IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
Achaogen, Inc.,	)	Case No. 19-10844 (BLS)
Debtor.[1]	)	**Related to Docket No. 656**

NOTICE OF PLAN SUPPLEMENT FOR THE FIRST AMENDED CHAPTER 11 PLAN OF LIQUIDATION JOINTLY PROPOSED BY ACHAOGEN, INC. AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF ACHAOGEN, INC.

PLEASE TAKE NOTICE THAT Achaogen, Inc., the debtor and debtor-in-possession in the above-captioned chapter 11 case and the Official Committee of Unsecured Creditors of Achaogen, Inc. (collectively, the "Plan Proponents"), submit this plan supplement (the "Plan Supplement") in support of confirmation of the *First Amended Chapter 11 Plan of Liquidation* [Docket No. 656] (as may be modified or amended from time to time, the "Plan"), filed in this chapter 11 case on April 22, 2020. Capitalized terms used but not defined herein have the meanings set forth in the Plan.

PLEASE TAKE FURTHER NOTICE THAT the Plan Supplement contains the following documents, each as may be amended, modified, or supplement from time to time by the Plan Proponents in accordance with the Plan as set forth below:

Exhibit	Plan Supplement Document
A	Plan Trust Agreement
B	Assumption Schedule
C	Identified Causes of Action

[1] The last four digits of the Debtor's federal tax identification number are 3693. The Debtor's mailing address for purposes of this Chapter 11 Case is 548 Market Street, #70987, San Francisco, CA 94104-5401.

Certain documents, or portions thereof, contained in the Plan Supplement remain subject to continuing negotiations among the Plan Proponents and interested parties with respect thereto. The Plan Proponents reserve all rights with respect to the Plan Supplement and the documents contained therein which are subject to continuing negotiations. The Plan Proponents and the Plan Trustee reserve all rights to amend, modify, or supplement the Plan Supplement and any of the documents contained therein, subject to the terms of the Plan. To the extent material amendments or modifications are made to any of the Plan Supplement documents prior to the Confirmation Hearing, the Plan Proponents will file a blackline with the Bankruptcy Court prior to the Confirmation Hearing marked to reflect same.

PLEASE TAKE FURTHER NOTICE that the documents contained in the Plan Supplement are integral to, part of, and incorporated by reference into the Plan. These documents have not yet been approved by the Bankruptcy Court. If the Plan is approved, the documents contained in the Plan Supplement will be approved by the Bankruptcy Court pursuant to the Confirmation Order.

PLEASE TAKE FURTHER NOTICE that the hearing to consider confirmation of the Plan is currently scheduled for **Thursday, May 28, 2020, at 10:00 a.m. (prevailing Eastern Time)**, before the Honorable Brendan L. Shannon, United States Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE that any party wishing to obtain copies of the Plan, the Plan Supplement documents referred to on the attached list, or the Disclosure Statement related to the Plan may download copies from the Debtor's Notice and Claims Agent, Kurtzman Carson Consultants LLC at https://www.kccllc.net/achaogen.

Dated: May 14, 2020
Wilmington, Delaware

/s/ Paige N. Topper

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EXHIBIT A

Plan Trust Agreement

Draft/Subject to Further Review & Modification

PLAN TRUST AGREEMENT

This Plan Trust Agreement (as it may be amended, modified, supplemented or restated from time to time, this "Agreement") dated as of May ___, 2020, is made and entered into by and between Achaogen, Inc. (the "Settlor" or "Debtor"), and Edward E. Neiger (together with any successor trustee under the terms of this Agreement, the "Trustee" or the "Plan Trustee"), solely in his capacity as plan trustee for purposes of this Agreement, for the benefit of the Beneficiaries (as defined below) under the terms of the *First Amended Chapter 11 Plan of Liquidation Jointly Proposed by Achaogen, Inc. and the Official Committee of Unsecured Creditors of Achaogen, Inc.* (as may be amended, modified, supplemented or restated from time to time, the "Plan").

RECITALS

WHEREAS, on April 15, 2019, the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United State Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Court");

WHEREAS, on April 22, 2020, the Debtor filed the Plan with the Court [Docket No. 656];

WHEREAS, on May __, 2020, the Court entered the Confirmation Order (as defined below);

WHEREAS, the Plan contemplates, among other things, on the Effective Date (as defined in the Plan), (i) the creation of a plan trust (the "Trust" or the "Plan Trust") and (b) the vesting of the Plan Trust Assets (as defined below) in the Plan Trust;

WHEREAS, pursuant to the Plan, the Trust shall be established to, among other things, (i) administer the Plan Trust Assets for the sole benefit the Beneficiaries in accordance with the terms of the Governing Documents (as defined herein); (ii) pursue the Causes of Action (as defined below); (iii) resolve all Disputed Claims; (d) make all Distributions to the Holders of Allowed Claims as provided for and pursuant to the Plan, 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 purpose of the Trust and the Plan;

WHEREAS, the Trustee has agreed to serve as such upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, the Debtor shall not have any control over the Trust or the Plan Trust Assets;

WHEREAS, the Trust is intended to qualify as a liquidating trust within the meaning of United States Treasury Regulation (hereinafter "Treasury Regulation") Section 301.7701-4(d) and to be exempt from the requirements of the Investment Company Action of 1940;

WHEREAS, pursuant to the Plan, the Settlor, the Trustee and the Beneficiaries are required to treat, for all federal income tax purposes, the transfer of the Plan Trust Assets to the Trust as a transfer of the Plan Trust Assets by the Settlor to the Beneficiaries in satisfaction of their Allowed General Unsecured Claims, followed by a transfer of the Plan Trust Assets by the Beneficiaries to the Trust in exchange for the beneficial interest therein, and to treat the Beneficiaries as the grantors and owners of the Trust in accordance with Treasury Regulation § 301.7701-4;

WHEREAS, the Trust is intended to be treated as a grantor trust for federal income tax purposes pursuant to I.R.C. Section 671, *et seq*., with the Beneficiaries treated as the grantors of the Trust; and

WHEREAS, the Bankruptcy Court shall have jurisdiction over the Trust, the Trustee, and the Plan Trust Assets as provided herein and in the Plan.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein and in the Plan, the Settlor and the Trustee agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATIONS

1.1. Definitions. The following definitions apply to the capitalized terms wherever those terms appear throughout the Agreement. Any capitalized term defined in the prefatory paragraph, the recitals, this Section or any Section below shall have the meaning ascribed to such term therein. Any capitalized term not otherwise defined in the Agreement shall have the meaning set forth in the Plan.

1.1.1. "Beneficiaries" shall mean, collectively, the DIP Beneficiary and the GUC Beneficiaries.

1.1.2. "Committee Representative" means Solar Capital, Ltd., acting solely in its capacity as a member of the Official Committee of Unsecured Creditors, or such other successor representative, if any.

1.1.3. "Confirmation Order" shall mean the order entered by the Court on May ___, 2020 confirming the Plan pursuant to section 1129 of the Bankruptcy Code [Docket No. ___].

1.1.4. "DIP Beneficiary" means Silicon Valley Bank and its successors and assigns.

1.1.5. "Existing Monetized Plan Trust Assets" means the monetary assets held in the Debtor's accounts as of the Effective Date.

1.1.6. "Governing Documents" means the Confirmation Order, the Plan, the Proceeds Stipulation, the Committee Settlement, and this Agreement.

1.1.7. "GUC Beneficiaries" means the Holders of Allowed General Unsecured Claims under the Plan, or any successors to such Holders' applicable Claims or interests in the Trust.

1.1.8. "Permitted Investments" shall include (i) short-term direct obligations of, or obligations guaranteed by, the United States of America, (ii) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof, (iii) such other investments as the Court may approve from time to time or (iv) demand deposits or certificates of deposit at any bank or trust company that has, at the time of the deposit, a capital stock and surplus aggregating at least $1,000,000,000. The Trustee may take action reasonably necessary to maintain the value of the Plan Trust Assets; provided, however, that the scope of any Permitted Investments shall be limited to include only those investments that a Plan Trust, within the meaning of Treas. Reg. § 301.7701-4(d), may be permitted to hold, pursuant to Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise.

1.1.9. "Plan Trust" shall have the meaning ascribed to such term in the recitals.

1.1.10. "Plan Trustee" shall have the meaning ascribed to such term in the prefatory paragraph.

1.1.11. "Plan Trust Assets" shall mean collectively and to the extent not otherwise paid or distributed in accordance with the Governing Documents prior to the Effective Date, the Wind Down Reserve, the GUC Reserve, the Additional Future Proceeds (as defined in the Proceeds Stipulation), the Future Cash Proceeds, all Estate Assets as of the Effective Date, including Cash on hand of the Debtor, all Causes of Action, including Third Party Claims, and all other Estate Assets, together with all Proceeds of the liquidation of the Plan Trust Assets from any source.

