IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: HUMANIGEN, INC.,[1] Debtor.	Chapter 11 Case No. 24-10003 (BLS)

COMBINED CHAPTER 11 PLAN OF LIQUIDATION AND DISCLOSURE STATEMENT FOR HUMANIGEN, INC.

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Dated: June 13, 2024
Wilmington, Delaware

[1] The Debtor's mailing address in this chapter 11 case is Humanigen, Inc., c/o Verdolino & Lowey, P.C., 124 Washington Street, Suite 101, Foxboro, MA 02035 and the last four digits of the Debtor's federal tax identification number are 7236.

TABLE OF CONTENTS

NOTICE

THERE HAS BEEN NO INDEPENDENT AUDIT OF THE FINANCIAL INFORMATION CONTAINED IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT. THIS COMBINED PLAN AND DISCLOSURE STATEMENT WAS COMPILED FROM INFORMATION OBTAINED FROM NUMEROUS SOURCES BELIEVED TO BE ACCURATE TO THE BEST OF THE DEBTOR'S KNOWLEDGE, INFORMATION AND BELIEF. NO GOVERNMENTAL AUTHORITY HAS PASSED ON, CONFIRMED OR DETERMINED THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED HEREIN.

NOTHING STATED HEREIN SHALL BE DEEMED OR CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTOR OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE COMBINED PLAN AND DISCLOSURE STATEMENT ON THE DEBTOR OR HOLDERS OF CLAIMS OR EQUITY INTERESTS. CERTAIN STATEMENTS CONTAINED HEREIN, BY NATURE, ARE FORWARD-LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL REFLECT ACTUAL OUTCOMES.

THE STATEMENTS CONTAINED HEREIN ARE MADE AS OF THE DATE HEREOF, UNLESS ANOTHER TIME IS SPECIFIED. THE DELIVERY OF THIS COMBINED PLAN AND DISCLOSURE STATEMENT SHALL NOT BE DEEMED OR CONSTRUED TO CREATE ANY IMPLICATION THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AT ANY TIME AFTER THE DATE HEREOF.

HOLDERS OF CLAIMS AND INTERESTS SHOULD NOT CONSTRUE THE CONTENTS OF THIS COMBINED PLAN AND DISCLOSURE STATEMENT AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE. THEREFORE, EACH SUCH HOLDER SHOULD CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL AND TAX ADVISORS AS TO ANY SUCH MATTERS CONCERNING THE COMBINED PLAN AND DISCLOSURE STATEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY.

THE CREDITORS' COMMITTEE HAS INDEPENDENTLY CONCLUDED THAT THE COMBINED DISCLOSURE STATEMENT AND PLAN IS IN THE BEST INTERESTS OF GENERAL UNSECURED CREDITORS AND URGES SUCH CREDITORS TO VOTE IN FAVOR OF THE COMBINED DISCLOSURE STATEMENT AND PLAN. A LETTER FROM THE COMMITTEE EXPRESSING ITS SUPPORT FOR THE COMBINED DISCLOSURE STATEMENT AND PLAN IS ATTACHED HERETO AS EXHIBIT A.

I. INTRODUCTION[2]

Humanigen Inc. (the "Debtor"), with the support of the Creditors' Committee, proposes the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code sections 1125 and 1129, and Local Rule 3017-2. The Debtor is the "proponent" of the Combined Plan and Disclosure Statement within the meaning of Bankruptcy Code section 1129.

The Combined Plan and Disclosure Statement constitutes a liquidating chapter 11 plan for the Debtor and provides for the Distribution of the Debtor's assets already liquidated or to be liquidated over time to the Holders of Allowed Claims or Interests in accordance with the terms of the Combined Plan and Disclosure Statement and the priority of claims provisions of the Bankruptcy Code. The Combined Plan and Disclosure Statement provides that, upon the Effective Date, the Liquidating Trust Assets will be transferred to the Liquidating Trust and the Debtor may be dissolved thereafter. The Liquidating Trust Assets will be administered, liquidated, and distributed as soon as practicable pursuant to the terms of the Combined Plan and Disclosure Statement and Liquidating Trust Agreement.

Each Holder of a Claim against the Debtor who is entitled to vote to accept or reject the Combined Plan and Disclosure Statement is encouraged to read the Combined Plan and Disclosure Statement in its entirety before voting.

Copies of the Combined Plan and Disclosure Statement and all other documents related to the Chapter 11 Case are available for review without charge on the Case Website at: https://dm.epiq11.com/case/humanigen/.

Subject to the restrictions on modifications as set forth in Bankruptcy Code section 1127, Bankruptcy Rule 3019, and in the Combined Plan and Disclosure Statement, the Debtor expressly reserves the right to alter, amend, or modify the Combined Plan and Disclosure Statement one or more times before the Confirmation Hearing and/or its substantial consummation.

II. DEFINITIONS AND CONSTRUCTION OF TERMS

A. Definitions

1. **"503(b)(9) Claim"** means any Claim against the Debtor under section 503(b)(9) of the Bankruptcy Code for the value of goods sold to the Debtor in the ordinary course of business and received by the Debtor within twenty (20) days before the Petition Date.

2. "**Acquired Assets**" means the Debtor's assets relating to the operation of its business that were sold, granted, transferred, assigned, conveyed, and delivered to the Purchaser pursuant to the Sale Order and the APA. Any inconsistencies that arise under this definition shall be interpreted in favor of the definition of "Acquired Assets" in the APA, as modified by the Sale Order.

[2] All capitalized terms used but not defined in the introduction and executive summary shall have the meanings ascribed to them in Article II of the Combined Plan and Disclosure Statement.

3. **"Administrative Claim Bar Date**" means, collectively, the Initial Administrative Claim Bar Date and the Final Administrative Claim Bar Date.

4. "**Administrative Expense Claim**" means any right to payment constituting actual and necessary costs and expenses of preserving the Estate under Bankruptcy Code sections 503(b) and 507(a)(2) including, without limitation, (a) any fees or charges assessed against the Estate under section 1930 of title 28 of the United States Code, (b) all compensation and reimbursement of expenses to the extent Allowed by the Bankruptcy Court under section 330 or 503 of the Bankruptcy Code, including Professional Fee Claims, and (c) all 503(b)(9) Claims.

5. **"Affiliate"** means an "affiliate" as defined in Bankruptcy Code section 101(2).

6. "**Allowed**" means, with respect to any Claim (including any Administrative Expense Claim) or Interest, such Claim or Interest that is not Disallowed and (a) proof of which was properly and timely Filed (or for which Claim, under the Combined Plan and Disclosure Statement, the Bankruptcy Code, or a Final Order of the Bankruptcy Court, a Proof of Claim is not or shall not be required to be Filed); (b) has been or hereafter is listed by the Debtor in its Schedules as liquidated in amount and not disputed or contingent and as to which no Proof of Claim has been Filed; or (c) any Claim allowed pursuant to the Combined Plan and Disclosure Statement or a Final Order of the Bankruptcy Court; *provided, however*, that any Claim described in clauses (a) and (b) shall be considered Allowed only if and to the extent that with respect to such Claim (x) no objection to allowance thereof has been interposed within the applicable period fixed by the Combined Plan and Disclosure Statement, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or the Bankruptcy Court, or (y) an objection has been interposed and such Claim has been Allowed by the Bankruptcy Court, in whole or in part, by a Final Order. Claims allowed solely for the purpose of voting to accept or reject the Combined Plan and Disclosure Statement pursuant to an order of the Bankruptcy Court shall not be considered "Allowed" Claims hereunder.

