and the Notice of Non-Voting Status and Release Opt-Out Forms, and related documents and notices, and in soliciting and tabulating the votes on the Plan.

**S. Plan Proposed in Good Faith—Section 1129(a)(3).**

62. The Plan satisfies the requirements of section 1129(a)(3) of the Bankruptcy Code. The Debtors proposed the Plan in good faith and not by any means forbidden by law. In so determining, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Cases, the Plan, the Sale Transactions, and the process leading to

Confirmation, including the support of Holders of Claims and Interests for the Plan, and the transactions to be implemented pursuant thereto. These Chapter 11 Cases were filed, and the Plan was proposed, with the legitimate purpose of allowing the Debtors to implement the Liquidation Transactions for the maximum benefit of all parties in interest and to maximize the value of the Estates and the recoveries to Holders of Claims and Interests.

**T. Payment for Services or for Costs and Expenses—Section 1129(a)(4).**

63. The procedures set forth in the Plan for the Bankruptcy Court’s review and ultimate determination of the fees and expenses to be paid by the Debtors in connection with these Chapter 11 Cases, or in connection with the Plan and incident to these Chapter 11 Cases, satisfy the objectives of, and are in compliance with, section 1129(a)(4) of the Bankruptcy Code.

**U. Directors, Officers, and Insiders—Section 1129(a)(5).**

64. Because the Plan provides for the dissolution of the existing board of directors of the Debtors and that any remaining directors or officers of the Debtors shall be dismissed, section 1129(a)(5) of the Bankruptcy Code does not apply to the Debtors. To the extent section 1129(a)(5) applies to the Plan Administrator or the Liquidating Trustee, the Debtors have satisfied the requirements of this provision by, among other things, agreeing to disclose the identities of the Plan Administrator and the Liquidating Trustee.

**V. No Rate Change—Section 1129(a)(6).**

65. Section 1129(a)(6) of the Bankruptcy Code is not applicable to these Chapter 11 Cases. The Plan proposes no rate change subject to the jurisdiction of any governmental regulatory commission.

**W. Best Interest of the Creditors—Section 1129(a)(7).**

66. The Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code. The Liquidation Analysis included in the Plan Supplement, and any other evidence related thereto



in support of the Plan that was proffered or adduced in the Declarations in Support or at, prior to, or in connection with the Combined Hearing: (a) are reasonable, persuasive, credible, and accurate as of the dates such analysis or evidence was prepared, presented, or proffered; (b) utilize reasonable and appropriate methodologies and assumptions; (c) have not been controverted by other evidence; and (d) establish that Holders of Allowed Claims and Interests in each Class will recover more under the Plan on account of such Claim or Interest, as of the Effective Date, than such Holder would receive if the Debtors were liquidated, on the Effective Date, under chapter 7 of the Bankruptcy Code.

**X. Acceptance by Certain Classes—Section 1129(a)(8).**

67. Classes 1, 2, 3, 4, and 5 are Unimpaired under the Plan and are deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Class 6 is Impaired under the Plan and has voted to accept the Plan pursuant to section 1126(c) of the Bankruptcy Code. Accordingly, each Class of Claims or Interests is either Unimpaired or has accepted the Plan and, as such, the Plan complies with Section 1129(a)(8) of the Bankruptcy Code.

**Y. Treatment of Claims Entitled to Priority under Section 507(a)—1129(a)(9).**

68. The Plan satisfies the requirements of section 1129(a)(9) of the Bankruptcy Code. The treatment of Allowed Administrative Claims, Professional Compensation Claims, and Priority Tax Claims under Article II of the Plan and of Other Priority Claims under Article III of the Plan satisfies the requirements of, and complies in all respects with the treatment required by section 1129(a)(9) of the Bankruptcy Code for each of the various claims specified in sections 507(a)(1)–(8) of the Bankruptcy Code.

**Z. Acceptance by at Least One Impaired Class—Section 1129(a)(10).**

69. The Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code. As evidenced in the Voting Report, Class 6 voted to accept the Plan by the requisite numbers and

amounts of interests specified under section 1126(c) of the Bankruptcy Code, determined without including any acceptance of the Plan by any insider (as that term is defined in section 101(31) of the Bankruptcy Code).

**AA. Feasibility—Section 1129(a)(11).**

70. The Plan satisfies section 1129(a)(11) of the Bankruptcy Code. The evidence supporting the Plan proffered or adduced by the Debtors at or before the Combined Hearing: (a) is reasonable, persuasive, credible, and accurate as of the dates such evidence was prepared, presented, or proffered; (b) has not been controverted by other persuasive evidence; (c) establishes that the Plan is feasible and Confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization; (d) establishes that the Plan may be implemented and has a reasonable likelihood of success; (e) establishes that the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, will have sufficient funds available to meet their obligations under the Plan; and (f) establishes that the Plan Administrator or the Liquidating Trustee, as applicable, will have the financial wherewithal to satisfy their obligations following the Effective Date.

**BB. Payment of Statutory Fees—Section 1129(a)(12).**

71. The Plan satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code. Article II.D of the Plan provides for the payment of all fees and charges assessed against the Estates under 28 U.S.C. § 1930.

**CC. Continuation of Employee Benefits—Section 1129(a)(13).**

72. The Debtors do not have any obligation to pay retiree benefits (as defined in section 1114 of the Bankruptcy Code). Therefore, section 1129(a)(13) of the Bankruptcy Code is inapplicable to these Chapter 11 Cases and the Plan.

**DD. Non-Applicability of Certain Sections—Sections 1129(a)(14), (15), and (16).**

73. Sections 1129(a)(14), 1129(a)(15), and 1129(a)(16) of the Bankruptcy Code do not apply to these Chapter 11 Cases. The Debtors owe no domestic support obligations, are not individuals, and are not nonprofit corporations.

**EE. “Cram Down” Requirements—Section 1129(b).**

74. Section 1129(b)(1) of the Bankruptcy Code provides that, if all applicable requirements of section 1129(a) of the Bankruptcy Code are met other than section 1129(a)(8) of the Bankruptcy Code, a plan may be confirmed so long as the requirements set forth in section 1129(b) of the Bankruptcy Code are satisfied. Class 6 voted to accept the Plan, so all Holders of Claims or Interests under the Plan are either Unimpaired or they have accepted the Plan, thus satisfying the requirements of section 1129(a)(8) of the Bankruptcy Code and rendering section 1129(b) of the Bankruptcy Code inapplicable.

**FF. Only One Plan—Section 1129(c).**

75. The Plan satisfies the requirements of section 1129(c) of the Bankruptcy Code. The Plan is the only chapter 11 plan filed in these Chapter 11 Cases.