1.1.12. "Plan Trust Expenses" shall mean, all reasonable and documented fees, expenses, and costs incurred by the Plan Trustee, in connection with carrying out the obligations of the Plan Trust, including the maintenance or disposition of the Plan Trust Assets (including Plan Trustee fees, indemnity reserves, attorneys' fees, the fees of other professionals, and other Persons retained by the Plan Trustee, personnel-related expenses, and any taxes imposed on the Plan Trust or in respect of the Plan Trust Assets), and any other expenses incurred in accordance with this Agreement; provided, that the amount of the Plan Trust Expenses shall not exceed the Trust Budget. For the avoidance of doubt, any costs and expenses incurred post-Effective Date relating to the administration of the Trust or other Trustee obligations hereunder shall be paid solely from the Trust Budget and as further set out in this Agreement, including Section 6.7 hereof.

1.1.13. "Plan Trust Indemnified Parties" means, collectively (i) the Plan Trustee, (ii) the Committee Representative, and (iii) the directors, members, shareholders, partners, officers, agents, professionals, or employees of the foregoing.

1.1.14. "Professional Fee Claim Escrow" means a segregated account, consisting of $805,914.00, which is the remainder of the Supplemental Carve-Out (as defined in the Proceeds Stipulation), funded by the Debtor or by the Plan Trustee, on the Effective Date, or as soon thereafter as possible, and maintained by the Plan Trustee to pay unpaid Allowed Professional Fee Claims in accordance with the Committee Settlement and Proceeds Stipulation.

1.1.15. "Royalty Payments" means that certain contingent consideration received by the Debtor pursuant to that sale of the Debtor's global right to ZEMDRI (Plazomicin) to Cipla USA Inc.

1.1.16. "Trust" shall have the meaning ascribed to such term in the recitals.

1.1.17. "Trust Budget" shall have the meaning ascribed to such term in Section 2.5 of the Agreement.

1.1.18. "Trustee" shall have the meaning ascribed to such term in the prefatory paragraph.

1.2 Interpretation. The headings in the Agreement are for convenience only and shall not affect the meaning or understanding of the Agreement or any provision hereof. Words defined, denoted or stated in the singular form also include the plural form and vice versa, and words defined, denoted or stated in the masculine, feminine or neuter form include each of the masculine, feminine and neuter forms. The word "including" means "including but not limited to." The word "or" is not exclusive.

1.3 Particular Words. Reference in the Agreement to any Section or Article is, unless otherwise specified, to that such Section or Article under the Agreement. The words "hereof," "herein," "hereto" and similar terms shall refer to the Agreement and not to any particular Section or Article of the Agreement.

ARTICLE II

DECLARATION OF TRUST

2.1 Creation and Name. There is hereby created the Trust, which shall be known as the "Achaogen Plan Trust," and is the Trust referred to as the "Plan Trust" in the Plan. The Trust is created for the benefit of the Beneficiaries. The Trustee may conduct the affairs of the Trust under the name of the "Achaogen Plan Trust." The Trust shall have a separate existence from the Debtor. This Agreement shall become effective on the Effective Date and upon the execution of the Agreement by all parties hereto.

2.2 Standing of the Trust. The Trust shall have independent standing to appear and be heard in the Court as to any matter relating to the Plan, this Agreement or the Estate, including any matter as to which the Court has retained jurisdiction pursuant to Article XI of the Plan.

2.3 Purpose of Trust. The Plan Trust shall be established pursuant to the Governing Documents for the purpose of pursuing, liquidating and/or administering (or abandoning, as the case may be) the Plan Trust Assets, winding down the remaining affairs of the Debtor and taking actions on behalf of, and representing, the Trust as set forth in the Governing Documents, including dissolving the Debtor, reconciling and objecting to Claims, prosecuting Causes of Action, including Third Party Claims and making Distributions to holders of Allowed Claims, including Allowed Professional Fee Claims. The Trust is intended to qualify as a liquidating trust in accordance with Treasury Regulation section 301.7701-4(d), and the sole purpose of the Trust shall be to liquidate and distribute the Plan Trust Assets. The Trustee understands and agrees that the Trust has 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 as set forth in the Plan.

2.4 Creation and Governance of the Plan Trust. On the Effective Date, the Debtor and the Plan Trustee shall execute this Agreement and shall take all steps necessary to establish the Plan Trust in accordance with the Governing Documents and the beneficial interests therein, which shall be for the benefit of the Beneficiaries. The Plan Trustee shall be the exclusive trustee of the Plan Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to Bankruptcy Code section 1123(b)(3) regarding all Plan Trust Assets. The Plan Trust shall be governed in accordance with the Governing Documents and administered by the Plan Trustee. After the Effective Date, the Debtor shall have no interest in the Plan Trust Assets or the Plan Trust.

2.5 Transfer of Assets/Trust Budget.

(a) As of the Effective Date, the Debtor, in its capacity as a debtor-in-possession on behalf of the Estate, has irrevocably granted, conveyed, transferred, assigned, and delivered to the Trust, without recourse, (x) all of its rights, powers, title, and interests in and to the Plan Trust Assets, including all rights under any asset purchase agreement, free and clear of any and all liens, claims, encumbrances and interests (legal, beneficial or otherwise) of all other Persons and Entities, and (y) without waiver, the evidentiary privileges attributable to the Debtor or any fiduciary of the Debtor's estate, including the attorney-client privilege, work-product privilege or other privilege or immunity attaching to any documents or communications (whether written or oral) associated with the Plan Trust Assets. Notwithstanding the foregoing, the transfer of the Plan Trust Assets to the Plan Trust (i) shall not affect the mutuality of obligations that otherwise may have existed prior to the effectuation of such transfer for the purposes of section 553 of the Bankruptcy Code, and (ii) shall be exempt from any stamp, real estate transfer, other transfer, mortgage reporting, sales, use, or other similar tax.

(b) On the Effective Date, in accordance with the Trust Waterfall, the Debtor and/or Trustee (as applicable) shall allocate $421,250.00 of the Plan Trust Assets to (i) fund the wind

down of the Debtor's chapter 11 case, including, without limitation, the payment of Allowed Administrative and Priority Claims as set forth in the Plan and (ii) fund the Plan Trust Expenses, in each case, subject to the budget attached hereto as **Exhibit A** (the "Trust Budget"); provided, that the Trustee shall be entitled to reallocate funds within the Trust Budget (other than the GUC Reconciliation Costs (as defined in the Trust Budget)) with the consent of the DIP Beneficiary and the Committee Representative.[1] The Trustee shall employ best efforts to appropriately allocate and records its fees and expenses (and those of its professionals) to ensure that all fees and expenses are incurred in accordance with the Trust Budget (including with respect to the GUC Reconciliation Costs). For the avoidance of doubt, Allowed Professional Fee Claims shall be satisfied in accordance with the Proceeds Stipulation and the Trust Waterfall.

2.6 Transfer Taxes. Any transfer of the Plan Trust Assets or any portion(s) of the Plan Trust Assets pursuant to the Plan shall constitute a "transfer under a plan" within the purview of section 1146(a) of the Bankruptcy Code and shall not be subject to transfer, stamp or similar Taxes.

2.7 Title to Assets. From and after the Effective Date, legal title to the Plan Trust Assets shall automatically be vested at all times in the Trust as a separate legal entity except where applicable law in any jurisdiction in which the Trust property may be located requires title to any part of the Plan Trust Assets to be vested in a trustee, in which case title shall be deemed vested in the Trustee. No Beneficiary shall have legal title to any part of the Plan Trust Assets.

2.8 Situs of the Trust. The Trust shall be located in the State of Delaware.

2.9 Securities Law. The parties hereto intend that the rights of the holders of the beneficial interests arising under this Agreement shall not be "securities" under applicable laws, but none of the parties hereto represents or warrants that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If such rights constitute securities, the parties hereto intend for the exemption from registration provided by section 1145 of the Bankruptcy Code and by other applicable law to apply to their issuance under the Plan.

2.10 Appointment and Acceptance of Trustee. The Trustee shall be deemed to be appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The appointment of the Trustee shall be approved in the Confirmation Order and such appointment shall be effective as of the Effective Date of the Plan. The Trustee agrees to accept and hold the Plan Trust assets in trust for the Beneficiaries subject to the terms and conditions set forth in the Governing Documents.