7. "**APA**" means the asset purchase agreement, dated January 3, 2024, as amended, modified, or supplemented from time to time, between the Debtor and Purchaser, a copy of which is attached to the Sale Order as Exhibit A.

8. "**Assets**" means any and all right, title, and interest of the Debtor in and to property of whatever type or nature, including without limitation, all property of the Estate pursuant to section 541 of the Bankruptcy Code, whether real or personal, tangible or intangible, including, without limitation, any real estate, buildings, structures, improvements, privileges, rights, easements, leases, subleases, licenses, goods, materials, supplies, furniture, fixtures, equipment, works in progress, accounts, chattel paper, deposit accounts, reserves, deposits, contractual rights, intellectual property rights, legal privileges, Causes of Action, Claims, other causes of action, and any general intangibles, and any proceeds thereof, but specifically excludes the Acquired Assets.

9. "**Avoidance Actions**" means any and all Causes of Action and rights to recover or avoid transfers or to avoid any lien under chapter 5 of the Bankruptcy Code or applicable state law or otherwise that were excluded from the definition of Acquired Assets pursuant to the Sale Order.

10. "**Ballot**" means the voting form of ballot distributed to each Holder of an Impaired Claim entitled to vote on the Combined Plan and Disclosure Statement, on which the Holder is to indicate acceptance or rejection of the Combined Plan and Disclosure Statement.

11. "**Bankruptcy Code**" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

12. "**Bankruptcy Court**" means the United States Bankruptcy Court for the District of Delaware.

13. "**Bankruptcy Rules**" means the Federal Rules of Bankruptcy Procedure, as amended from time to time.

14. "**Bar Date Motion**" means the *Debtor's Motion for Entry of an Order (I) Establishing Deadlines for the Filing of Proofs of Claim (Including for Claims Arising Under Section 503(b)(9) of the Bankruptcy Code) and Administrative Claims, (II) Approving the Forms and Manner of Notice Thereof, and (III) Granting Related Relief* filed on March 1, 2024 [Docket No. 173].

15. "**Bar Date Notice**" means the *Notice of Deadline for Filing Proofs of Claim (Including for Claims Arising Under Section 503(b)(9) of the Bankruptcy Code) and Requests for Payment of Administrative Claims* [Docket No. 193].

16. "**Bar Date Order**" means the *Order (I) Establishing Deadlines for the Filing of Proofs of Claim (Including for Claims Arising Under Section 503(b)(9) of the Bankruptcy Code) and Administrative Claims, (II) Approving the Forms and Manner of Notice Thereof, and (III) Granting Related Relief* [Docket No. 190].

17. **"Bar Dates**" means those dates and times defined in the Bar Date Order and Section III.B.5. of this Combined Plan and Disclosure Statement.

18. **"Bidding Procedures Order"** means the *Order (I) Approving Bid Procedures in Connection with the Potential Sale of Substantially All of the Debtor's Assets, (II) Scheduling an Auction and a Sale Hearing, (III) Approving the Form and Manner of Notice Thereof, (IV) Authorizing the Debtor to Enter into the Stalking Horse Agreement, (V) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (VI) Granting Related Relief* [Docket No. 65].

19. "**Board**" means the members of the Debtor's Board of Directors from any time prior to or after the Petition Date through the Effective Date.

20. "**Business Day**" means any day other than a Saturday, Sunday, or any other day on which commercial banks in Wilmington, Delaware are required or authorized to close by law or executive order.

21. "**Case Website**" means the website maintained by the Claims and Noticing Agent where parties are able to view the Combined Plan and Disclosure Statement and other documents related to the Chapter 11 Case at https://dm.epiq11.com/case/humanigen/info.

22. "**Cash and Cash Equivalents**" means all of the Debtor's cash (including petty cash and checks received prior to the close of business on the date of the closing of the Sale), checking account balances, marketable securities, certificates of deposits, time deposits, bankers' acceptances, commercial paper, security entitlements, securities accounts, commodity contracts, commodity accounts, government securities and any other cash equivalents, whether on hand, in transit, in banks or other financial institutions, or otherwise held.

23. "**Causes of Action**" means any Claim, claim, cause of action (including Avoidance Actions and D&O Claims), controversy, right of setoff, cross claim, counterclaim, or recoupment, demand, right, action, lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, power, privilege, license, or franchise of any kind or character whatsoever, known, unknown, fixed or contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law, of the Debtor and/or the Estate that have not been waived or sold by a prior order of the Bankruptcy Court or released under the Combined Plan and Disclosure Statement, and any claim on contracts or for breaches of duties of the Debtor and/or the Estate not transferred to the Purchaser pursuant to the Sale Order and not otherwise expressly released hereunder imposed by law or in equity.

24. "**Chapter 11 Case**" means the chapter 11 case being administered by the Bankruptcy Court under Case No. 24-10003 (BLS).

25. "**Claim**" shall have the meaning set forth in Bankruptcy Code section 101(5).

26. "**Claims and Noticing Agent**" means Epiq Corporate Restructuring, LLC in its capacity as claims and noticing agent to the Debtor.

27. "**Claims Objection Deadline**" means the date that is one hundred and eighty (180) days after the Effective Date or such later date as may be approved by the Bankruptcy Court upon motion.

28. "**Claims Register**" means the official register of Claims maintained by the Claims and Noticing Agent.

29. "**Class**" means any group of substantially similar Claims or Interests classified by the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code sections 1122 and 1123(a)(1).

30. "**Clerk**" means the clerk of the Bankruptcy Court.

31. **"Closing"** means February 20, 2024 as the date upon which the sale of substantially all of the Debtor's assets pursuant to the Sale Order closed.

32. "**Combined Plan and Disclosure Statement**" means this combined chapter 11 plan of liquidation and disclosure statement including, without limitation, all exhibits, supplements, appendices, and schedules hereto, either in their present form or as the same may be

altered, amended, or modified from time to time through the Effective Date, including those set forth in the Plan Supplement.

33. "**Confirmation**" means confirmation of the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code section 1129.

34. "**Confirmation Date**" means the date on which the Confirmation Order is entered on the Docket.

35. "**Confirmation Hearing**" means the combined hearing to be held by the Bankruptcy Court to consider (a) approval of the Combined Plan and Disclosure Statement as providing adequate information pursuant to Bankruptcy Code section 1125, and (b) confirmation of the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code section 1129, as such hearing may be adjourned or continued from time to time.

36. "**Confirmation Order**" means the order of the Bankruptcy Court confirming the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code section 1129.