**GG. Principal Purpose of the Plan—Section 1129(d).**

76. The Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act.

**HH. No Small Business Case—Section 1129(e).**

77. The Chapter 11 Cases are not small business cases and, accordingly, section 1129(e) of the Bankruptcy Code does not apply.

**II. Good Faith Solicitation—Section 1125(e).**

78. The Debtors acted in “good faith” within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and

the Bankruptcy Rules in connection with all of their activities relating to support and consummation of the Plan, including the solicitation and receipt of acceptances of the Plan, and they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

**JJ. Likelihood of Satisfaction of Conditions Precedent to the Effective Date.**

79. Each of the conditions precedent to the Effective Date, as set forth in Article VIII.A of the Plan, has been or is reasonably likely to be satisfied or, as applicable, waived in accordance with Article VIII.B of the Plan.

**KK. Implementation.**

80. All documents and agreements necessary to implement the transactions contemplated by the Plan, including those contained or summarized in the Plan Supplement, and all other relevant and necessary documents have been negotiated in good faith and at arms' length, are in the best interests of the Debtors and their Estates, and shall, upon completion of documentation and execution, be valid, binding, and enforceable agreements and shall not be in conflict with any federal, state, or local law. The Debtors, the Plan Administrator, and the Liquidating Trustee, as applicable, are authorized to take any action reasonably necessary, advisable, or appropriate to consummate such agreements and the transactions contemplated thereby.

**LL. Disclosure of All Material Facts.**

81. The Debtors disclosed all material facts regarding the Disclosure Statement, the Plan, the Plan Supplement, and the adoption, execution, and implementation of the other matters provided for under the Plan involving corporate action to be taken by or required of the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable.

**MM. Satisfaction of Confirmation Requirements.**

82. Based on the foregoing, the Declarations in Support, and all other pleadings and evidence proffered or adduced at or prior to the Combined Hearing, the Plan satisfies the requirements of section 1129 of the Bankruptcy Code.

### **ORDER**

**BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:**

83. **Findings of Fact and Conclusions of Law.** The above-referenced findings of fact and conclusions of law are hereby incorporated by reference as though fully set forth herein and constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable herein by Bankruptcy Rule 9014. To the extent that any finding of fact is determined to be a conclusion of law, it is deemed so, and vice versa.

84. **Disclosure Statement, Solicitation Packages, Tabulation Procedures, and Solicitation Procedures.** The Disclosure Statement, the Solicitation Packages, and the Solicitation Procedures are **APPROVED** on a final basis in all respects pursuant to section 1125 of the Bankruptcy Code.

85. **Approval of the Global Settlement.** Pursuant to section 1123(b)(2) of the Bankruptcy Code and Bankruptcy Rule 9019, the Global Settlement is hereby approved.

86. **Confirmation of the Plan.** The Plan, attached hereto as **Exhibit A**, as and to the extent modified by this Confirmation Order, is approved and **CONFIRMED** in its entirety pursuant to section 1129 of the Bankruptcy Code. All Plan documents necessary for implementation of the Plan, including those in the Plan Supplement, are hereby approved and incorporated herein by reference as an integral part of this Confirmation Order. The failure to include or refer to any particular article, section, or provision of the Plan, the Plan Supplement, or any related document, agreement, or exhibit does not impair the effectiveness of that article,

section, or provision, it being the intent of this Confirmation Order that the Plan, the Plan Supplement, and any related document, agreement, or exhibit are approved in their entirety.

87. **Headings.** Headings utilized in this Confirmation Order are for convenience of reference only and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

88. **Objections.** All objections (including any reservations of rights contained therein) to approval of Confirmation of the Plan that have not been withdrawn, waived, or settled prior to entry of this Confirmation Order, are not cured by the relief granted herein, or are not otherwise resolved as stated by the Debtors on the record of the Combined Hearing, are **OVERRULED** and **DENIED** on the merits and in their entirety, and all withdrawn objections are deemed withdrawn with prejudice.

89. **Deemed Acceptance of Plan.** In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims or Interests who voted to accept the Plan or who are conclusively presumed to accept the Plan are deemed to have accepted the Plan, as modified by the Plan Modifications and this Confirmation Order. No Holder of a Claim or Interest shall be permitted to change its vote as a consequence of any Plan Modifications.

90. **No Action Required.** Under section 1142(b) of the Bankruptcy Code and any other comparable provisions under applicable law, no action of the respective directors, equity holders, managers, or members of the Debtors is required to authorize the Debtors to enter into, execute, deliver, File, adopt, amend, restate, consummate, or effectuate, as the case may be, the Plan, the Liquidation Transactions, and any contract, assignment, certificate, instrument, or other document to be executed, delivered, adopted, or amended in connection with the implementation of the Plan.

91. **Immediate Binding Effect.** Notwithstanding Bankruptcy Rules 3020(e), 6004(h), 7062, or otherwise, upon the occurrence of the Effective Date, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon and inure to the benefit of the Debtors, or the Plan Administrator, the Liquidating Trustee, the Holders of Claims or Interests, the Released Parties, and each of their respective successors and assigns. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable thereafter.

92. Pursuant to section 1141 of the Bankruptcy Code, subject to the occurrence of the Effective Date and subject to the terms of the Plan and this Confirmation Order, all prior orders entered in these Chapter 11 Cases, all documents and agreements executed by the Debtors as authorized and directed thereunder, and all motions or requests for relief by the Debtors pending before this Bankruptcy Court as of the Effective Date shall be binding upon and shall inure to the benefit of the Debtors, the Wind-Down Debtors, the Plan Administrator, the Liquidating Trust, and the Liquidating Trustee, as applicable, and their respective successors and assigns.

93. **Classification and Treatment.** The Plan's classification scheme is approved. The terms of the Plan shall govern the classification and treatment of Claims and Interests for purposes of the distributions to be made thereunder.

94. **Subordination of Claims.** The allowance, classification, and treatment of all Allowed Claims and Interests and the respective distributions and treatments under the Plan shall take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, contract, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors or the Liquidating Trustee (as applicable) reserve the right to re-classify any Allowed Claim or

Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

95. **Insurance.** Notwithstanding anything to the contrary in the Plan, if any Claim is subject to coverage under an Insurance Policy, payments on account of such Claim will first be made from proceeds of such Insurance Policy in accordance with the terms thereof, with the balance of such Claim, if any, treated in accordance with the provisions of the Plan governing the Class applicable to such Claim.