2.11 Status of Trustee. The Plan Trustee shall be deemed to be a judicial substitute for the Debtor as the party-in-interest in this Bankruptcy Case solely with respect to liquidating the Plan Trust Assets for the benefit of the Beneficiaries in accordance with this Agreement and, in

[1] In the event the portion of the Trust Budget allocated to GUC Reconciliation Costs is insufficient to fund such costs, under no circumstances shall such costs be funded from (a) any other portion of the Trust Budget, or (b) any Plan Trust Assets that otherwise would be distributed to the DIP Beneficiary under this Agreement.

solely that capacity, the Plan Trustee is appointed as the representative of the Estate and may exercise all power and authority that may be exercised by any officer, director or holder of an Interest in the Debtor with like effect as if authorized, exercised and taken by unanimous consent of such officers, directors or holders of Interests.

2.12 No Reversion to Debtor. The Plan Trust Assets will not be distributed to the Debtor.

ARTICLE III

ADMINISTRATION OF THE TRUST

3.1 Rights, Powers and Privileges. The Trustee shall be deemed the Estate's representative in accordance with section 1123(b)(3)(B) of the Bankruptcy Code and shall have all the rights and powers set forth herein and under the Plan and Confirmation Order, including without limitation, the powers of a trustee under sections 704 and 1106 of the Bankruptcy Code and Bankruptcy Rule 2004. In addition to the rights and powers of the Trustee in the Plan and the Confirmation Order, the Trustee shall have the power to take the actions granted in this Section 3.1 and any powers reasonably incidental thereto, which the Trustee reasonably determines to be necessary or appropriate to fulfill the purpose of the Trust, including but not limited to:

A. Pursuing, investigating, commencing, prosecuting, settling, assigning or otherwise compromising or abandoning for the benefit of the Trust any and all Claims, Causes of Action, including Third Party Claims, including, without limitation, taking any action with respect to appeals, counterclaims and defenses of or with respect to such Claims and Causes of Action;

B. Exercising all powers provided to the Trustee or the Trust under the Governing Documents, including, without limitation, the right to allow, object to or reconcile General Unsecured Claims asserted against the Debtor's Estate;

C. Liquidating, selling or abandoning the Plan Trust Assets or any portion thereof;

D. Executing any documents and taking any other actions related to, or in connection with, the liquidation of the Plan Trust Assets and the exercise of the Trustee's powers granted in the Governing Documents;

E. Entering into employment, indemnification and other agreements with individuals who may be required to assist the Plan Trustee after the Effective Date; provided, that such agreements, in addition to director and officer liability policies and other insurance policies, shall remain in place after the Effective Date until such time as the Plan Trustee shall determine to either terminate or amend such agreements;

F. Subject to the Proceeds Stipulation, retaining and employing professionals, disbursing agents, and other agents and third parties including, but not limited to, counsel, accountants, financial advisors, and paying their reasonable compensation, subject to the Trust Budget, without Bankruptcy Court approval in accordance with the terms of the Governing Documents;

G. Holding legal title to any and all rights of the Beneficiaries in, to or arising from the Plan Trust Assets;

H. Pursuing objections to, and estimations and settlements of Administrative Claims (other than Professional Fee Claims) and Claims in Class 2, Class 3, Class 4 and Equity or Other Interests in Class 5 and making disbursements on account of such Allowed Claims pursuant to the Plan;

I. Establishing the Distribution Reserve, as well as any other required reserves as may be necessary and appropriate for the proper operation of matters incident to the Trust;

J. Notwithstanding any provision in this Trust Agreement to the contrary, disbursing funds to pay Allowed Professional Fee Claims in accordance with the Governing Documents; provided, for the avoidance of doubt, the Trustee shall pay any consideration due to Cassel Salpeter & Co., LLC ("Cassel") on account of the Royalty Payments (if any) received by the Estate pursuant to the Plan and in accordance with the terms of their engagement letter (as modified by the order approving Cassel's retention) and the Proceeds Stipulation;

K. Investigating potential causes of action and any objections to claims, including causing the Trust to seek the examination of any person pursuant to Federal Rule of Bankruptcy Procedure 2004;

L. Protecting and enforcing the rights to the Plan Trust Assets vested in the Plan Trustee by the Agreement by any method reasonably determined to be appropriate, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

M. Making Distributions of the Plan Trust Assets to or on behalf of the Beneficiaries in accordance with Governing Documents;

N. Filing any and all tax returns with respect to the Trust and paying taxes properly payable by the Trust, if any;

O. Making all necessary filings in accordance with any applicable law, statute or regulation;

P. Causing the Trust to pay the Plan Trust Expenses, including all of the Trust's lawful expenses, debts, charges, taxes and other liabilities, and all other Plan Trust Expenses, solely from the Trust Budget;

Q. Determining and satisfying from Trust Budget any and all taxes and ordinary course liabilities, including reasonable professional fees and expenses, incurred by or on behalf of the Trust;

R. Investing the Plan Trust Assets in accordance with Section 3.6 of the Agreement;

S. In the event that the Plan Trustee determines that the Beneficiaries or the Trust may, will or have become subject to different tax consequences than those described in the Agreement, taking such actions that will, or are intended to, address such different tax consequences;

T. Creating sub-trusts or title vehicles of which the Trust or the Beneficiaries hold the beneficial or ownership interests, as applicable;

U. Sending such reports and tax forms to Beneficiaries as may be required under applicable law or regulation;

V. Opening and maintaining bank accounts on behalf of or in the name of the Trust;

W. Purchasing customary insurance coverage using funds from the Trust Budget on behalf of the Trust or the Plan Trustee, including but not limited to errors and omissions policies, to the extent the Plan Trustee deems necessary;

X. In reliance upon the official claims register maintained in the Chapter 11 Case and any applicable court order, maintaining on the Trustee's books and records a register evidencing the beneficial interest in the Trust held by each Beneficiary;

Y. Abandoning, in any commercially reasonable manner, any Plan Trust Assets that, in the Plan Trustee's reasonable judgment, cannot be sold in a commercially reasonable manner or that the Plan Trustee believes in good faith have inconsequential value; and

Z. Performing such functions and taking such actions as are provided for or permitted in Governing Documents;

provided, that the Plan Trustee shall not, without the prior written consent of the DIP Beneficiary and the Committee Representative (which shall not be unreasonably withheld), sell, liquidate, monetize, or settle, as applicable, any (i) Plan Trust Assets, in one or more related transactions, with an aggregate value in excess of $[100,000.00], (ii) litigation against Cipla USA Inc. or any of its subsidiaries or affiliates ("Cipla"), (iii) right to receive royalty payments on account of or

relating to the sale of certain of the Debtor's assets to Cipla, or (iv) any Identified Causes of Action.

3.2 Plan Trust Interests. On the Effective Date, each Beneficiary shall, by operation of the Plan, be deemed to have received an uncertificated interest in the Plan Trust (the "Plan Trust Interests") that shall entitle the holder thereof to receive distributions from the Plan Trust in accordance with the Governing Documents. Plan Trust Interests shall be reserved for Holders of Disputed General Unsecured Claims and issued by the Trust to, and held by the Trustee in, the Distribution Reserve pending allowance or disallowance of such Claims. No other Entity shall have any interest, legal, beneficial or otherwise, in the Plan Trust Assets upon the assignment and transfer of such assets to the Trust.

The Plan Trust Interests shall be uncertificated and shall be nontransferable except upon death of the Holder or by operation of law. Holders of Plan Trust Interests, in such capacity, shall have no voting rights or any authority over the activities of the Trust. The Trust shall have a term of five (5) years from the Effective Date, provided, however, that, the Plan Trustee shall be entitled to extend the terms of the Trust as further set forth in section 10.3 of this Agreement.

3.3 Agents and Professionals. The Plan Trustee, on behalf of the Plan Trust, may employ, without further order of the Bankruptcy Court, professionals (including those previously retained by the Committee) to assist in carrying out its duties hereunder and under this Agreement and may compensate and reimburse the reasonable expenses of these professionals without further order of the Bankruptcy Court from the Trust Budget in accordance with the Governing Documents at the rates agreed upon by and between the Plan Trustee and his/her/its retained professionals.

3.4 Safekeeping of Assets. All Plan Trust Assets shall, until distributed or paid over as provided herein or in the Governing Documents, be held by the Trustee in trust for the benefit of the Beneficiaries in accordance with the Governing Documents. The Trustee shall be under no liability for interest or producing income on any moneys received by it under the Agreement and held for distribution or payment to the Beneficiaries, except as such interest or income shall actually be received by the Trustee.

3.5 Liquidation of Assets. The Plan Trustee shall pursue recovery and liquidation of the Plan Trust Assets in a commercially reasonable manner.

3.6 Limitations on Trustee. The Trustee shall not at any time, on behalf of the Trust or Beneficiaries, enter into or engage in any trade or business, and no part of the Plan Trust Assets shall be used or disposed of by the Trust in furtherance of any trade or business.

3.7 Disbursing Agent. The Plan Trustee shall serve as or may select an alternative disbursing agent for Allowed Claims under the Plan.