37. "**Creditor**" means any Person or Entity that is the Holder of a Claim against the Debtor as defined in Bankruptcy Code section 101(10).

38. "**Creditors' Committee**" means the Committee of Unsecured Creditors appointed by the U.S. Trustee, as amended from time to time. *See* Docket Nos. 45, 109.

39. **"Creditors' Committee Support Letter"** means that certain letter from the Creditors' Committee expressing its support for the Combined Plan and Disclosure Statement and urging the holders of Class 3 claims to vote in favor of the Combined Plan and Disclosure Statement, a copy of which is attached hereto as Exhibit A.

40. "**D&O Claims**" means any Claims or Causes of Action held by the Debtor or its Estate against any current or former members of the Board and current or former directors or officers of the Debtor, except such Claims or Causes of Action, or such rights relating thereto, that were released, sold, or modified pursuant to a prior order of the Bankruptcy Court, including the Sale Order.

41. "**Derivative Action**" means the action captioned *Yang v. Durrant, et al*., No. 2:23cv235 pending before the United States District Court for the District of New Jersey that was commenced by a shareholder of the Debtor.

42. "**DIP Facility**" means the superpriority senior secured priming term loan facility, and the term loans made thereunder, in the maximum aggregate amount of up to $2,000,000, subject to the terms and conditions of the DIP Orders and the DIP Term Sheet.

43. "**DIP Lender**" means Taran Therapeutics, Inc., in its capacity as lender under the DIP Loan Documents.

44. "**DIP Loan Documents**" means, together, the DIP Term Sheet and the DIP Orders.

45. "**DIP Motion**" means the *Motion of Debtor for Entry of Interim and Final Orders (I) Authorizing the Debtor to Obtain Post-Petition Financing, Granting Senior Post-Petition Security Interests and According Superpriority Administrative Expense Status Pursuant to Sections 364(c) and 364(d) of the Bankruptcy Code, (II) Modifying the Automatic Stay, and (III) Granting Related Relief* [Docket No. 8].

46. "**DIP Orders**" means, together, the (i) *Interim Order (I) Authorizing the Debtor to Obtain Post-Petition Financing, (II) Granting Senior Post-Petition Security Interests and According Superpriority Administrative Expense Status Pursuant to Sections 364(c) and 364(d) of the Bankruptcy Code, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 28]; and (ii) *Final Order (I) Authorizing the Debtor to Obtain Post-Petition Financing, (II) Granting Senior Post-Petition Security Interests and According Superpriority Administrative Expense Status Pursuant to Sections 364(c) and 364(d) of the Bankruptcy Code, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 181].

47. "**DIP Term Sheet**" means the DIP Financing Term Sheet dated January 3, 2024, as amended from time to time, by and among the Debtor, as borrower, and the DIP Lender, as lender, a copy of which is attached to the Final DIP Order as Exhibit 1.

48. "**Disallowed**" means any Claim or any portion thereof that (i) has been disallowed by a Final Order or settlement, (ii) is not Scheduled and as to which a Bar Date has been established but no Proof of Claim has been timely Filed, deemed timely Filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court, including the Bar Date Order, or otherwise deemed timely Filed under applicable law, (iii) is Scheduled as zero ($0.00) or as contingent, disputed, or unliquidated and as to which a Bar Date has been established but no Proof of Claim has been timely Filed, deemed timely Filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court, including the Bar Date Order, or (iv) has been withdrawn by the Holder of the Claim or Interest, or by agreement of the Debtor or Liquidating Trust, as applicable, and the Holder thereof.

49. "**Disputed**" means, with respect to any Claim or Interest, a Claim (or portion thereof) or Interest that is not yet Allowed or Disallowed.

50. "**Distribution**" means any distribution to the Holders of Allowed Claims against or Interests in the Debtor on account of such Claims or Interests pursuant to the Combined Plan and Disclosure Statement.

51. "**Distribution Record Date**" means the Effective Date.

52. **"DTC"** means the Depository Trust Company.

53. "**Docket**" means the docket in this Chapter 11 Case maintained by the Clerk.

54. "**Effective Date**" means the date on which the conditions specified in Article IX of the Combined Plan and Disclosure Statement have been satisfied or waived.

55. "**Entity**" means an "entity" as defined in Bankruptcy Code section 101(15).

56. "**Estate**" means the estate of the Debtor created upon the commencement of the Chapter 11 Case pursuant to Bankruptcy Code section 541.

57. "**Exculpated Parties**" means, with respect to the period beginning on and from the Petition Date and ending on date through and including the Effective Date, individually and collectively, in each case solely in their capacity as such, each and all of: (a) the Debtor; (b) the Creditors' Committee and its members (solely in their capacity as such); (c) all Professionals retained by the Debtor or the Creditors' Committee; and (d) the current officers and directors of the Debtor; *provided, however,* that Cameron Durrant, Dale Chappell, and all other current or former members of the Board and current or former officers and directors of the Debtor, and any entities of any nature affiliated with them, shall not be Exculpated Parties; *provided further*, that, notwithstanding the foregoing, Ronald Barliant, Rainer Bohm, Craig Jalbert, Henry Madrid, and Barbara Rescino shall be Exculpated Parties.

58. "**Executory Contract**" means any executory contract as of the Petition Date between the Debtor and any other Person or Entity.

59. "**Existing Equity Interests**" means Interests in the Debtor.

60. **"Existing Equity Interests Record Date"** means such date on which the Liquidating Trustee may establish, in its sole discretion, for purposes of determining which Holders of Existing Equity Interests are potentially entitled to receive a Distribution (if any), which such record date shall be identified in a notice Filed on the Docket in the Chapter 11 Case not less than thirty (30) days prior to such record date.

61. **"File", "Filed", or "Filing"** means file, filed, or filing with the Bankruptcy Court, or its authorized designee, in the Chapter 11 Case.

62. "**Final Administrative Claim Bar Date**" means, for any unpaid Administrative Expense Claim arising on or between February 21, 2024 and the Effective Date, the date that is thirty (30) calendar days after service of the notice of Effective Date, with such date to be provided in the notice of Effective Date.

63. "**Final Decree**" means the order entered pursuant to Bankruptcy Code section 350, Bankruptcy Rule 3022, and Local Rule 5009-1 closing the Chapter 11 Case.

64. "**Final DIP Order**" means the *Final Order (I) Authorizing the Debtor to Obtain Post-Petition Financing, (II) Granting Senior Post-Petition Security Interests and According Superpriority Administrative Expense Status Pursuant to Sections 364(c) and 364(d) of the Bankruptcy Code, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 181].

65. "**Final Order**" means an order or judgment of the Bankruptcy Court or any other court of competent jurisdiction that has been entered on the docket in the Chapter 11 Case (or the docket of such other court) that is not subject to a stay and has not been modified, amended, reversed, or vacated and as to which (a) the time to appeal, petition for certiorari, move for leave to appeal, or move for a new trial, reargument, or rehearing pursuant to Bankruptcy Rule 9023 has expired and as to which no appeal, petition for certiorari, or other proceedings for a new trial,

reargument, or rehearing shall then be pending, or (b) if an appeal, writ of certiorari, new trial, reargument, or rehearing thereof has been sought, such order or judgment shall have been affirmed by the highest court to which such order was timely and properly appealed, or certiorari shall have been denied or a new trial, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for a new trial, reargument, or rehearing shall have expired.