96. **Liquidation.** On or before the Effective Date, the Debtors or the Plan Administrator shall enter into and take any actions that may be necessary or appropriate to effectuate the Sale Transactions or the Wind-Down of the Debtors, as applicable, including but not limited to: (a) the Eiger Conversion; (b) the execution and delivery of appropriate agreements or other documents of consolidation, conversion, disposition, transfer, or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law; (c) the execution and delivery of any appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, duty, or obligation on terms consistent with the Plan; (d) the delivery of Liquidating Trust Assets to the Liquidating Trustee; (e) the filing of appropriate documents with the appropriate governmental authorities pursuant to applicable law; and (f) any and all other actions that the Debtors or the Plan Administrator determine are necessary or appropriate to effectuate the Plan.

- a. **Wind-Down.** Following the Effective Date, the Plan Administrator shall Wind-Down the business affairs and operations of the Debtors. The responsibilities and authority of the Plan Administrator shall include the following: (i) administering the Professional Fee Reserve Account, the Wind-Down Budget, and the Prepetition Term Loan Claims Escrow Account on the terms set forth in the Plan; (ii) administering and paying taxes, including, among other things, (a) filing tax returns (to the extent not the obligation of any Purchaser), and (b) representing the interest and



account of the Debtors before any taxing authority in all matters; (iii) retaining and paying, without the need for retention or fee applications, professionals in connection with the Plan Administrator's performance of its duties under the Plan; (iv) distributing information statements as required for U.S. federal income tax and other applicable tax purposes; (v) complying with any continuing obligations under the Asset Purchase Agreements, as applicable; (vi) Filing an application for entry by the Bankruptcy Court of a final decree closing the Chapter 11 Cases; and (vii) making distributions to Professionals for Allowed Professional Compensation Claims from the Professional Fee Reserve Account.

The responsibilities and authority of the Liquidating Trustee shall include the following: (i) preserving and liquidating the Debtors' assets remaining after consummation of the Sale Transactions, if any, including through the prosecution of any Claims or Retained Causes of Action; (ii) considering, litigating, or resolving disputed Claims; (iii) distributing the Distributable Cash and other assets of the Debtors' Estates pursuant to the terms of the Plan to Holders of Allowed Claims and Interests; (iv) procuring the necessary insurance to facilitate the Wind-Down, including appropriate D&O Liability Insurance Policies; and (v) performing such other responsibilities as may be vested in the Liquidating Trustee pursuant to the Plan or an order of the Bankruptcy Court (including, without limitation, this Confirmation Order), or as may be necessary and proper to carry out the provisions of the Plan.

97. **Sources of Consideration for Plan Distributions.** Subject to the provisions of the Plan concerning the Professional Fee Reserve Account and the Wind-Down Budget, the Debtors or the Liquidating Trustee (as applicable) shall fund distributions under the Plan with the Liquidating Trust Assets, including but not limited to: (1) the remaining proceeds from the Sale Transactions; (2) the Debtors' Cash on hand delivered to the Liquidating Trustee; and (3) the recovery, if any, from prosecution or settlement of the Retained Causes of Action, all in accordance with the terms in the Plan.

98. On or before the Effective Date, the Debtors or the Plan Administrator shall take any actions that may be necessary or appropriate to effectuate the Sale Transactions in accordance with the Bid Procedures Order and the Plan.

99. The Debtors or the Liquidating Trustee shall use Cash on hand to pay the fees and expenses of administering their respective functions and to fund distributions to Holders of Allowed Claims and Allowed Interests, consistent with the terms of the Plan.

100. The Debtors, the Liquidating Trustee, or the Plan Administrator shall use the recovery, if any, from prosecution or settlement of the Retained Causes of Action to fund distributions to certain Holders of Allowed Claims and Allowed Interests, consistent with the terms of the Plan.

101. **Vesting of Assets.** Except as otherwise provided in the Plan or the Sale Orders, on and after the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, except for certain Causes of Action (as set forth on the Schedule of Retained Causes of Action), the Wind-Down Budget, the Professional Fee Reserve Account, which shall vest in the Wind-Down Debtors, all property in each of the Estates, including all claims, rights, Causes of Action that shall vest in the Liquidating Trust, and any property acquired by the Debtors under or in connection with the Plan, shall vest in the Liquidating Trust and with the Liquidating Trustee, free and clear of all Claims, Liens, encumbrances, charges, Causes of Action, or other interests. Subject to the terms of the Plan, on or after the Effective Date, the Liquidating Trustee may use, acquire, and dispose of property, and may prosecute, compromise, or settle any Claims and Causes of Action without supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules other than restrictions expressly imposed by the Plan or this Confirmation Order.

102. As soon as practicable after the Bankruptcy Court's determination of the Aggregate Allowed Prepetition Term Loan Claims Amount, should the Aggregate Allowed Prepetition Term Loan Claims Amount be less than the sum of (a) any prepayments made on account of the

Prepetition Term Loan Claims and (b) the Prepetition Term Loan Claims Escrow Amount, the portion of the Prepetition Term Loan Claims Escrow Amount in excess of the Aggregate Allowed Prepetition Term Loan Claims Amount minus any prepayments made on account of the Prepetition Term Loan Claims shall be reallocated to the Existing Equity Interest Recovery Pool and transferred to the Liquidating Trust.

103. On the Effective Date, the attorney-client privilege, the attorney work product doctrine and any similar privilege against disclosure, and all other similar immunities (all together, "Privileges") belonging to the Debtors or the Estates that concern or in any way relate to (a) any of the Liquidating Trust Assets, or that would apply to communications, documents, or records recorded in magnetic, optical, or other form of electronic medium concerning or in any way relating to any Liquidating Trust Assets, shall vest in the Liquidating Trust, and (b) any of the assets vesting in the Wind-Down Debtors, or that would apply to communications, documents, or records recorded in magnetic, optical, or other form of electronic medium concerning or in any way relating to any such assets, shall vest in the Wind-Down Debtors. The Liquidating Trustee shall have the sole right to waive Privileges that concern or in any way relate to any of the Liquidating Trust Assets or that would apply to communications, documents, or electronic records concerning or in any way relating to any Liquidating Trust Assets. The Plan Administrator shall have the sole right to waive Privileges that concern or in any way relate to any of the assets vesting in the Wind-Down Debtors or that would apply to communications, documents, or electronic records concerning or in any way relating to any such assets.

104. **Preservation of Causes of Action.** In accordance with section 1123(b) of the Bankruptcy Code, the Liquidating Trustee or the Plan Administrator, as applicable, shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action

of the Debtors, including any actions specifically enumerated in the Schedule of Retained Causes of Action, that are not otherwise transferred or sold pursuant to the Sale Transactions or distributed pursuant to the Plan, whether arising before or after the Petition Date, and the Liquidating Trustee's or the Plan Administrator's, as applicable, rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date, other than the Causes of Action released by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article IX of the Plan, which shall be deemed released and waived by the Debtors as of the Effective Date. No preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation. No Entity (other than the Released Parties) may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Debtors, the Liquidating Trustee, or the Plan Administrator, as applicable, will not pursue any and all available Causes of Action of the Debtors against it.