3.8 Investment. The Trustee may invest Cash (including any earnings thereon or proceeds therefrom) or other Plan Trust Assets held in the Trust in Permitted Investments and,

provided that the Trustee does so, it shall have no liability in the event of insolvency of any institution in which it has invested any of the Plan Trust Assets.

3.9 Trustee Action. The Trustee shall hold, collect, conserve, protect and administer the Trust in accordance with the provisions of Governing Documents, and pay and distribute amounts as set forth in the Governing Documents. Subject to the Governing Documents, any good faith determination by the Trustee as to what actions are in the best interests of the Trust shall be determinative.

3.10 Execution of Documents. The Debtor (or the Plan Trustee on behalf of the Debtor) may execute any and all documents and instruments necessary to effectuate the purposes of the Plan Trust set forth in the Governing Documents.

3.11 Court Approval of Trustee Actions. Except as specified in this Agreement, the Trustee need not obtain an order or approval of the Court in the exercise of any power, rights or discretion conferred hereunder. The Trustee shall exercise its business judgment for the benefit of the Beneficiaries in order to maximize the value of the Plan Trust Assets and Distributions, giving due regard to the cost, risk and delay of any course of action. The Trustee may request approval of the Court for the taking of any specific action proposed to be taken by the Trustee with respect to the Plan Trust Assets, the Trust, or the Governing Documents, including the administration and Distribution of the Plan Trust Assets in accordance with the Governing Documents. In addition, the Trustee shall have the authority, but not the obligation, to seek Court approval to sell any Asset free and clear of any and all liens, claims and encumbrances.

3.12 Confidentiality. The Trustee shall, during the period that it serves as Trustee under the Agreement and following the termination of the Agreement or its removal or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person or Entity to which any of the Plan Trust Assets relates or which it has become aware of in its capacity as Trustee.

ARTICLE IV

DISTRIBUTIONS TO BENEFICIARIES

4.1 Initial Distribution. The Trustee shall distribute the Existing Monetized Plan Trust Assets as follows:

> (x) $421,250.00 for the Trust Budget, which shall be reserved to fund (i) the wind down of the Debtor's chapter 11 case, including the payment of Allowed Administrative and Priority Claims, as set forth in the Plan, and (ii) the Plan Trust Expenses; provided, that any unused portion of the Trust Budget shall be distributed in accordance with this Trust Waterfall, (y) the amount held in the GUC Reserve on the Effective Date, which is $947,850.00, shall be distributed to GUC Beneficiaries as soon as reasonably practicable after the Effective Date in accordance with the term of the Governing Documents (such distribution, the "Initial GUC Reserve Distribution"), and (z) $805,914.00, which is the amount

held in the Supplemental Carve-Out (as defined in the Proceeds Stipulation) on the Effective Date and distributed to the Professional Fee Claim Escrow, shall be disbursed to the Non-Deferral Professionals and the Deferral Professionals (as defined in the Proceeds Stipulation) as soon as reasonably practicable after the Effective Date in accordance with the terms of the Proceeds Stipulation.

4.2 Trust Waterfall. Subject to the funding of the Trust Budget on the Effective Date, the payment of the Initial GUC Reserve Distribution, and the funding of the Professional Fee Claim Escrow, the Trustee shall distribute all other Plan Trust Assets in accordance with the following order of priority (the "Trust Waterfall"):

(a) *first*, the Non-Deferral Fees and the Deferral Fees shall be paid to the Non-Deferral Professionals and the Deferral Professionals (each as defined in the Proceeds Stipulation), respectively, in accordance with paragraphs 17 to 20 of the Proceeds Stipulation and all other applicable provisions of the Proceeds Stipulation;

(b) *second*, 80% to the DIP Beneficiary and 20% to the GUC Reserve until (i) the DIP Beneficiary has received an additional $10,400,000.00 (provided, that the DIP Beneficiary received $2,593,120.00 of such amount on account of this subparagraph (i) prior to the Effective Date), and (ii) the GUC Reserve has received an additional $2,600,000.00 (provided, that the GUC Reserve received $647,850.00 of such amount on account of this subparagraph (ii) prior to the Effective Date), which distributions to the foregoing shall be made contemporaneously.

(c) *thereafter*, 50% to the DIP Beneficiary and 50% to the GUC Reserve; which distributions to the foregoing shall be made contemporaneously.

4.3 (a) Distributions. Silicon Valley Bank shall receive, in full and final satisfaction of its Allowed Claims, the distributions provided to the DIP Beneficiary under the Trust Waterfall. Holders of Allowed General Unsecured Claims against the Debtor shall receive, in full and final satisfaction of their Allowed General Unsecured Claims, a Pro Rata share of the distributions from the GUC Reserve.

(b) Tax Identification Numbers. The Trustee may require any Beneficiary to furnish to the Trustee in writing his or its Employer or Taxpayer Identification Number as assigned by the IRS, including without limitation by providing an executed current Form W-9, Form W-8 or similar tax form, and the Trustee may condition any Distribution upon receipt of such identification number. Failure of a Beneficiary to respond to the Trustee's request for such tax information may result in forfeiture of the Beneficiary's distribution as set forth in the Plan.

(c) Timing of Distributions. The reservation of the Trust Budget, the Initial GUC Reserve Distribution to the GUC Beneficiaries, and the Professional Fee Claim Escrow shall be made as soon as reasonably practicable following the Effective Date pursuant to the terms of the Governing Documents. Thereafter, all cash proceeds of Plan Trust Assets shall be paid in

accordance with the Trust Waterfall within five (5) business days of receipt or as soon as practicable thereafter. All distributions from the GUC Reserve (other than the Initial GUC Reserve Distribution) shall be made in the discretion of the Trustee, in accordance with the terms of the Plan.

4.3 Distributions After Allowance or Disallowance of a Disputed Claim. Payments and distributions to each Holder of a Disputed Claim to the extent that such Claim ultimately becomes an Allowed Claim, shall be made in accordance with the Governing Documents, including the provisions governing the class of Claims in which such Claim is classified. As soon as practicable after the date that any Disputed Claim is Allowed, the Trust shall distribute to the Holder of such Claim any cash that would have been distributed to such Holder if the Claim had been an Allowed Claim on the Effective Date. No Distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Claim have been settled, withdrawn, or resolved by final order.

Upon a Disputed General Unsecured Claim becoming an Allowed General Unsecured Claim, the Trustee shall distribute to the Holder thereof, from the Distribution Reserve at the time of the next scheduled Distribution, such amount from the GUC Reserve as would have been distributed to such Holder if its Claim had been an Allowed General Unsecured Claim on the Effective Date. The Trustee shall no longer reserve for and shall distribute to the GUC Beneficiaries, pursuant to the Agreement, their Pro Rata share of the funds held in the Distribution Reserve on account of any Disputed General Unsecured Claim that becomes a Disallowed Claim.

4.4 De Minimis Distributions. The Trustee shall not be required to make any Distributions to Holders of Allowed General Unsecured Claims aggregating less than fifty dollars ($50.00). Cash that otherwise would be payable under the Plan and the Agreement to Holders of Plan Trust Interests but for this Section 4.4 shall remain Assets to be used in accordance with the Agreement.

4.5 Withholding on Distributions. The Trustee, in its discretion, may cause the Trust to withhold from amounts distributable from the Trust to any Beneficiary any and all amounts as may be sufficient to pay the maximum amount of any tax or other charge that has been or might be assessed or imposed by any law, regulation, rule, ruling, directive, or other governmental requirement on such Beneficiary or the Trust with respect to the amount to be distributed to such Beneficiary. Any amount withheld for taxes and timely deposited with the appropriate governmental authority shall be treated as if distributed to such Beneficiary. The Trustee shall determine such maximum amount to be withheld by the Trust in its sole, reasonable discretion and shall cause the Trust to distribute to the Beneficiary any excess amount withheld.

4.6 Payments Limited to Assets. All payments to be made by the Trustee to or for the benefit of any Beneficiary on behalf of the Trust shall be made only from the Plan Trust Assets in accordance with the terms of the Governing Documents.

4.7 United States Trustee Fees and Reports. All fees payable through the Effective Date pursuant to 28 U.S.C. § 1930 shall be paid from the Trust Budget on or as soon as

practicable after the Effective Date. After the Effective Date, the Plan Trustee shall pay such fees from the Trust Budget.

4.8 Insurance. The Plan Trustee shall be authorized, but not required, to obtain any reasonably necessary insurance coverage, at the Plan Trust's sole expense from the Trust Budget, for itself and its respective agents, including coverage with respect to the liabilities, duties, and obligations of the Plan Trustee, which insurance coverage may, at the sole option of the Plan Trustee, be extended for a reasonable period after the termination of this Agreement.