66. "**First Day Declaration**" means the *Declaration of Henry Madrid, Senior Vice President of Finance of the Debtor, in Support of Chapter 11 Petition and First Day Pleadings* [Docket No. 7].

67. "**First Day Motions**" refer collectively to those certain motions filed by the Debtor on or shortly after the Petition Date, and as more specifically identified in Part IV of the First Day Declaration.

68. "**First Day Orders**" means the Final Orders entered by the Bankruptcy Court approving the First Day Motions and granting the relief set forth in each First Day Motion.

69. "**Foreign Subsidiary**" means Humanigen Australia Pty, Ltd., a proprietary limited company organized in Australia.

70. "**General Bar Date**" means April 22, 2024 at 5:00 p.m. prevailing Eastern Time, as set forth in the Bar Date Notice.

71. "**General Unsecured Claims**" means any Claim against the Debtor which is *not* a Non-Tax Priority Claim, Administrative Expense Claim, Professional Fee Claim, Priority Tax Claim, Secured Claim, Non-Priority Tax Claim, Subordinated Claim, or Existing Equity Interest.

72. "**Governmental Bar Date**" means, pursuant to the Bar Date Order, the date by which Proofs of Claim on behalf of Governmental Units must be submitted: July 1, 2024 at 5:00 p.m. prevailing Eastern Time.

73. "**Governmental Unit**" means a "governmental unit" as defined in Bankruptcy Code section 101(27).

74. "**Holder**" means the beneficial holder of any Claim or Interest.

75. **"HGEN AUS Receivable"** means that certain receivable owed by the Foreign Subsidiary to the Debtor in the amount of not less than AUD $2,432,486.94.

76. "**HGEN Product**" means lenzilumab, ifabotuzumab and HGEN005 or the salts or precursors thereof, whether approved for commercial sale independently or as part of an ADC or as a companion therapeutic to another drug or biological product.

77. "**Impaired**" means, with respect to any Class, a Class that is impaired within the meaning of Bankruptcy Code sections 1123(a)(4) and 1124.

78. **"Initial Administrative Claim Bar Date"** means April 22, 2024 at 5:00 p.m. (prevailing Eastern Time), which is the deadline for Filing requests for allowance and payment of Administrative Expense Claims arising in the time period between the Petition Date and February 20, 2024.

79. "**Interest**" means any "equity security" in the Debtor as defined in Bankruptcy Code section 101(16), including, without limitation, all issued, unissued, authorized, or outstanding ownership interests (including common and preferred) or other equity interests and membership units, together with any warrants, options, convertible securities, liquidating preferred securities, or contractual rights to purchase or acquire any such equity interests at any time and all rights arising with respect thereto.

80. "**Interim DIP Order**" means the *Interim Order (I) Authorizing the Debtor to Obtain Post-Petition Financing, (II) Granting Senior Post-Petition Security Interests and According Superpriority Administrative Expense Status Pursuant to Sections 364(c) and 364(d) of the Bankruptcy Code, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 28].

81. **"Lien"** shall have the meaning set forth in section 101(37) of the Bankruptcy Code.

82. "**Liquidating Trust**" means the liquidating trust established on the Effective Date pursuant to the Liquidating Trust Agreement and the Combined Plan and Disclosure Statement for the purpose of administering the Liquidating Trust Assets and to make one or more Distribution(s) to Holders of Allowed Claims against the Debtor.

83. "**Liquidating Trust Agreement**" means the trust agreement, and related documents, that documents and governs the powers, duties, and responsibilities of the Liquidating Trustee, and which agreement will be materially consistent with and subject to the Combined Plan and Disclosure Statement and otherwise in the substance and form included in the Plan Supplement.

84. "**Liquidating Trust Assets**" means all Assets, and proceeds thereof, and the Debtor's equity interests, solely for the purpose of conferring derivative standing upon the Liquidating Trustee to institute any Cause of Action pursuant to the provisions of the Delaware General Corporation Law to the extent that the Liquidating Trustee is found not to have direct standing to pursue such Claims as an estate representative pursuant to section 1123(b) of the Bankruptcy Code. The Liquidating Trust Assets shall exclude Acquired Assets and the Professional Fee Escrow; *provided, however*, that any excess amounts in the Professional Fee Escrow after payment in full or other satisfaction of Allowed Professional Fee Claims shall become Liquidating Trust Assets and be treated as such under the Combined Plan and Disclosure Statement and Liquidating Trust Agreement.

85. "**Liquidating Trust Beneficiaries**" means, collectively, the Holders of Allowed Claims or Interests under the Combined Plan and Disclosure Statement against the Debtor, or any successors to such Holders, or their interests in the Liquidating Trust, whether said Claims are Allowed before or after the Effective Date.

86. "**Liquidating Trust Expenses**" means all actual and necessary fees, costs, expenses, and obligations incurred or owed by the Liquidating Trustee or its agents, employees, attorneys, advisors, or other professionals in administering the Combined Plan and Disclosure Statement and the Liquidating Trust (including, without limitation, reasonable compensation for services rendered, and reimbursement for actual and necessary expenses incurred by the Liquidating Trustee and its agents, employees, and professionals) arising after the Effective Date through and including the date upon which the Bankruptcy Court enters a Final Decree closing the Chapter 11 Case, which shall be solely payable from the Liquidating Trust Assets prior to any Distribution to Creditors.

87. "**Liquidating Trust Interests**" mean the beneficial interests of the Liquidating Trust allocable to Holders of Allowed Claims or Interests in accordance with the terms of the Combined Plan and Disclosure Statement and the Liquidating Trust Agreement.

88. "**Liquidating Trustee**" means the Person or Entity selected to administer the Liquidating Trust under the Liquidating Trust Agreement and as identified in the Plan Supplement and the Liquidating Trust Agreement.

89. "**Liquidating Trust Proceeds**" means all proceeds, and other receipts of, from, or attributable to the Liquidating Trust Assets after payment of fees, expenses, charges, or other incurrences of the Liquidating Trust.

90. "**Local Rules**" means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

91. "**Madison JV Interest**" means Debtor's membership or other interest in Madison Joint Venture LLC, a Delaware limited liability company, including, without limitation any right, title, or interest of the Debtor in a judgment, settlement, or other award resulting from the litigation styled as *Madison Joint Venture LLC v. Chemo Research SL et al.*, Case No. 2:19-cv-08012.

92. **"Madison JV Litigation"** means that certain litigation styled as *Madison Joint Venture LLC* v. *Chemo Research SL et. al.*, Case No. 2:19-cv-08012.

93. **"Non-Tax Priority Claims**" means any Claim entitled to priority pursuant to Bankruptcy Code section 507(a) other than Administrative Expense Claims, Professional Fee Claims, and Priority Tax Claims.