105. **Corporate Action.** On the Effective Date, the Debtors shall not be dissolved unless and until the Plan Administrator, in consultation with the Liquidating Trustee, determines that dissolution will not have any adverse impact on the value of the Debtors' assets; *provided* that neither the Debtors nor any party released pursuant to Article IX of the Plan shall be responsible for any liabilities that may arise as a result of non-dissolution of the Debtors; *provided further*, that nothing in the Plan shall be construed as relieving the Debtors or the Plan Administrator (as applicable) of their duties to pay U.S. Trustee Statutory Fees as required by the Bankruptcy Code and applicable law until such time as a final decree is entered in the Debtors' Chapter 11 Cases or

the cases are dismissed or converted to cases under chapter 7 of the Bankruptcy Code. The Plan Administrator shall submit with the appropriate governmental agencies a copy of this Confirmation Order, which Confirmation Order shall suffice for purposes of obtaining a Certificate of Dissolution from the applicable Secretary of State or equivalent body.

106. Without limiting the foregoing, on the Effective Date and following satisfaction of the Debtors' distribution and funding requirements set forth in the Plan, the Debtors shall have no further duties or responsibilities in connection with implementation of the Plan, and the directors and officers of the Debtors shall be deemed to have resigned in favor of the ongoing administration of the Debtors' affairs by the Plan Administrator. From and after the Effective Date, the Plan Administrator and the Liquidating Trustee shall be authorized to act on behalf of the Estates, as applicable, provided that neither of them shall have duties other than as expressly set forth in the Plan or this Confirmation Order.

107. **Cancellation of Existing Securities and Agreements.** Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan, on the Effective Date, all agreements, instruments, notes, certificates, indentures, mortgages, securities and other documents evidencing any Claim or Interest, and any rights of any Holder in respect thereof, shall be deemed cancelled and of no further force or effect and the obligations of the Debtors thereunder shall be deemed fully satisfied, released, and discharged and, as applicable, shall be deemed to have been surrendered to the Liquidating Trustee. The Holders of or parties to such cancelled instruments, securities, and other documentation shall have no rights arising from or related to such instruments, securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to the Plan. All parties' rights, defenses, and Causes of Action

related to the Prepetition Term Loan Claims shall be reserved pending the Bankruptcy Court's determination of the Aggregate Allowed Prepetition Term Loan Claims Amount.

108. **Effectuating Documents; Further Transactions.** Upon entry of this Confirmation Order, the Debtors or the Plan Administrator or the Liquidating Trustee (as applicable) shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, consents, certificates, resolutions, programs, and other agreements or documents, and take such acts and actions as may be reasonable, necessary, or appropriate to effectuate, implement, consummate, and/or further evidence the terms and conditions of the Plan and any transactions described in or contemplated by the Plan. The Debtors or the Plan Administrator or the Liquidating Trustee, all Holders of Claims or Interests receiving distributions pursuant to the Plan, and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents, and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

109. **Section 1146 Exemption from Certain Taxes and Fees.** Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation all such instruments or other documents governing or evidencing such transfers without the payment of any such tax, recordation fee, or governmental assessment.

110. **Sale Orders.** Notwithstanding anything to the contrary in the Plan, nothing in the Plan shall affect, impair or supersede the Sale Orders or Sale Transactions Documents, each of which remains in full force and effect and governs in the event of any inconsistency with the Plan.

111. **Authority to Act.** Prior to, on, or after the Effective Date (as appropriate), all matters expressly provided for under the Plan that would otherwise require approval of the stockholders, security holders, officers, directors, or other owners of the Debtors shall be deemed to have occurred and shall be in effect prior to, on, or after the Effective Date (as applicable) pursuant to the applicable law of the state(s) in which the Debtors are formed, without any further vote, consent, approval, authorization, or other action by such stockholders, security holders, officers, directors, or other owners of the Debtor or notice to, order of, or hearing before, the Bankruptcy Court.

112. **Separate Plans.** Notwithstanding the combination of separate plans of liquidation for the Debtors set forth in the Plan for purposes of economy and efficiency, the Plan constitutes a separate chapter 11 plan for each Debtor.

113. **General Settlement of Claims and Interests.** Pursuant to section 1123(b)(2) of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the distributions, releases, and other benefits provided pursuant to the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a Holders of Claims or Interests may have with respect to any Allowed Claim or Interest or any distribution to be made on account of such Allowed Claim or Interest. The entry of this Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise and settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise

or settlement is in the best interests of the Debtors, their Estates, and Holders of such Claims or Interests, and is fair, equitable, and reasonable.

114. **Assumption and Rejection of Executory Contracts and Unexpired Leases.** On the Effective Date, except as otherwise provided in the Plan (which exclusion includes the Indemnification Obligations and the D&O Liability Insurance Policies) or otherwise identified on the Schedule of Assumed Executory Contracts and Unexpired Leases, if any, all Executory Contracts or Unexpired Leases not previously assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court, will be deemed rejected, in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code other than those Executory Contracts or Unexpired Leases that are the subject of a motion to assume that is pending on the Confirmation Date.

115. Assumption of any Executory Contract or Unexpired Lease pursuant to the Sale Transactions Documents or the Plan, and payment of any Cures relating thereto, shall, upon satisfaction of the applicable requirements of section 365 of the Bankruptcy Code, result in the full, final, and complete release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults or provisions restricting the change in control of ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

116. If the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan and Confirmation Order results in a Claim, then, unless otherwise ordered by the Bankruptcy Court, such Claim shall be forever barred and shall not be enforceable against the Debtors, the Estates, the Plan Administrator, or the Liquidating Trustee, or any of their respective assets and properties unless a Proof of Claim is Filed with the Notice and Claims Agent and served upon



counsel to the Plan Administrator and the Liquidating Trustee within thirty (30) days of the Effective Date.

117. The foregoing applies only to Claims arising from the rejection of an Executory Contract or Unexpired Lease under the Plan and this Confirmation Order; any other Claims held by a party to a rejected Executory Contract or Unexpired Lease shall have been evidenced by a Proof of Claim Filed by the applicable Bar Date or shall be barred and unenforceable. Claims arising from the rejection of Executory Contracts or Unexpired Leases under the Plan and this Confirmation Order shall be classified as General Unsecured Claims and shall, if Allowed, be treated in accordance with the provisions herein.