4.9 Insufficient Assets to Make Further Distributions. Upon termination of the Trust, if the Trustee reasonably determines that any remaining Assets are insufficient to render a further Distribution practicable, or exceed the amounts required or permitted to be paid under the Plan, the Trustee may donate such funds to a charitable organization.

ARTICLE V

BENEFICIARIES

5.1 Incidents of Ownership. The Beneficiaries shall be the sole beneficiaries of the Trust and the Plan Trust Assets, and the Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized in the Governing Documents.

5.2 Beneficial Interest Only. The ownership of a beneficial interest in the Trust shall not entitle any Beneficiary or the Settlor to any title in or to the Plan Trust Assets or to any right to call for a partition or division of such assets or to require an accounting, except as specifically provided in the Governing Documents.

5.3 Evidence of Beneficial Interest. Ownership of a beneficial interest in the Plan Trust Assets shall not be evidenced by any certificate, security or receipt, or in any other form or manner whatsoever, except as maintained on the books and records of the Trust by the Trustee.

5.4 Notice of Transfer of Beneficial Interest. Any notice of a change of beneficial interest ownership as described in Section 11.2 of the Agreement shall be forwarded to the Trustee in the manner set forth in Section 11.3 of the Agreement. The notice shall be executed by both the transferee and the transferor, and the signatures of the parties shall be acknowledged before a notary public. The notice must clearly describe the interest to be transferred. The Trustee may rely upon such signatures and acknowledgments as evidence of such transfer without the requirement of any further investigation.

ARTICLE VI

THIRD PARTY RIGHTS AND LIMITATION OF LIABILITY

6.1 Reliance. Except as otherwise provided in the Agreement, the Plan or the Confirmation Order, the Trustee may rely and shall be protected in acting upon any resolution,

statement, instrument, opinion, report, notice, request, consent, order or other paper or document reasonably believed to be genuine and to have been signed or presented by an authorized party.

6.2 Parties Dealing With the Trustee. In the absence of actual knowledge to the contrary, any Person or Entity dealing with the Trust or the Trustee shall be entitled to rely on the authority of the Trustee or any of the Trustee's agents to act in connection with the Plan Trust Assets. There is no obligation on any Person or Entity dealing with the Trustee to inquire into the validity, expediency or propriety of any transaction by the Trustee or any agent of the Trustee.

6.3 Limited Recourse. Except as otherwise provided in the Agreement, the Plan or the Confirmation Order, Persons or Entities (including any professionals retained by the Trustee in accordance with the Agreement) engaged in transactions with the Trust or the Trustee, or seeking to assert claims against the Trust, shall look only to the Trust Budget to satisfy any liability incurred by the Trust, the Trustee, representatives, or other Persons or Entities employed by the Trust in connection with carrying out the terms of the Governing Documents.

6.4 Limitation of Liability. Neither the Plan Trustee, the Committee Representative, nor its firms, companies, affiliates, partners, officers, directors, members, employees, designees, professionals, advisors, attorneys, representatives, disbursing agents or agents, and any of such Person's successors and assigns, shall incur any responsibility or liability by reason of any error of law or fact or of any matter or thing done or suffered or omitted to be done under or in connection with the Governing Documents, other than for specific actions or omissions resulting from its willful misconduct, gross negligence or fraud found by a Final Order (not subject to further appeal or review) of a court of competent jurisdiction to be the direct and primary cause of loss, liability, damage, or expense suffered by the Trust. The Plan Trustee shall enjoy all of the rights, powers, immunities, and privileges applicable to a chapter 7 trustee. The Plan Trustee may, in connection with the performance of his, her or its functions, in the Plan Trustee's sole and absolute discretion, consult with his, her or 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 are in writing. Notwithstanding such authority, the Plan Trustee shall be under no obligation to consult with any such attorneys, accountants, advisors, or agents, and any determination not to do so shall not result in the imposition of liability on the Plan Trustee or its members unless such determination is based on willful misconduct, gross negligence, or fraud. Persons dealing with the Plan Trustee shall look only to the Trust Budget to satisfy any liability incurred by the Plan Trustee to such person in carrying out the terms of the Plan or this Agreement, and the Plan Trustee shall have no personal obligation to satisfy such liability.

6.5 Non-Liability for Acts of Others. Except as expressly provided in the Agreement, the Plan or the Confirmation Order, neither the Trust nor the Trustee shall assume any of the liabilities, obligations or duties of the Debtor or the Beneficiaries. Any successor Trustee may accept and rely upon any accounting made by or on behalf of any predecessor Trustee hereunder, and any statement or representation made by a predecessor Trustee or its agents as to the assets comprising the Plan Trust Assets or as to any other fact bearing upon the prior administration of the Trust, so long as it has a good faith basis to do so. A Trustee shall not be liable for having

accepted and relied in good faith upon any such accounting, statement or representation if it is later proved to be incomplete, inaccurate or untrue. A Trustee or successor Trustee shall not be liable for any act or omission of any predecessor Trustee, nor have a duty to enforce any claims against any predecessor Trustee on account of any such act or omission.

6.6 Standard of Care. Neither the Plan Trustee, the Committee Representative, nor any director, officer, affiliate, employee, employer, professional, successors, assigns, agent, or representative of such parties (each, an "Exculpated Party" and collectively, the "Exculpated Parties") shall be liable for any losses, claims, damages, liabilities, obligations settlements, proceedings, suits, judgments, causes of action, litigation, actions, or investigations (whether civil or administrative and whether sounding in tort, contract, or otherwise), penalties, costs, and expenses, including reasonable fees and disbursements (collectively referred to herein as "Losses"), whether or not in connection with litigation in which any Exculpated Party is a party, or enforcing this Agreement (including these exculpation provisions), as and when imposed on the Plan Trustee, incurred, caused by, relating to, based upon, or arising out of (directly or indirectly) the Plan Trustee's execution, delivery, and acceptance of, or the performance or nonperformance of its powers, duties, and obligations under, this Agreement, the Plan, or the Confirmation Order or as may arise by reason of any action, omission, or error of an Exculpated Party; provided, however, that the foregoing limitation shall not apply to any Losses suffered or incurred by any Beneficiary or other Holder of an Allowed Claim that are found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted from the fraud, gross negligence, or willful misconduct of such Exculpated Party. Every act taken or omitted, power exercised, or obligation assumed by the Plan Trust or any Exculpated Party pursuant to the provisions of this Agreement shall be held to be taken or omitted, exercised, or assumed, as the case may be, by the Plan Trust or any Exculpated Party acting for and on behalf of the Plan Trust and not otherwise; provided, however, that none of the foregoing Exculpated Parties are deemed to be responsible for any other such Exculpated Parties' actions or inactions. Except as provided in the first proviso of the first sentence of this Section 6.6, every entity contracting or otherwise dealing with or having any relationship with the Plan Trust or any Exculpated Party shall have recourse only to the Trust Budget for payment of any liabilities or other obligations arising in connection with such contracts, dealings, or relationships and the Trust and the Exculpated Parties shall not be individually liable therefor. In no event shall the Plan Trustee be liable for any indirect, punitive, special, incidental, or consequential damage or loss (including but not limited to lost profits) whatsoever, even if the Plan Trustee has been informed of the likelihood of such loss or damages and regardless of the form of action.

6.7 Indemnification. The Plan Trust shall indemnify the Plan Trust Indemnified Parties for, and shall hold them harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost, or expense (including the reasonable fees and expenses of their respective professionals) incurred without fraud, gross negligence or willful misconduct on the part of the Plan Trust Indemnified Parties (which fraud, gross negligence or willful misconduct, if any, must be determined by a Final Order of a court of competent jurisdiction) for any action taken, suffered, or omitted to be taken by the Plan Trust Indemnified Parties in connection with the acceptance, administration, exercise, and performance of their duties under the Governing Documents. An act or omission taken with the approval of the Bankruptcy Court, and not inconsistent therewith, will be conclusively deemed not to constitute fraud, gross

negligence or willful misconduct. In addition, the Plan Trust shall, to the fullest extent permitted by law, indemnify and hold harmless the Plan Trust Indemnified Parties, from and against and with respect to any and all liabilities, losses, damages, claims, costs, and expenses, including attorneys' fees arising out of or due to their actions or omissions, or consequences of such actions or omissions, with respect to the Plan Trust or the implementation or administration of the Plan if the Plan Trust Indemnified Party acted in good faith and in a manner reasonably believed to be in, or not opposed to, the best interest of the Plan Trust. To the extent the Plan Trust indemnifies and holds harmless any Plan Trust Indemnified Parties as provided above, the reasonable and documented legal fees and related costs incurred by counsel to the Plan Trustee in monitoring or participating in the defense of such claims giving rise to the right of indemnification shall be paid from the proceeds of any insurance procured by the Plan Trustee on behalf of the Plan Trust or as Plan Trust Expenses (excluding from any reserves for the GUC Reconciliation Costs); the reasonable and documented legal fees and related costs incurred by counsel retained solely by the Committee Representative on its own behalf in connection with monitoring or participating in the defense of such claims giving rise to the indemnification shall be paid from the proceeds of any insurance procured by the Plan Trustee on behalf of the Plan Trust or as part of the GUC Reconciliation Costs. Except as set forth in the foregoing sentence, the costs and expenses incurred in enforcing the right of indemnification in this Section shall be paid from the proceeds of any insurance procured by the Plan Trustee on behalf of the Plan Trust or as Plan Trust Expenses (other than from the reserve for the GUC Reconciliation Costs). This provision shall survive the termination of this Agreement and the death, dissolution, liquidation, resignation, replacement, or removal of the Plan Trustee.