94. "**Person**" means a "person" as defined in Bankruptcy Code section 101(41).

95. "**Petition Date**" means January 3, 2024.

96. "**Plan Supplement**" means the appendix of schedules and exhibits to be filed with the Bankruptcy Court at least seven (7) days prior to the Voting Deadline. The Plan Supplement will contain, among other things: (a) the form of Liquidating Trust Agreement; (b) identification of the Liquidating Trustee; and (c) any other disclosures as required by the Bankruptcy Code.

97. "**Priority Tax Claims**" means Claims of a Governmental Unit against the Debtor entitled to priority pursuant to Bankruptcy Code section 507(a)(8) or as specified in Bankruptcy Code section 502(i).

98. "**Pro Rata**" means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in the same Class.

99. "**Professional**" means any professional Person employed in the Chapter 11 Case pursuant to Bankruptcy Code sections 327, 328, 363, or 1103 pursuant to an order of the Bankruptcy Court and who is to be compensated for services rendered pursuant to Bankruptcy Code sections 327, 328, 329, 330, 331, or 363.

100. "**Professional Fee Claims**" means all Claims for compensation and reimbursement of expenses by Professionals, for the period starting with each Professional's retention date pursuant to an order of the Bankruptcy Court and ending with the Effective Date, to the extent Allowed by the Bankruptcy Court.

101. "**Professional Fee Escrow**" means the escrow account that was funded in accordance with the DIP Term Sheet and DIP Orders.

102. "**Proof of Claim**" means a proof of claim or request for payment and allowance of a Claim, as applicable, filed against the Debtor in accordance with the Bar Date Order or any other order of the Bankruptcy Court requiring or setting forth a time period for the fixing of Claims.

103. "**Purchaser**" means Taran Therapeutics Inc., in its capacity as purchaser under the APA, Sale, and Sale Order.

104. "**Regulatory Approval**" means, with respect to a country or other jurisdiction, all approvals, licenses, registrations, or authorizations of any governmental body necessary to commercialize an HGEN Product in such country or other jurisdiction, including, where applicable, (a) any pricing approval in such country or other jurisdiction, (b) pre-and post-approval marketing authorizations (including any prerequisite manufacturing approval or authorization related thereto), and (c) approval of product labeling.

105. "**Rejection Claim**" means any Claim arising from, or relating to, the rejection of an Executory Contract or Unexpired Lease pursuant to Bankruptcy Code section 365(a) by the Debtor, as limited, in the case of a rejected Unexpired Lease, by Bankruptcy Code section 502(b)(6).

106. **[reserved]**

107. "**Sale Order**" means the *Order (A) Approving the Sale of Substantially all of the Debtor's Assets Free and Clear of all Liens, Claims, Encumbrances, and Interests, (B) Authorizing the Assumption and Assignment of Contracts and Leases, and (C) Granting Related Relief* [Docket No. 155].

108. "**Sale**" means the sale of the Acquired Assets free and clear of liens, claims, interests, and encumbrances, pursuant to the Sale Order and the APA attached thereto as Exhibit A.

109. "**Schedules**" means, collectively, the schedules of assets and liabilities, the list of Holders of Interests, and the statements of financial affairs filed by the Debtor under Bankruptcy Code section 521 and Bankruptcy Rule 1007 [Docket Nos. 84 and 115], and all amendments and modifications thereto.

110. "**Scheduled**" refers to any Claim included in the Debtor's Schedules.

111. "**Secured Claim**" means a Claim secured by a Lien on property in which the applicable Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by a Final Order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the applicable creditor's interest in such Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, in each case, as determined pursuant to section 506(a) of the Bankruptcy Code.

112. **"Solicitation Agent"** means Epiq Corporate Restructuring, LLC in its capacity as solicitation agent.

113. "**Solicitation Package**" means the package to be distributed to certain Creditors for solicitation of votes on the Combined Plan and Disclosure Statement.

114. **"Solicitation Procedures Order"** means the *Order (I) Granting Interim Approval of the Disclosures in the Combined Plan and Disclosure Statement; (II) Scheduling a Combined Confirmation Hearing and Setting Deadlines Related Thereto; (III) Approving Solicitation Packages and Procedures; (IV) Approving the Forms of Ballots; and (V) Granting Related Relief* [Docket No. 250].

115. "**Statutory Fees**" means all fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930, and any interest thereupon.

116. **"Subordinated Claim**" means any Claim that is subordinated, pursuant to section 510(b) of the Bankruptcy Code or otherwise, including any Claims arising from rescission of a purchase or sale of a Security of any Debtor or an Affiliate of any Debtor, which Security is not an Interest, for damages arising from the purchase or sale of such a Security, or for reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such a Claim.

117. **"Taran"** means Taran Therapeutics, Inc.

118. "**U.S. Trustee**" means the Office of the United States Trustee for the District of Delaware.

119. "**Unclaimed Distribution**" means a Distribution that is not claimed by a Holder of an Allowed Claim on or prior to the Unclaimed Distribution Deadline.

120. "**Unclaimed Distribution Deadline**" means ninety (90) days from the date the Debtor or Liquidating Trustee, as the case may be, makes a Distribution pursuant to the Combined Plan and Disclosure Statement.

121. **"Unexpired Lease"** means any unexpired lease as of the Petition Date between the Debtor and any other Person or Entity.

122. "**Unimpaired**" means, with respect to a Claim, Interest, or Class of Claims or Interests, not "impaired" within the meaning of sections 1123(a)(4) and 1124 of the Bankruptcy Code.

123. "**Voting Class**" means Class 3.

124. "**Voting Deadline**" means June 6, 2024 at 4:00 p.m. prevailing Eastern Time.

125. "**Voting Record Date**" means the date on which the Bankruptcy Court has entered the Solicitation Procedures Order.

B. Interpretation; Application of Definitions and Rules of Construction

Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include both the singular and the plural and pronouns stated in the masculine, feminine, or neutral gender shall include the masculine, feminine, and neutral genders. Unless otherwise specified, each section, article, schedule, or exhibit reference in the Combined Plan and Disclosure Statement is to the respective section in, article of, schedule to, or exhibit to the Combined Plan and Disclosure Statement. The words "herein," "hereof," "hereto," "hereunder," and other words of similar import refer to the Combined Plan and Disclosure Statement as a whole and not to any particular section, subsection, or clause contained in the Combined Plan and Disclosure Statement. The rules of construction contained in Bankruptcy Code section 102 shall apply to the construction and interpretation of the Combined Plan and Disclosure Statement. A term used herein that is not defined herein but that is used in the Bankruptcy Code shall have the meaning ascribed to that term in the Bankruptcy Code. The headings in the Combined Plan and Disclosure Statement are for convenience of reference only and shall not limit or otherwise affect the provisions of the Combined Plan and Disclosure Statement. Unless otherwise provided, any reference in the Combined Plan and Disclosure Statement to an existing document, exhibit, or schedule means such document, exhibit, or schedule as may be amended, restated, revised, supplemented, or otherwise modified. In computing any period of time prescribed or allowed by the Combined Plan and Disclosure Statement, the provisions of Bankruptcy Rule 9006(a) shall apply.