**118. Any Claims arising from the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan and this Confirmation Order that are not timely Filed within thirty (30) days of the Effective Date will be disallowed automatically, forever barred from assertion, and shall not be enforceable against, as applicable, the Debtors, the Estates, the Plan Administrator, or the Liquidating Trustee, or any of their respective assets and properties.**

119. **Indemnity Obligations.** Each of the Debtors' Indemnification Obligations shall not be discharged, impaired, or otherwise affected by the Plan. The Indemnification Obligations shall be deemed Executory Contracts assumed by the Debtors under the Plan. Notwithstanding the foregoing, such Indemnification Obligations shall be subject to typical exclusions for actual fraud, willful misconduct, or gross negligence.

120. **D&O Liability Insurance Policies.** Each D&O Liability Insurance Policy to which the Debtors are a party as of the Effective Date shall be deemed an Executory Contract and shall be automatically assumed or assumed and assigned by the applicable Debtor, effective as of

the Effective Date, pursuant to sections 365 and 1123 of the Bankruptcy Code. For the avoidance of doubt, coverage for defense and indemnity under the D&O Liability Insurance Policies shall remain available to all individuals within the definition of “Insured” in the D&O Liability Insurance Policies. In addition, after the Effective Date, all officers, directors, agents, or employees of the Debtors who served in such capacity at any time before the Effective Date shall be entitled to the full benefits of the D&O Liability Insurance Policies (including any “tail” policy) in effect or purchased as of the Effective Date for the full term of such policy regardless of whether such officers, directors, agents, and/or employees remain in such positions after the Effective Date, in each case, to the extent set forth in the D&O Liability Insurance Policies.

121. **Employee Compensation and Benefits.** All employment policies, and all compensation and benefits plans, policies, and programs of the Debtors applicable to their respective employees, retirees, and nonemployee directors, including all savings plans, retirement plans, healthcare plans, disability plans, severance benefit plans, incentive plans, and life and accidental death and dismemberment insurance plans, are deemed to be, and shall be treated as, Executory Contracts under the Plan and, on the Effective Date, shall be rejected pursuant to sections 365 and 1123 of the Bankruptcy Code.

122. **Employment Agreements.** Any Employment Agreement not assumed and assigned pursuant to the Sale Transactions Documents as part of the Sale Transactions shall be rejected by the Plan Administrator on the Effective Date of the Plan.

123. **Distributions.** The procedures governing distributions contained in Article VI of the Plan shall be, and hereby are, approved in their entirety. Except as otherwise set forth in the Plan or in this Confirmation Order, the timing of distributions required under the Plan or this Confirmation Order shall be made in accordance with and as set forth in the Plan, the Plan

Supplement, or this Confirmation Order, as applicable. To the extent the Plan does not specify the recipient of any Estate assets or property (including in the event that the Claim of the specified recipient of such Estate assets or property is paid or otherwise satisfied in full), such Estate assets or property shall be turned over to the Liquidating Trustee for distribution to Holders of Claims in accordance with the claims and priority waterfall set forth in the Plan.

124. **Professional Compensation.** All requests for payment of Professional Compensation Claims (other than from OCPs) for services rendered and reimbursement of expenses incurred through the Effective Date shall be filed no later than forty-five (45) days after the Effective Date. This Bankruptcy Court shall determine the Allowed amounts of such Professional Compensation Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code. Objections to Professional Compensation Claims must be Filed and served no later than twenty-one (21) days after the Filing of the Professional Compensation Claims. To the extent any Cash is remaining in the Professional Fee Reserve Account following irrevocable payment in full of all Allowed Professional Compensation Claims (including Allowed Professional Compensation Claims arising after the Confirmation Date), such Cash shall be transferred to the Wind-Down Debtors.

125. All requests for payment of Professional Compensation Claims of OCPs shall be made pursuant to the OCP Order. To the extent any Professional Compensation Claims of the OCPs have not been Allowed pursuant to the OCP Order on or before the Effective Date, the amount of Professional Compensation Claims owing to the OCPs shall be paid in Cash to such OCPs by the Debtor or the Plan Administrator (as applicable) from the Professional Fee Reserve Account as soon as reasonably practicable after such Professional Compensation Claims are Allowed pursuant to the OCP Order.

126. **Return of Deposits.** All utilities, including, but not limited to, any Person or Entity that received a deposit or other form of adequate assurance of performance under section 366 of the Bankruptcy Code during these Chapter 11 Cases, must return such deposit or other form of adequate assurance of performance to the Liquidating Trustee promptly following the occurrence of the Effective Date, if not returned or applied earlier.

127. **Compliance with Tax Requirements.** In connection with the Plan, any Person issuing any instrument or making any distribution or payment in connection therewith, shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority. In the case of a non-Cash distribution that is subject to withholding, the distributing party may require the intended recipient of such distribution to provide the withholding agent with an amount of Cash sufficient to satisfy such withholding tax as a condition to receiving such distribution or withhold an appropriate portion of such distributed property and either (1) sell such withheld property to generate Cash necessary to pay over the withholding tax (or reimburse the distributing party for any advance payment of the withholding tax) or (2) pay the withholding tax using its own funds and retain such withheld property. The distributing party shall have the right not to make a distribution under the Plan until its withholding or reporting obligation is satisfied pursuant to the preceding sentences. Any amounts withheld pursuant to the Plan shall be deemed to have been distributed to and received by the applicable recipient for all purposes of the Plan.

128. Any party entitled to receive any property as an issuance or distribution under the Plan shall, upon request, deliver to the withholding agent or such other Person designated by the Liquidating Trustee the appropriate IRS Form or other tax forms or documentation requested by the Liquidating Trustee to reduce or eliminate any required federal, state, or local withholding. If

the party entitled to receive such property as an issuance or distribution fails to comply with any such request for a one hundred eighty (180) day period beginning on the date after the date such request is made, the amount of such issuance or distribution shall irrevocably revert to the Liquidating Trustee and any Claim in respect of such distribution under the Plan shall be discharged and forever barred from assertion against such Debtor, the Plan Administrator, or the Liquidating Trustee or its respective property.

129. Notwithstanding the above, each Holder of an Allowed Claim or Interest that is to receive a distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such Holder by any Governmental Unit, including income, withholding, and other tax obligations, on account of such Plan Distribution.

130. **Procedures for Resolving Disputed Claims.** The procedures governing resolution of disputed or unliquidated claims contained in Article VII of the Plan shall be, and hereby are, approved in their entirety. As set forth therein, all Claims held by Persons or Entities against whom or which the Debtor has commenced a proceeding asserting a Cause of Action under sections 542, 543, 544, 545, 547, 548, 549, or 550 of the Bankruptcy Code or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 548, 549 or 724(a) of the Bankruptcy Code shall be deemed Disputed Claims pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims shall not be entitled to vote to accept or reject the Plan. A Claim deemed Disputed pursuant to Article VII.H of the Plan shall continue to be Disputed for all purposes until the relevant proceeding against the Holder of such Claim has been settled or resolved by a Final Order and any sums due to the Debtors or the Liquidating Trustee from such Holder have been paid.