ARTICLE VII

SELECTION, REMOVAL AND COMPENSATION OF TRUSTEE

7.1 Initial Trustee. The initial Trustee shall be Edward E. Neiger.

7.2 Term of Service. The Trustee shall serve until (a) the completion of all the Trustee's duties, responsibilities and obligations under the Agreement and the Plan; (b) termination of the Trust in accordance with the Agreement; or (c) the Trustee's death or dissolution, incapacitation, resignation or removal.

7.3 Removal of a Trustee. Any Person or Entity serving as Trustee may be removed and a successor Trustee appointed at any time jointly by (i) the GUC Beneficiaries holding at least two thirds of the value of the then outstanding beneficial interests in the Trust, along with a certification from each Beneficiary as to the amount of the beneficial interest held and (ii) the DIP Beneficiary. If there is a dispute as to whether the Trustee has been properly removed, the Bankruptcy Court shall retain jurisdiction to determine such dispute. The Trustee may also be removed by the Bankruptcy Court for cause upon application by any Beneficiary after notice and a hearing. Any Trustee so removed is entitled to payment of reasonable fees and necessary expenses accrued prior to removal subject to the terms of the Agreement, subject to the Trust Budget.

7.4 Resignation of Trustee. The Trustee may resign at any time by giving at least thirty (30) days' written notice, delivered to and filed with the Bankruptcy Court, of the Trustee's intention to do so, provided that such resignation shall only become effective upon the appointment of a permanent or interim successor Trustee. In the event of a resignation, the resigning Trustee shall render to the successor Trustee a full and complete accounting of monies and assets received, disbursed and held during the term of office of that Trustee.

7.5 Appointment of Successor Trustee. Upon the resignation, death or dissolution, incapacity or removal of a Trustee, a successor Trustee shall be appointed by the Bankruptcy Court based upon submissions from interested parties (including the Trustee or any Beneficiary). Any successor Trustee so appointed shall consent to and accept in writing the terms of the Agreement and agree that the provisions of the Agreement shall be binding upon and inure to the benefit of the successor Trustee and all of the successor Trustee's heirs and legal and personal representatives, successors or assigns.

7.6 Powers and Duties of Successor Trustee. A successor Trustee shall have all the rights, privileges, powers and duties of the predecessor Trustee under the Agreement and the Plan.

7.7 Trust Continuance. The death or dissolution, incapacity, resignation or removal of the Trustee shall not terminate the Trust or revoke any existing agency created pursuant to the Agreement or invalidate any action theretofore taken by the Trustee.

7.8 Compensation and Costs of Administration. As compensation for services rendered, the Trustee shall be paid a customary hourly rate. The Trustee's hourly rate for this engagement is $795.00 per hour, subject to annual adjustment. Any annual hourly rate increase of more than $25.00 shall be subject to filing a motion with and obtaining an order from the Bankruptcy Court. For the avoidance of doubt, such compensation and costs of administration of the Trust shall only be paid from the Trust Budget. In addition, the Trustee may retain and compensate professionals (including the Trustee and/or the Trustee's affiliates or firm), subject to the Trust Budget, as provided for in the Agreement. Notwithstanding the foregoing, for the avoidance of doubt, the Trustee shall be permitted to engage counsel, on a reasonable contingency fee basis, to pursue litigation on behalf of the Trust; provided, that any such contingency fee arrangement must be reasonably acceptable to the DIP Beneficiary, the Committee Representative and the Deferral Professionals; provided, further, that the litigation proceeds required to be paid under the terms of such arrangement shall not be deemed Plan Trust Assets and shall not be subject to the Trust Waterfall or the Trust Budget.

ARTICLE VIII

TRUST OBLIGATIONS

8.1 Tax Reporting. The Plan Trustee shall file any and all tax returns for the Debtor and Plan Trust, as applicable. The Plan Trustee shall be responsible for payment, out of the Trust Budget, of any taxes imposed on the Plan Trust or Plan Trust Assets to the extent such payment is consistent with the Bankruptcy Code, this Plan and any applicable order of the

Bankruptcy Court including, but not limited to, any order establishing a Bar Date. The Plan Trustee shall file tax returns for the Plan Trust treating the Plan Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Plan Trustee may cause the Trust to seek any appropriate tax determination, including, without limitation, a determination of tax liability or refund under section 505 of the Bankruptcy Code. The Plan Trustee shall be responsible for payment, solely from the Trust Budget, of all taxes (if any) imposed on the Plan Trust or its assets. The Plan Trustee shall distribute such tax-related notices to the applicable Beneficiaries as the Plan Trustee determines are necessary or desirable.

8.2 United States Federal Income Tax Treatment of the Plan Trust. For all United States federal income tax purposes, the parties shall treat the transfer of the Plan Trust Assets to the Plan Trust as: (a) a transfer of the Plan Trust Assets directly to the applicable holders of Plan Trust Interests, followed by (b) the transfer by the holders of such Plan Trust Interests to the Plan Trust of such Plan Trust Assets in exchange for the Plan Trust Interests; provided, however, that the Plan Trust Assets will be subject to any post-Effective-Date obligations incurred by the Plan Trust relating to the pursuit of Plan Trust Assets. Accordingly, the applicable Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Plan Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes

8.3 Valuation of Assets. As soon as practicable after the Effective Date, to the extent that the Trustee deems it necessary or appropriate in the reasonable exercise of its discretion, the Trustee shall, in good faith, value the Plan Trust Assets, and shall apprise the Beneficiaries of such valuation upon written request to the Trustee. The valuation shall be used consistently by all parties (including, without limitation, the Debtor, the Trustee, Holders of Allowed Claims and the Beneficiaries) for all federal income tax purposes. The Court shall resolve any dispute regarding the valuation of the Plan Trust Assets.

8.4 Reporting. The Trustee shall timely prepare, file and distribute such additional statements, reports and submissions requested by the U.S. Trustee or the Bankruptcy Court and as may be necessary to cause the Trust and the Trustee to be in compliance with applicable law.

ARTICLE IX

BOOKS AND RECORDS; PRIVILEGE MATTERS

9.1 Records. On the Effective Date, the Plan Trustee shall be provided with originals or copies of or access to all documents and business records of the Debtor necessary for the disposition of the Plan Trust Assets and objections to Disputed Claims.

9.2 Maintenance of Books and Records. The Trustee shall have the responsibility of storing and maintaining books and records transferred hereunder at the Trust's sole expense until the Trust is closed, after which time such books and records may, to the extent not prohibited by applicable law, be abandoned or destroyed in accordance with the Plan and Confirmation Order. In maintaining the books and records, the Trustee shall keep a description of all property from time to time constituting the Plan Trust Assets and an accounting of all receipts and

disbursements. Subject to Section 9.3 of this Agreement, said books and records shall be open to reasonable inspection by any representative designated by any Beneficiary upon written request to the Trustee. Subject to Section 9.3 of this Agreement, the Trustee shall permit any representatives designated by any Beneficiary to discuss the affairs, finances, accounts and condition of the Plan Trust with the Trustee or any of its professionals and/or advisors at commercially reasonably times and upon commercially reasonable notice. Subject to Section 9.3 of this Agreement, the Trustee shall deliver promptly, from time to time, such other information regarding the affairs of the Plan Trust as any Beneficiary may reasonably request.

9.3 Privileges. Upon the Effective Date, the Trustee shall succeed to the evidentiary privileges (including attorney-client, joint-client, joint-defense, common interest and other privileges) formerly held by the Debtor and/or the Committee. The Trustee and Debtor agree that with respect to any documents transferred to the Trustee, any attorney client privilege, work-product privilege, joint interest privilege or other privilege or immunity held by the Debtor prior to the Effective Date attaching to such documents or communications (whether written or oral) shall automatically vest in the Trust. The Trustee shall have the exclusive authority and sole discretion to maintain the privileges afforded with respect to privileged information and to keep such privileged information confidential, or waive any such privileges, disclose any such privileged information, and use in litigation or any proceeding any or all of the privileged information. For the avoidance of doubt, nothing in this Agreement nor any action taken by the Debtor or Trustee shall be (or shall be deemed to be) a waiver of any privilege or immunity, including attorney-client privilege or work-product privilege, attaching to any documents or communications (whether written or oral) and such documents/communications shall remain privileged unless otherwise waived by the Trustee post-Effective Date.