III. BACKGROUND AND DISCLOSURES

A. General Background

1. The Company and Its Business

The Debtor was a clinical-stage biopharmaceutical company, developing a portfolio of proprietary anti-inflammatory immunology and immuno-oncology monoclonal antibodies. The Debtor was incorporated in 2000 in California under the name KaloBios Pharmaceuticals, Inc. ("KaloBios") and reincorporated in Delaware under that name in 2001. The company completed its initial public offering in 2013, listing its shares of common stock on the Nasdaq Stock Market ("Nasdaq").

In December 2015, KaloBios filed a voluntary petition for relief under chapter 11 of Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (15-12628-LSS). In June 2016, KaloBios confirmed a plan of reorganization, the confirmed plan went effective, and KaloBios emerged from its chapter 11 bankruptcy. *In re KaloBios Pharm., Inc.*, Case No. 15-12628-LSS (Bankr. D. Del. June 2016) [Docket Nos. 581 and 626]. The Debtor's shares were delisted from Nasdaq in connection with these bankruptcy proceedings. In 2017, KaloBios announced a change to the company's name to Humanigen, Inc., which name change took effect on August 7, 2017.

Since 2017, the Debtor focused its operations on preventing and treating an immune hyper-response called "cytokine storm"; a cytokine storm is a physiological reaction where a person's immune system causes an uncontrolled and excessive release of pro-inflammatory signaling molecules called cytokines. The sudden release of large quantities of cytokines can lead to multisystem organ failure and even death. The Debtor's lead product candidate, lenzilumab, is under development as a treatment for cytokine storm in various potential indications as well as other biological mechanisms related to overproduction of granulocyte-macrophage colony-stimulating factor ("GM-CSF"). Lenzilumab is a first-in class antibody that binds to and neutralizes GM-CSF. Preclinical modeling has indicated GM-CSF is an upstream regulator of many inflammatory cytokines and chemokines involved in the cytokine storm.

Early in the COVID-19 pandemic, published scientific research indicated that high levels of GM-CSF secreting T cells were associated with disease severity and intensive care unit admission. In response, the Debtor designed and conducted a Phase 3, multi-center, double-blind, placebo-controlled potential registrational trial for hospitalized, hypoxic patients with COVID-19 pneumonia (the "LIVE-AIR Study") to test a hypothesis that early intervention with lenzilumab may prevent consequences of a full-blown cytokine storm in hospitalized patients with COVID-19. Lenzilumab also was selected to be part of the ACTIV-5 "Big Effect Trial" ("ACTIV-5/BET"), which was sponsored by the National Institutes of Health ("NIH")

On September 8, 2021, the United States Food and Drug Administration's ("FDA") informed the Debtor that it had declined to issue an Emergency Use Authorization ("EUA") for lenzilumab for patients hospitalized with COVID-19. The price of the Debtor's common stock dropped precipitously in the trading days following the Debtor's announcement of the FDA's decision. During 2021 the United Kingdom's regulatory body raised a number of questions as part of its review of the Debtor's application for marketing authorization. The Debtor continued to pursue its applications for EUA and marketing authorization, on the assessment that the results from the ACTIV-5/BET, if confirmatory of certain of the findings from the LIVE-AIR Study, may support the issuance of EUA or marketing authorization. However, in its 2021 Form 10-K filed with the Securities and Exchange Commission (the "SEC"), the Debtor cautioned that unfavorable results from the ACTIV-5/BET likely would have a material and adverse impact on the Debtor's stock price and ability to obtain future financing needed to continue as a going concern.

In July 2022, the Debtor was informed by the NIH of topline initial data from the ACTIV-5/BET which showed that lenzilumab had failed to meet the primary endpoint of that study on the statistical analysis performed on the data to hand. The Debtor's announcement of this failure again

resulted in a significant decline in the price of the Debtor's common stock, such that the Debtor fell out of compliance with certain of the requirements for continued listing on Nasdaq. Unfortunately, the failure of the study did not relieve the Debtor from any of the manufacturing commitments it incurred in 2020 and 2021.

Following the announcement of the ACTIV-5/BET results, the Debtor announced a strategic realignment plan to develop lenzilumab and the Debtor's other monoclonal antibodies for other immune-oncology indications, while pursuing new financing to enable the Debtor to remain a going concern. The effectiveness of lenzilumab is being explored and it could be developed as a treatment for other inflammatory conditions – such as acute Graft versus Host Disease in patients undergoing allogeneic hematopoietic stem cell transplantation, eosinophilic asthma, and rheumatoid arthritis. Further, the Debtor focused on studying the effectiveness of lenzilumab for patients with chronic myelomonocytic leukemia exhibiting RAS pathway mutations. The Debtor was working on two other monoclonal antibodies – ifabotuzumab, which binds to EphA3, and HGEN005, which targets EMR1. Ifabotuzumab has been evaluated in a Phase 1 study of glioblastoma multiforme and HGEN005 is being considered as a treatment for a range of eosinophilic diseases.

2. Business Operations and Financial Overview of the Company

a. Financial Performance

With nominal revenues and heavy research and development and manufacturing costs, the Debtor recognized net losses of $236,649,000 in the year ended December 31, 2021, and $70,730,000 in the year ending on December 31, 2022.

The Debtor relied on third party capital raised through public and private equity offerings and debt financings to support its operations. In 2021, the company received net proceeds of approximately $94.2 million from an underwritten public offering, $65.7 million from the issuance of common stock under a sales agreement with Cantor Fitzgerald & Co. (the "Cantor Sales Agreement"), and $24.4 million from a term loan with Hercules Capital. In 2022, the company received net proceeds of $41.8 million from the issuance of common stock under the Cantor Sales Agreement, and repaid the term loan with Hercules Capital in full, in an attempt to reduce its future cash payments for interest and enhance its ability to generate additional liquidity from its intellectual property.

As of the Petition Date, the Debtor owed creditors a total of approximately $44.1 million consisting of unsecured obligations. The Debtor's general unsecured creditors include non-insider trade creditors and vendors, some of which are litigation counterparties.

b. Corporate Governance

The Debtor is governed by its Board. As of the Petition Date, the Board was composed of four (4) members: Cameron Durrant (Chairman of the Board, Chief Executive Officer, acting Chief Financial Officer); Dale Chappell (Chief Science Officer); Ronald Barliant (independent director and member of the Special Committee); and Rainer Bohm (independent director and member of the Special Committee). Following the closing of the Sale, the Board size was reduced

to one member, and Craig Jalbert was appointed to serve as the sole director of the Debtor, and each other director of the Debtor resigned in such capacity from the Board. *See* Docket No. 176. Non-debtor subsidiary Humanigen, Ltd. is organized under the laws of the United Kingdom and located in England, the Foreign Subsidiary is organized under the laws of Australia and located in the Commonwealth of Australia, and non-debtor Humanigen Europe, Ltd. is organized under the laws of the Republic of Ireland and located in the Republic of Ireland.