131. Prepetition Term Loan Claims will remain Disputed until the Bankruptcy Court determines the Aggregate Allowed Prepetition Term Loan Claims Amount.

132. Except as provided in the Plan, on or after the Effective Date, without the prior authorization of the Bankruptcy Court, the Plan Administrator, or the Liquidating Trustee, as applicable, a Claim may not be Filed or amended, and any such new or amended Claim Filed shall be deemed disallowed in full and expunged without any further notice to or action, order, or approval of the Bankruptcy Court.

133. If an objection to a Claim, Proof of Claim, or portion thereof is Filed, no payment or distribution provided under the Plan shall be made on account of such Claim, Proof of Claim, or portion thereof unless and until the Disputed Claim becomes an Allowed Claim.

134. To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. Within ten (10) days after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Disbursing Agent shall provide to the Holder of such Claim the distribution to which such Holder is entitled under the Plan, unless otherwise provided by order of the Bankruptcy Court. No interest shall accrue or be paid on any Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Claim unless the Plan provides otherwise. The Aggregate Allowed Prepetition Term Loan Claims Amount shall include any interest accrued, as applicable per the Bankruptcy Court's determination, with respect to the period from the Effective Date to the date a final distribution is made on account of such Claim.

135. **Claims Register.** Any Claim that has been paid or satisfied, or any Claim that has been amended or superseded, may be adjusted or expunged on the official Claims Register in these

Chapter 11 Cases by the Debtors, or the Liquidating Trustee, as applicable, without an objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court. The Debtors' Notice and Claims Agent, is directed to adjust or expunge such Claims in the Claims Register, as applicable.

136. **Waiver or Estoppel.** Each Holder of a Claim or Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, as an Other Secured Claim, or not subordinated, by virtue of an agreement made with the Debtors or their counsel (or any other Entity), if such agreement was not disclosed in the Plan, the Sale Orders, the Plan Supplement, the Disclosure Statement, or other papers filed with the Bankruptcy Court or evidenced by a written instrument acknowledged by the Debtors or their counsel before the Confirmation Date.

137. **Debtor Releases, Third Party Release, Exculpations, Injunction, and Related Provisions under the Plan.** The discharge, releases, injunctions, exculpations, and related provisions set forth in Article IX of the Plan are incorporated herein in their entirety, are hereby approved and authorized in all respects, are so ordered, and shall be immediately effective on the Effective Date without further order or action on the part of this Bankruptcy Court or any other party.

138. **Debtor Releases.** Notwithstanding anything contained in the Plan to the contrary, pursuant to section 1123(b) of the Bankruptcy Code, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, effective on the Effective Date, each Released Party is hereby deemed to be hereby released and discharged by the Debtors and their Estates, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other entities who may purport to

assert any causes of action, directly or derivatively, by, through, for, or because of the foregoing Entities on behalf of the Debtors, from any and all derivative Claims and Causes of Action asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtors or their Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, a Debtor or other Entity, or that any Holder of any Claim against, or Interest in, a Debtor or other Entity could have asserted on behalf of the Debtors, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the capital structure, management, ownership, or operation thereof), the assertion or enforcement of rights and remedies against the Debtors, the Debtors' in- or out-of-court restructuring efforts, any Avoidance Actions (but excluding Avoidance Actions brought as counterclaims or defenses to Claims asserted against the Debtors), intercompany transactions, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Disclosure Statement, the Plan (including, for the avoidance of doubt, the Plan Supplement), Sale Transactions, or any aspect of the Liquidation Transactions, including any contract, instrument, release, or other agreement or document (including any legal opinion requested by any Entity regarding any transaction, contract, instrument, document or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or this Confirmation Order in lieu of such legal opinion) relating to any of the foregoing, created or entered into in connection with the Disclosure Statement, the Plan, the Plan Supplement, and the Sale Transactions, before or during the Chapter 11 Cases, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the



administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Effective Date, except for claims related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence of such Person. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Effective Date obligations of any party or Entity under the Plan, this Confirmation Order, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or any Claim or obligation arising under the Plan. Notwithstanding anything to the contrary in the foregoing, the releases under this section only release Claims held by the Debtors or Claims that could be asserted by the Debtors under applicable law.

139. **Third Party Release.** Except as otherwise expressly set forth in the Plan or this Confirmation Order, on and after the Effective Date, and with respect to all other Releasing Parties, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is, and is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably and forever, released by each Releasing Party from any and all Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise, including any derivative claims asserted on behalf of the Debtors, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the capital

structure, management, ownership, or operation thereof), the Debtors' in- or out-of-court restructuring efforts, any Avoidance Actions (but excluding Avoidance Actions brought as counterclaims or defenses to Claims asserted against the Debtors), intercompany transactions, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Disclosure Statement, the Plan (including, for the avoidance of doubt, the Plan Supplement), the Sale Transactions, or any aspect of the Liquidation Transactions, including any contract, instrument, release, or other agreement or document (including any legal opinion requested by any Entity regarding any transaction, contract, instrument, document or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or this Confirmation Order in lieu of such legal opinion) relating to any of the foregoing, created or entered into in connection with the Disclosure Statement, the Plan, the Plan Supplement, the Sale Transactions, before or during the Chapter 11 Cases, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release or act to modify (1) any post Effective Date obligations of any party or Entity under the Plan, (2) this Confirmation Order, or (3) any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or any Claim or obligation arising under the Plan.

140. **Exculpations.** Except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is hereby exculpated from any Cause of Action for any claim related to any act or omission taking place between the Petition Date and the Effective Date in connection with, relating to, or arising out of, the Chapter 11 Cases, the Disclosure Statement, the Plan, the Sale Transactions, or any aspect of the Liquidation Transaction, including any contract, instrument, release or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or this Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Disclosure Statement or the Plan, the Sale Transactions, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the administration and implementation of the Plan, or the distribution of property under the Plan or any other related agreement, except for claims related to any act or omission that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan.