ARTICLE X

DURATION OF TRUST

10.1 Duration. The Trust shall become effective upon the Effective Date of the Plan, and the Trust and its provisions herein shall remain and continue in full force and effect until the Trust is terminated.

10.2 Dissolution of the Debtor. The Plan Trustee shall dissolve the Debtor prior to or contemporaneously with the dissolution of the Plan Trust. The Plan Trustee may effectuate such dissolution by filing a notice of such dissolution with the Court, notwithstanding any requirements of applicable state law, without the necessity for any other or further actions to be taken by or on behalf of the Debtor or payments to be made in connection therewith.

10.3 Dissolution of the Plan Trust. The Plan Trustee and the Plan Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Plan Trustee determines that the pursuit of additional Causes of Action, including Third Party Claims, is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, including Third Party Claims, (b) all objections to Disputed Claims are fully resolved, and (c) all Distributions required to be made by the Plan Trustee under the Governing Documents have been made, but the Plan Trust shall not be dissolved later than five (5) years from the Effective Date; provided, however, that, within the six (6) month period prior to the termination of the Plan Trust, the Plan

Trustee may file a notice of intent to extend the term of the Plan Trust with the Court and, upon approval of the Court of such extension, the term of the Plan Trust shall be so extended. The Plan Trust may file one or more such extension notices, each notice to be filed within the six (6) month period prior to the termination of the extended term of the Plan Trust (all such extensions, collectively, are referred to herein as the "Supplemental Trust Term"). Notwithstanding anything to the contrary in this Section 10.3, however, Supplemental Trust Term may not exceed five (5) without an order of the Court finding that the extension of the trust is warranted under the facts and circumstances and that such extension is necessary to the liquidating purpose of the Liquidating Trust, which order may be issued retroactively after the expiration of the Supplemental Trust Term; provided that a failure to file a motion with the Court prior to the 6-month expiration period shall not cause the Trust to terminate, as long as the Trust would otherwise continue to qualify as a liquidating trust. Upon dissolution of the Plan Trust or at such earlier time as determined by the Plan Trustee in his, her or its reasonable discretion, any remaining Plan Trust Assets that exceed the amounts required to be paid under the Governing Documents may be transferred by the Plan Trustee to a charitable organization that the Plan Trustee shall designate.

10.4 Termination. The Trust shall terminate and the Trustee shall make the final Distributions upon the occurrence of the earlier of (a) the substantial completion of all the Trustee's duties, responsibilities and obligations under the Agreement, and (b) the fifth (5th) anniversary of the Effective Date; provided, however, that termination of the Trust shall only be deemed effective upon the filing by the Trustee with the Court of a certification of termination of the Trust. Notwithstanding the foregoing, on or prior to a date not less than six (6) months prior to such termination, the Court, upon motion by a party in interest, may extend the term of the Trust for one or more finite terms based upon the particular facts and circumstances present at that time, if an extension is necessary to the liquidating purpose of the Trust.

10.5 Continuance of Trust for Winding Up. After the termination of the Trust and for the purpose of liquidating and winding up the affairs of the Trust, the Trustee shall continue to act as such until the Trustee's duties have been fully performed, including, without limitation, performing such post-distribution tasks as necessary to windup the affairs of the Trust at the Trust's expense. Upon a motion by the Plan Trustee, the Bankruptcy Court may enter an order relieving the Plan Trustee, its agents and employees of any further duties, discharging, and releasing the Plan Trustee and releasing its bond, if any. Except as otherwise specifically provided herein, upon the discharge of all liabilities of the Trust and final Distribution of the Trust, the Trustee shall have no further duties or obligations hereunder.

ARTICLE XI

MISCELLANEOUS

11.1 Jurisdiction. Subject to the Plan and Confirmation Order, the Court shall have exclusive jurisdiction over (i) the Trust and the Trustee, with respect to the administration of and activities relating to the Trust, and (ii) any issues or disputes arising out of the Agreement; provided, however, that notwithstanding the foregoing, the Trustee shall have the power and

authority to bring any action in any court of competent jurisdiction to prosecute the Causes of Action.

11.2 Limitation on Transferability. A beneficial interest in the Trust shall be nonassignable and non-transferable except by operation of law. An assignment or transfer shall not be effective until appropriate notification and proof thereof is submitted to the Trustee, and the Trustee may continue to pay all amounts to or for the benefit of the assigning or transferring Beneficiary until receipt of proper notification and proof of assignment or transfer. The Trustee may rely upon such proof without the requirement of any further investigation.

11.3 Notices. All notices to be given to GUC Beneficiaries may be given by ordinary mail to the Holders at the addresses appearing on the books kept by Trustee. Any notice or other communication which may be or is required to be given, served or sent to the Trustee shall be in writing and shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, or transmitted by hand delivery or overnight courier, addressed as follows:

If to the Trust/Trustee:

Edward Neiger
Marianna Udem
151 West 46th Street
4th Floor
New York, NY 10036

Nick Brown
2600 Eagan Woods Drive
Suite 400
St. Paul, MN 55121

or to such other address as may from time to time be provided in written notice by the Trustee.

Any notice or other communication which may be or is required to be given, served or sent to the DIP Beneficiary shall be in writing and shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, or transmitted by hand delivery or overnight courier, addressed as follows:

Silicon Valley Bank
c/o Todd M. Goren, Esquire
Morrison & Foerster LLP
250 West 55th Street
New York, NY 10019

-and-

Silicon Valley Bank
c/o Alexander Rheaume, Esquire

Morrison & Foerster LLP
200 Clarendon Street
Boston, MA 02116

or to such other address as may from time to time be provided in written notice by the DIP Beneficiary.

Any notice or other communication which may be or is required to be given, served or sent to the Committee Representative shall be in writing and shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, or transmitted by hand delivery or overnight courier, addressed as follows:

Solar Capital Partners
c/o Anthony Storino
500 Park Avenue, 3rd Floor
New York, NY 10022

or to such other address as may from time to time be provided in written notice by the Committee Representative.

11.4 No Bond. Notwithstanding any state law to the contrary, the Trustee (including any successor) shall be exempt from giving any bond or other security in any jurisdiction.

11.5 Governing Law. The Agreement is made in the State of Delaware, and the Trust and the Agreement, and the rights and obligations of the Trustee are to be governed by and construed and administered according to the laws of the State of Delaware; provided, however, that, except as expressly provided in the Agreement, there shall not be applicable to the Trust, the Trustee, or the Agreement (a) the provisions of Section 3540 of Title 12 of the Delaware Code; or (b) any provisions of the laws (statutory or common) of the State of Delaware pertaining to trusts which relate to or regulate: (i) the filing with any court or governmental body or agency of trustee accounts or schedules of trustee fees and charges; (ii) affirmative requirements to post bonds for trustees, officers, agents or employees of a trust; (iii) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property; (iv) fees or other sums payable to trustees, officers, agents or employees of a trust; (v) the allocation of receipts and expenditures to income or principal; (vi) restrictions or limitations on the permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding of Plan Trust Assets; or (vii) the establishment of fiduciary or other standards or responsibilities or limitations on the acts or powers of trustees, which are inconsistent with the limitations or liabilities or authorities and powers of the Trustee set forth or referenced in the Agreement.

11.6 Successors and Assigns. The Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

11.7 No Execution. All funds in the Trust shall be deemed *in custodia legis* until such times as the funds have actually been paid to or for the benefit of a Beneficiary, and no Beneficiary or any other Person can bind, pledge, encumber, execute upon, garnish or attach the

Plan Trust Assets or the Trustee in any manner or compel payment from the Trust except by Final Order of the Court. Payment will be governed solely by the Governing Documents.

11.8 Governing Documents. To the extent that there is any conflict or inconsistency in the of the Governing Documents, then the terms of the Governing Documents shall govern and control in the following order of priority: the Confirmation Order, the Plan, this Agreement, the Proceeds Stipulation, and the Committee Settlement.

11.9 Substantial Consummation. The Plan shall be deemed to be substantially consummated on the first date Distributions are made in accordance with the terms of the Plan to any holders of Allowed Claims of any Class.

11.10 Intention of Parties to Establish Grantor Trust. The Agreement is intended to create a grantor trust for United States federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a grantor trust, and any ambiguity herein shall be construed consistent herewith, and if necessary, the Agreement may be amended to comply with such federal income tax laws, which amendments may apply retroactively.