3. Events Precipitating the Chapter 11 Filing

The Debtor's financial distress is due in large part to the FDA's rejection of the Debtor's EUA request for lenzilumab. Further, litigation and arbitration taking place in federal and state courts across the United States, resulting, in pertinent part, from the Debtor's inability to pay primarily for manufacturing, as well as sales and marketing services rendered pursuant to agreements executed by the various parties in 2020 and 2021, has also strained the Debtor's financial resources. Unfortunately, after the FDA's rejection of the Debtor's application for EUA, a securities class action suit styled *Pieroni v. Humanigen Inc., et al.*, Case No. 22-cv-05258 (the "Securities Class Action Suit") was commenced in the District of New Jersey, which was followed by the Derivative Action for a breach of fiduciary duty based on the same allegations. Similarly, in litigation pending with a commercial partner in a California state court, the Debtor's financial distress led to an escalation in the litigation tactics employed by the litigation counterparty against the Debtor, which included seeking a writ of attachment against all of the Debtor's corporate assets. A chart summarizing the pending litigation against the Debtor is provided in paragraph 28 of the First Day Declaration.

On September 22, 2023, a stipulation of settlement (the "Securities Settlement") was filed in the Securities Class Action Suit by and among (i) Co-Lead Plaintiffs Dr. Scott Greenbaum and Joshua Mailey and Plaintiff Alejandro Pieroni, individually and on behalf of the settlement class; and (ii) Defendants Humanigen, Inc., Cameron Durrant, and Dale Chappell, through their respective counsel. The Securities Settlement has not yet been approved by the U.S. District Court for the District of New Jersey. The Securities Class Action Suit, like all other civil actions, has been stayed against the Debtor since the Petition Date.

Within months of adoption of its strategic realignment plan, on or around October 13, 2022, the company engaged SC&H Group, Inc. (together with its subsidiaries and affiliates, "SC&H") to determine whether there was going concern interest in the Debtor and how to best maximize the value of the Debtor's assets, whether through further equity infusions, debt financing, or a sale of substantially all of the Debtor's assets. The Debtor and SC&H conducted a broad and robust marketing process using proprietary research tools and methods. Ultimately, this process identified 101 potential buyers based on their industry, size, acquisition history, and potential strategic angle. The list of potential buyers was supplemented with 55 potential buyers that management believed would have an interest in a transaction with the Debtor. SC&H prepared marketing materials and conducted an outreach campaign that involved direct calls and emails to the groups identified, sending non-disclosure agreements ("NDAs") to 113 prospective bidders. In total, 14 groups signed NDAs and management conducted meetings with nine separate groups at the JP Morgan Healthcare Conference in San Francisco, CA in January 2023. This led to additional in-person meetings and video calls with the more interested prospects. No transactions were proposed to the Debtor as a result of such meetings.

During the first half of 2023, the Debtor was involved in exclusive negotiations relating to a proposed business combination with a privately held biopharmaceutical company (the "Partner Company"), which negotiations contemplated a tax-free stock-for-stock merger, that would result in the issuance of shares of Humanigen's capital stock to the Partner Company's stockholders, representing roughly two times the number of Humanigen's outstanding shares of common stock. The proposed terms for the business combination were subject to conditions, including that the Debtor received binding commitments for investment of additional capital that would have been necessary to fund the operations of the combined company and enable it to maintain a listing on a national securities exchange. Such additional capital proved not to be available, and in July of 2023, the Debtor's negotiations with the Partner Company concluded without execution of a definitive agreement.

In addition, the Debtor had been unsuccessful in its attempt to identify and complete another strategic or equity financing transaction in the first half of 2023 on terms sufficient to enable the company to regain compliance with applicable Nasdaq listing requirements.

In light of these developments and the matters discussed above, which resulted in severe liquidity constraints, on July 21, 2023, the Debtor notified a Nasdaq Hearings Panel that it did not expect to be able to demonstrate compliance with all applicable criteria for listing on the Nasdaq Capital Market by the Debtor's compliance deadline of August 21, 2023. As a result, the Panel suspended trading in the Debtor's shares beginning Wednesday, July 26, 2023, and delisted the shares of the Debtor from the Nasdaq Capital Market beginning October 11, 2023. The suspension from trading and delisting from the Nasdaq Capital Market had a significant, adverse effect on the liquidity of the Debtor's common stock and its ability to raise additional capital at a critical juncture.

Upon being delisted, in furtherance of its fiduciary duty to maximize value for all creditor constituencies, the Debtor turned its attention to one last-ditch effort to enter into a sales transaction to maximize the enterprise value of the Debtor. Accordingly, SC&H reached out to all interested parties and asked for submissions of final letters of intent ("LOI") to enter into a transaction with the Debtor. At the conclusion of this process, the Debtor received two (2) LOIs. One LOI was from a strategic partner and the other LOI was from the Purchaser, an entity owned and operated by Cameron Durrant, the Chairman and Chief Executive Officer of the Debtor and acting Chief Financial Officer of the Debtor.

As a result of the Purchaser's LOI, the Debtor's Board met and determined to form a special committee (the "Special Committee") consisting of the Board's two independent directors to oversee the negotiation of the LOI. The LOI contemplated a sale of substantially all of the Debtor's assets through a chapter 11 proceeding and a debtor in possession financing facility to fund the same.

The Special Committee tasked SC&H with negotiating with the two parties that submitted LOIs to get to the final and best terms that would allow the Debtor the required liquidity to prepare and file a chapter 11 case to run a sale and to continue the prepetition marketing process in bankruptcy after the commencement of the chapter 11 case. During these negotiations, the non-insider LOI made a business decision to no longer pursue a transaction. Left with no other alternative and extremely limited liquidity, the Special Committee determined to move forward with finalizing a definitive term sheet with the Purchaser.

After intense, arm's length negotiations between the Debtor's advisors, at the direction of the Special Committee, and the Purchaser, the Debtor and the Purchaser entered into a term sheet (the "Taran Term Sheet"), a copy of which was attached to the DIP Motion. Pursuant to the Taran Term Sheet, the Purchaser would purchase substantially all of the Debtor's assets, carving out certain Causes of Action, cash on hand, and claims related to the Madison JV Interest, in consideration of a $2,000,000 purchase price, which would include a credit bid pursuant to a to-be-provided debtor in possession loan in an amount up to $2,000,000.[3]

Since July of 2023, at all times relevant to the discussions and negotiations with Taran, the Special Committee negotiated on behalf of the Debtor. Ultimately, the Special Committee resolved to approve both a sale to Taran and a DIP financing arrangement with Taran as being the best—and only—alternative available to the Debtor to maximize value for all creditor constituencies. The Special Committee also determined that Cameron Durrant should remain in his then-current positions with the Debtor during the pendency of the Chapter 11 Case until the closing of the Sale. Given his intimate familiarity with the Debtor's business and financial operations, and experience and expertise, as well as the lack of liquidity to seek other options, the Special Committee believed that continuity of the business operations through a sale to Taran was imperative to maintain the enterprise, going concern value of the Debtor.