141. **Injunction.** Except as otherwise provided in the Plan or this Confirmation Order, all Entities who have held, hold, or may hold Claims, Interests, Causes of Action, or liabilities that: (1) are subject to compromise and settlement pursuant to the terms of the Plan; (2) have been released pursuant to the Plan; (3) were purchased and released by a Purchaser in connection with the Sale Transactions; (4) are subject to exculpation pursuant to the Plan; or (5) are otherwise discharged, satisfied, stayed, released, or terminated

pursuant to the terms of the Plan, are permanently enjoined and precluded, from and after the Effective Date, from commencing or continuing in any manner, any action or other proceeding, including on account of any Claims, Interests, Causes of Action, or liabilities that have been compromised or settled against any of the Debtors or any Entity so released or exculpated (or the property or estate of any Entity, directly or indirectly, so released or exculpated) on account of, or in connection with or with respect to, any discharged, released, settled, compromised, or exculpated Claims, Interests, Causes of Action, or liabilities, including being permanently enjoined and precluded, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Plan Administrator, the Liquidating Trustee, the Released Parties, or Exculpated Parties (as applicable): (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (3) creating, perfecting, or enforcing any lien or encumbrance of any kind against such Entities or the property or the estate of such Entities on account of or in connection with or with respect to any such Claims or Interests; (4) asserting any right of setoff or subrogation of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such Entity has timely asserted such setoff right in a document filed with the Bankruptcy Court explicitly preserving such setoff, and notwithstanding an indication of a Claim or Interest or otherwise that such Entity asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and

**(5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims or Interests released or settled pursuant to the Plan.**

142. **Upon the Bankruptcy Court's entry of this Confirmation Order, all Holders of Claims and Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan by the Debtors, the Plan Administrator, the Liquidating Trustee, and their respective affiliates, employees, advisors, officers and directors, or agents.**

143. **Article IX.D shall not operate as a discharge under section 1141(d)(3) of the Bankruptcy Code.**

144. **Gatekeeper Provision.** No party may commence, continue, amend, or otherwise pursue, join in, or otherwise support any other party commencing, continuing, amending, or pursuing, a Cause of Action of any kind against the Debtors or the Plan Administrator, the Liquidating Trustee, the Exculpated Parties, or the Released Parties that relates to, or is reasonably likely to relate to any act or omission in connection with, relating to, or arising out of, a Cause of Action subject to Article IX.A, Article IX.B, and Article IX.C without first (a) requesting a determination from the Bankruptcy Court, after notice and a hearing, that such Cause of Action represents a colorable claim against a Debtor or the Plan Administrator, Liquidating Trustee, Exculpated Party, or Released Party and is not a Claim that the Debtors released under the Plan, which request must attach the complaint or petition proposed to be filed by the requesting party and (b) obtaining from the Bankruptcy Court specific authorization for such party to bring such Cause of Action against any such Debtor or Plan Administrator, Liquidating Trustee, Exculpated

Party, or Released Party. For the avoidance of doubt, any party that obtains such determination and authorization and subsequently wishes to amend the authorized complaint or petition to add any Causes of Action not explicitly included in the authorized complaint or petition must obtain authorization from the Bankruptcy Court before filing any such amendment in the court where such complaint or petition is pending. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a Cause of Action is colorable and, only to the extent legally permissible, will have jurisdiction to adjudicate the underlying colorable Cause of Action.

145. **Release of Liens.** Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date in accordance with the terms of the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estate shall be fully released and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Debtors and their successors and assigns.

146. If any Holder of an Other Secured Claim or any agent for such Holder has filed or recorded publicly any Liens and/or security interests to secure such Holder's Other Secured Claim, as soon as practicable on or after the date such Holder has been satisfied in full pursuant to the Plan, such Holder (or the agent for such Holder) shall take any and all steps requested by the Liquidating Trustee that are necessary or desirable to record or effectuate the cancellation and/or extinguishment of such Liens and/or security interests, including the making of any applicable filings or recordings, and the Liquidating Trustee shall be entitled to make any such filings or

recordings on such Holder's behalf. The presentation or filing of this Confirmation Order to or with any federal, state, provincial, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

147. All parties' rights, defenses, and Causes of Action related to the Prepetition Term Loan Claims shall be reserved pending the Bankruptcy Court's determination of the Aggregate Allowed Prepetition Term Loan Claims Amount.

148. **Term of Injunctions or Stays.** Except as otherwise provided in the Plan or this Confirmation Order, to the maximum extent permitted by applicable law and subject to the Bankruptcy Court's post-confirmation jurisdiction to modify the injunctions and stays under the Plan: (a) all injunctions with respect to or stays against an action against property of the Debtors or the Debtors' Estates arising under or entered during these Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code, and in existence on the date this Confirmation Order is entered, shall remain in full force and effect until such property is no longer property of the Debtors or the Debtors' Estates; and (b) all other injunctions and stays arising under or entered during these Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code shall remain in full force and effect until the earliest of (i) the date that these Chapter 11 Cases are closed pursuant to a Final Order of the Bankruptcy Court, or (ii) the date that these Chapter 11 Cases are dismissed pursuant to a Final Order of the Bankruptcy Court. All injunctions or stays contained in the Plan or this Confirmation Order shall remain in full force and effect indefinitely.

149. **Nonseverability of Plan Provisions.** Each term and provision of the Plan is: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted or modified without the consent of the Debtors or the Liquidating Trustee (as applicable); and (c) non-severable and mutually dependent.

150. **Notice of Subsequent Pleadings.** Except as otherwise provided in the Plan or in this Confirmation Order, notice of all subsequent pleadings in these Chapter 11 Cases after the Effective Date is required to be served upon only the following parties: (a) the U.S. Trustee; (b) the Prepetition Term Loan Agent; (c) any party known to be directly affected by the relief sought by such pleadings; and (d) any party that specifically requests additional notice after the Effective Date in writing to the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, or files a request for notice under Bankruptcy Rule 2002 after the Effective Date. The Debtors' Notice and Claims Agent shall not be required to file updated service lists.

151. **Post-Confirmation Reports.** After entry of the Confirmation Order, 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.

152. **Post-Confirmation Modifications.** Following the entry of this Confirmation Order, the Debtors or the Plan Administrator may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

153. **Governing Law.** Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Texas, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents,



instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control), and corporate governance matters.

154. **Applicable Non-Bankruptcy Law.** The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law or any requirements related thereto.

155. **Government Approvals Not Required.** This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state, federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

156. **Reporting.** After entry of this Confirmation Order, the Debtors, or the Plan Administrator, as applicable, shall have no obligation to file with the Bankruptcy Court, serve on any parties, or otherwise provide any party with any other report that the Debtors were obligated to provide under the Bankruptcy Code or an order of the Bankruptcy Court, including obligations to provide (a) any reports to any parties otherwise required under the “first” and “second” day orders entered in these Chapter 11 Cases and (b) monthly operating reports (even for those periods for which a monthly operating report was not filed before the Effective Date); *provided* that the Debtors or Plan Administrator, as applicable, will comply with the U.S. Trustee’s quarterly reporting requirements.