11.11 Amendment. The Trustee may modify, supplement or amend the Agreement without further order of the Court, with the consent of the DIP Beneficiary and the Committee Representative, not to be unreasonably withheld, but only to clarify any ambiguity or inconsistency, or render the Agreement in compliance with its stated tax purposes, and only if such amendment (i) does not materially and adversely affect the interests, rights, treatment or Distributions of any Beneficiaries and (ii) is not inconsistent with the Governing Documents. The Plan Trustee shall seek Bankruptcy Court approval of any material modification, supplement, or amendment of this Agreement. The Trustee shall not modify, supplement or amend any provision of the Agreement regarding the Proceeds Stipulation without (i) the consent of the Deferred Professionals, the Non-Deferred Professionals, the DIP Beneficiary, and the Committee Representative or (ii) further order of the Court.

11.12 Severability. If any term, provision, covenant or restriction contained in the Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, the remainder of the terms, provisions, covenants and restrictions contained in the Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

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

11.14 Third Party Beneficiary. Nothing in the Agreement is intended to benefit or create any right or cause of action in or on behalf of any Person or Entity other than the parties hereto unless expressly set forth herein.

11.15 Counterparts. The 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 have executed the Agreement (or are deemed to have so executed the Agreement) as of the day and year first written above.

Trustee	**Achaogen, Inc.**
By: _____	By: _____
_____	By:

Draft/Subject to Further Review & Modification

Exhibit A

Trust Budget

Expense Category	Amount
U.S. Trustee Fees Post Closing[2]	$27,000
Tax Preparation (2020 returns)	$6,500
Tax/Priority Claims	$40,000
Administrative Claims	$65,000
Hazardous Pharmaceutical Storage and Disposal	$27,000
Other Operational Costs	$5,750
Costs incurred in connection with, or related to, general unsecured claims, including administrative costs associated with administering general unsecured claims and making distributions to unsecured creditors in accordance with the terms of the Plan (the "GUC Reconciliation Costs")	$100,000
All other costs associated with the Trust	$150,000
Total:	$421,250

[2] To the extent of any future proceeds, 1% of any amounts distributed shall be paid towards US Trustee fees.

EXHIBIT B

Assumption Schedule

Exhibit B

Assumption Schedule

Name	Debtor	Agreement	Address	City	State	Postal Code	Proposed Cure Amount
Earth Class Mail, Inc.	Achaogen, Inc.	Proposal for Services dated August 29, 2019	122 E Houston St	San Antonio	TX	78205	$0.00
Moore Colson & Company, P.C.	Achaogen, Inc.	Engagement Letter dated October 8, 2019	600 Galleria Parkway SE, Suite 600	Atlanta	GA	30339	$0.00
Neustar, Inc.	Achaogen, Inc.	Master Services Agreement dated November 24, 2019 Service Order Addendum as of June 22, 2018	46000 Center Oak Plaza	Sterling	VA	20166	$600.00

PURSUANT TO ARTICLE 1.72 OF THE PLAN, UPON MUTUAL AGREEMENT OF THE DEBTOR AND CREDITORS' COMMITTEE, THE ASSUMPTION SCHEDULE MAY BE AMENDED THROUGH THE EFFECTIVE DATE WITH THE CONSENT OF THE DIP LENDER.

THE INCLUSION OF ANY CONTRACT OR LEASE ON THE ASSUMPTION SCHEDULE SHALL NOT CONSTITUTE OR BE DEEMED TO BE A DETERMINATION OR ADMISSION BY ANY OF THE DEBTOR, CREDITORS' COMMITTEE, PLAN TRUSTEE OR DIP LENDER THAT SUCH DOCUMENT IS, IN FACT, AN EXECUTORY CONTRACT OR UNEXPIRED LEASE WITHIN THE MEANING OF THE BANKRUPTCY CODE, AND ALL RIGHTS WITH RESPECT THERETO ARE EXPRESSLY RESERVED. IN ADDITION, EACH OF THE DEBTOR, CREDITORS' COMMITTEE, PLAN TRUSTEE AND DIP LENDER RESERVES ALL OF ITS RIGHTS, REMEDIES AND DEFENSES WITH RESPECT TO ANY CONTRACT OR LEASE SET FORTH ON THE ASSUMPTION SCHEDULE.

EXHIBIT C

Identified Causes of Action

Exhibit C

Identified Causes of Action

Certain documents, or portions thereof, contained in this Exhibit and the Plan Supplement remain subject to continuing negotiations among the Plan Proponents, the DIP Lender, and the Debtor's other stakeholders. The Plan Proponents and Plan Trustee, as applicable, reserve all rights to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained herein, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Bankruptcy Court.

Article XIII of the *First Amended Joint Plan of Liquidation* [Docket No. 656], dated April 22, 2020 (as may be modified, supplemented or amended from time to time, the "**Plan**")[1] provides as follows:

> Unless otherwise released under a prior Order of the Bankruptcy Court or under the Plan, all Causes of Action and Third Party Claims are hereby preserved for prosecution and enforcement by the Plan Trustee. For the avoidance of doubt and without limiting the breadth and generality of the foregoing, the Identified Causes of Action and Third Party Claims shall be preserved for prosecution by the Plan Trustee. For the avoidance of doubt, neither the Debtor nor the Plan Trustee shall commence, litigate, prosecute and/or settle any Causes of Action against the Exculpated Parties for the Exculpated Claims. The Plan Trustee shall have no obligation to perform an analysis of or pursue any Cause of Action or Third Party Claims.

Except as otherwise provided in the Plan, the Plan Trustee reserves the right to commence and pursue any and all Causes of Action and Third Party Claims against any person or entity, including Causes of Action that are not expressly identified in this schedule of Identified Causes of Action. Confirmation of the Plan shall not in any way affect such right.

For the avoidance of doubt, all Avoidance Actions and claims against, but not limited to, Cipla USA Inc., Vipragen Biosciences Private Ltd. or any of the foregoing entities' affiliates or subsidiaries (including claims arising under asset purchase agreements for the sale of the Debtor's assets) are Identified Causes of Action. In addition, the following matters are Identified Causes of Action:

1. **<u>Claims Related to Contracts and Leases</u>**

The Plan Trustee expressly reserves any Causes of Action and Third Party Actions based in whole or in part upon any and all contracts and leases to which the Debtor is a party or pursuant to which the Debtor has any rights whatsoever, regardless of whether such contract or lease is specifically identified herein. The claims, Causes of Action and Third Party Claims reserved include Causes of Action against vendors, suppliers of goods and services or any other

[1] All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Plan.

contract parties: (a) for overpayments, back charges, duplicate payments, improper holdbacks, deductions owing or improper deductions taken, deposits, warranties, guarantees, indemnities, recoupment or setoff; (b) for wrongful or improper termination, suspension of services or supply of goods, or failure to meet other contractual or regulatory obligations; (c) for failure to fully perform or to condition performance on additional requirements under contracts with the Debtor before the assumption or rejection, if applicable, of such contracts; (d) for payments, deposits, holdbacks, reserves or other amounts owed by any creditor, utility, supplier, vendor, insurer, surety, factor, lender, bondholder, lessor or other party; (e) for any liens held by the Debtor; (f) counter-claims and defenses related to any contractual obligations; (g) any turnover actions arising under section 542 or 543 of the Bankruptcy Code; (h) for unfair competition, interference with contract or potential business advantage, breach of contract, infringement of intellectual property or any business tort claims; (i) rights to seek indemnity for product liability or product quality issues; and (j) actions against third parties for infringement of any of the Debtor's intellectual property.

2. Claims, Defenses, Cross-Claims and Counter-Claims Related to Litigation and Possible Litigation

The Plan Trustee may become a party to litigation, arbitration or any other type of adversarial proceeding or dispute resolution proceeding, whether formal or informal, judicial or non-judicial. The Plan Trustee expressly reserves all Causes of Action and Third Party Actions against or related to the Debtor, that are party to or that may in the future become party to litigation, arbitration or any other type of adversarial proceeding or dispute resolution proceeding, whether formal or informal, judicial or non-judicial, including any Claims or rights that the Debtor may have to participate as a plaintiff in a class action or other litigation.

3. Claims Related to Accounts Receivable and Accounts Payable

The Plan Trustee expressly reserves all Causes of Action and Third Party Claims against persons and entities that owe or that may in the future owe money to the Debtor regardless of whether such person or entity is explicitly identified in the Plan, this Plan Supplement or any amendments thereto. Furthermore, the Plan Trustee expressly reserves all Causes of Action and Third Party Claims against or related to all persons or entities who assert or may assert that the Debtor owes money to them.