157. **Notice of Effective Date.** The Debtors or the Plan Administrator, as applicable, shall serve notice of entry of this Confirmation Order, of the occurrence of the Effective Date, and of applicable deadlines (the “Notice of Effective Date”) in accordance with Bankruptcy Rules 2002 and 3020(c) on all parties served with notice of the Combined Hearing within seven (7) Business Days after the Effective Date; *provided* that no notice of any kind shall be required to be mailed or made upon any Entity to whom the Debtors mailed notice of the Combined Hearing, but received such notice returned marked “undeliverable as addressed,” “moved, left no forwarding address,” or “forwarding order expired,” or similar reason, unless the Debtors have been informed in writing by such Entity, or are otherwise aware, of that Entity’s new address. For those parties receiving electronic service, filing on the docket is deemed sufficient to satisfy such service and notice requirements.

158. The Notice of Effective Date will have the effect of an order of the Bankruptcy Court, will constitute sufficient notice of the entry of this Confirmation Order to filing and recording officers, and will be a recordable instrument notwithstanding any contrary provision of applicable non-bankruptcy law. The above-referenced notices are adequate under the particular circumstances of these Chapter 11 Cases and no other or further notice is necessary.

159. **Substantial Consummation.** On the Effective Date, the Plan shall be deemed to be substantially consummated (within the meaning set forth in section 1101 of the Bankruptcy Code) pursuant to section 1127(b) of the Bankruptcy Code.

160. **Dissolution of the Committees.** On the Effective Date, any duly appointed Statutory Committee will dissolve and the members thereof will be released and discharged from all duties and obligations arising from or related to these Chapter 11 Cases.

161. **Effect of Conflict.** This Confirmation Order supersedes any Bankruptcy Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control.

162. **Provisions Regarding Releases.** Nothing set forth in the Plan, including, without limitation, Article IX.A or Article IX.B of the Plan, shall be construed as or deemed to constitute a release of any obligations of the Debtors or any Released Parties under any Sale Order, including any Asset Purchase Agreement or ancillary document related thereto, regardless of when such obligations arise.

163. **Provisions Regarding Texas Comptroller.** Notwithstanding anything in the Plan or this Confirmation Order, the following provisions will govern the treatment of the Claims of the Texas Comptroller of Public Accounts (the “Texas Comptroller”): (1) the Plan shall not release or discharge any entity other than the Debtors, the Wind-Down Debtors, the Plan Administrator, the Liquidating Trust, or the Liquidating Trustee, as applicable, from any liability owed to the Texas Comptroller for a tax debt, including interest and penalties on such tax, and this provision is not an admission by any party that such liability exists; (2) the Plan shall not limit the Texas Comptroller’s setoff rights under 11 U.S.C. § 553, if any, and this provision is not an admission by any party that such setoff rights exist; and (3) in the event payment on account of the Texas Comptroller’s Claims is not made as set forth in the Plan, the Texas Comptroller reserves its rights under bankruptcy and state law.

164. **Governmental Entities.** Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or any state and local authority whatsoever, including without limitation any claim arising under the Internal

Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in this Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in this Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person.

165. **Final Order.** For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by this Bankruptcy Court. This Confirmation Order is a Final Order and shall be effective and enforceable immediately upon entry, and its provisions shall be self-executing.

166. **Retention of Jurisdiction.** The Bankruptcy Court may properly, and upon the Effective Date shall, to the full extent set forth in the Plan, retain jurisdiction over all matters arising out of, and related to, these Chapter 11 Cases, including the matters set forth in Article X of the Plan and section 1142 of the Bankruptcy Code.

**### END OF ORDER ###**

Submitted By:

**SIDLEY AUSTIN LLP**

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*Attorneys for the Debtors and Debtors in Possession*

**Exhibit C**

**Compensation of the Plan Administrator**

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

The Plan Administrator, together with any other professionals it may retain in the discharge of its duties pursuant to this Agreement, shall be compensated by one lump sum payment of \$685,832.00 on the Effective Date or as soon as reasonably practicable thereafter.

**Exhibit F-1**

**Redline to Previously Filed Plan Administrator Agreement**

## PLAN ADMINISTRATOR AGREEMENT

THIS PLAN ADMINISTRATOR AGREEMENT (the “Agreement”) is entered into this ~~27th~~ day of ~~August~~September, 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~~Broadbent Advisors LLC, a Delaware LLC, in its 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~~September 5, 2024, the Debtors filed the ~~Second~~Fifth 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~~635-1] (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 ~~27th~~September 5, 2024, the Bankruptcy Court entered an order confirming the Plan [Docket No. ~~639~~] (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. ~~[●]~~ Gary Broadbent 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, the Lonafarnib APA, and the Lambda APA, 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.

(d) The Plan Administrator shall not bear any risk associated with any bills of the Debtors. The Estates will provide the funds necessary to pay any such bills, and the management of such payment will be handled by the Plan Administrator.

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:**

~~[-]~~[Gary Broadbent](#)  
~~[-]~~[\[Address-1\]](#)

~~[-]~~[\[Address-2\]](#)

[Broadbent Advisors LLC](#)  
[Corporation Trust Center](#)  
[1209 Orange St.](#)  
[Wilmington, DE 19801](#)  
Email: ~~[-]~~[gary.broadbent@broadbentadvisors.com](mailto:gary.broadbent@broadbentadvisors.com)

With a copy to:

Sidley Austin LLP  
787 Seventh Avenue  
New York, NY 10019  
Attn: Thomas R. Califano, William E. Curtin, Anne G. Wallice  
Email: tom.califano@sidley.com; wcurtin@sidley.com; anne.wallice@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: [Gary Broadbent](#)

Title: [Plan Administrator](#)

**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:*~~

The Plan Administrator, together with any other professionals it may retain in the discharge of its duties pursuant to this Agreement, shall be compensated by one lump sum payment of \$685,832.00 on the Effective Date or as soon as reasonably practicable thereafter.

~~1. [●].~~

~~*Incentive Fees:*~~

~~1. [●].~~

<b>Summary report:</b>	
<b>Litera Compare for Word 11.7.0.54 Document comparison done on 9/27/2024 10:02:49 AM</b>	
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<b>Intelligent Table Comparison:</b> Active	
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<del>Move From</del>	0
Move To	0
Table Insert	0
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Table moves to	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>44</b>

**Exhibit G**

**Revised Identity of Any Insider to Be Employed by the Plan Administrator**

There are no insiders 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.

**Exhibit G**

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

~~{•} is an insider~~There are no insiders 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.

<b>Summary report:</b>	
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Embedded Graphics (Visio, ChemDraw, Images etc.)	0
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Format changes	0
<b>Total Changes:</b>	<b>5</b>