Immediately prior to the Petition Date, the Debtor and the Purchaser entered into the APA for the Purchaser to serve as the stalking horse purchaser, subject to approval by the Bankruptcy Court. Taran also agreed to act as the DIP Lender and provide senior secured post-petition DIP financing on a superpriority basis consisting of a superpriority senior secured priming term loan facility pursuant to the terms and conditions of set forth in the DIP Loan Documents, by and among the Debtor, as borrower, and Taran, as the DIP Lender.

As of the Petition Date, despite having no secured funded debt, the Debtor had limited revenue, even more limited liquidity, and minimal operations to maintain the value of the assets through the sale process. It held limited cash and cash equivalents and owned certain intellectual property, but owed unsecured obligations to its creditors that approximate $44.1 million. As a

[3] Additional "Excluded Assets" are specified in section 1.2 of the APA.

result, the Debtor recognized the need to seek the protection afforded by filing a petition for relief under Chapter 11 of the Bankruptcy Code.

B. The Chapter 11 Case

1. First Day Orders

On the Petition Date, the Debtor filed a voluntary petition for relief. The Debtor also filed a number of First Day Motions and applications seeking customary relief intended to facilitate a smooth transition into the Chapter 11 Case and to minimize disruptions to the Debtor's business operations.

The First Day Motions requested relief from the Bankruptcy Court to, among other things: (a) appoint the Claims and Noticing Agent; (b) pay employee wages; (c) maintain the Debtor's cash management system; and (d) obtain postpetition financing. In support of the First Day Motions, the Debtor relied upon the First Day Declaration. The First Day Motions were all entered on an interim and/or final basis, as applicable.

The First Day Motions, the First Day Declaration, and all orders for relief granted in the Chapter 11 Case can be viewed free of charge at https://dm.epiq11.com/case/humanigen/info.

2. DIP Financing

Pursuant to the DIP Motion, the Debtor sought authorization to obtain senior secured post-petition financing on a superpriority basis consisting of a senior secured superpriority term loan facility in the aggregate principal amount of up to $2,000,000 pursuant to the terms and conditions set forth in the DIP Loan Documents, by and among the Debtor, as borrower, and Taran, as DIP Lender. The Bankruptcy Court entered the Interim DIP Order on January 8, 2024, and the Final DIP Order on March 8, 2024, in each case approving the DIP Motion. Upon entry of the Interim DIP Order, the DIP Lender issued a loan in the principal amount of $1,000,000 to the Debtor to fund the Debtor's operations and the administration of its chapter 11 case. The remaining $1,000,000 of availability under the DIP Facility was not needed nor funded.

3. Retention of Professionals

The Debtor, through various applications which were subsequently approved by the Bankruptcy Court, employed certain Professionals including: Potter Anderson & Corroon LLP as counsel [Docket No. 93]; SC&H Group, Inc. as investment banker [Docket No. 81]; and Epiq Corporate Restructuring, LLC, as Claims and Noticing Agent [Docket No. 23], and as Solicitation Agent [Docket No. 251].

On January 16, 2024, the U.S. Trustee appointed the Creditors' Committee. The Creditors' Committee, through various applications which were subsequently approved by the Bankruptcy Court, employed certain Professionals including: Kilpatrick Townsend & Stockton LLP as co-counsel [Docket No. 162]; Womble Bond Dickinson (US) LLP as co-counsel [Docket No. 163]; and Dundon Advisers, LLC as financial advisor [Docket No. 164].

4. Sale of Substantially all of the Debtor's Assets

The Debtor filed the Chapter 11 Case to continue the process of marketing and selling substantially all of the Debtor's assets. To that end, on the Petition Date, the Debtor filed the *Motion of Debtor for Entry of (I) an Order (A) Approving Bid Procedures in Connection with the Potential Sale of Substantially all of the Debtor's Assets, (B) Scheduling an Auction and a Sale Hearing, (C) Approving the Form and Manner of Notice Thereof, (D) Authorizing the Debtor to Enter into the Stalking Horse Agreement, (E) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (F) Granting Related Relief; and (II) an Order (A) Approving the Sale of Substantially all of the Debtor's Assets Free and Clear of all Liens, Claims, Encumbrances, and Interests, (B) Authorizing the Assumption and Assignment of Contracts and Leases, and (C) Granting Related Relief* [Docket No. 10]. After the Petition Date, SC&H continued marketing the Debtor's Assets and soliciting interest from prospective purchasers. No other bids for substantially all of the Debtor's Assets were submitted by the Bid Deadline. The Debtor did receive one bid for the Madison JV Interest, but, in consultation and with the support of the Creditors' Committee, the Debtor declined to accept that bid.

On February 13, 2024, the Creditors' Committee filed the *Objection of the Official Committee of Unsecured Creditors to Proposed Sale of Substantially all of the Debtor's Assets to the Stalking Horse Bidder* [Docket No. 130]. To resolve the objections asserted therein, the Debtor, the Creditors' Committee, and the Purchaser agreed to certain amendments of the terms of the Sale and the APA, and agreed to such amendments as described on the record at the hearing before the Bankruptcy Court held on February 14, 2024 (the "February 14, 2024 Hearing").

On February 17, 2024, the Bankruptcy Court entered the Sale Order, whereby the Bankruptcy Court authorized the Debtor to, among other things, enter into the APA with the Purchaser for the sale of the Acquired Assets. The Sale closed on February 20, 2024.

5. Claims Process and Bar Dates

The Debtor filed the Bar Date Motion on March 1, 2024 and on March 19, 2024, the Bankruptcy Court entered the Bar Date Order. On March 21, 2024, the Debtor filed the Bar Date Notice, which established the General Bar Date, the Governmental Bar Date, and an administrative claim bar date for Administrative Expense Claims arising from the Petition Date through and including February 20, 2024.

Pursuant to the Bar Date Order, all Creditors holding or wishing to assert a Claim against the Debtor or its Estate, accruing prior to the Petition Date, and which remain unpaid, including Claims arising under Bankruptcy Code section 503(b)(9), were required to file a Proof of Claim by the General Bar Date.

In addition, pursuant to the Bar Date Order, all Creditors holding or wishing to assert Administrative Expense Claims against the Debtor or its Estate, accruing from the Petition Date through and including February 20, 2024, were required to file such Claims by the General Bar Date. Administrative Expense Claims arising from February 21, 2024 through the Effective Date of the Combined Plan and Disclosure Statement are governed by the Administrative Claim Bar Date set forth herein.

Further, pursuant to the Bar Date Order, Governmental Units with Claims against the Debtor or its Estate, accruing prior to the Petition Date, were required to file Proofs of Claim by the Governmental Bar Date.

C. Summary of Assets

The following is a non-exhaustive list of the Debtor's Assets after the Closing of the Sale: (1) any Assets expressly excluded from the definition of Acquired Assets pursuant to Section 1.1 of the APA; (2) all accounts receivable of the Debtor, including, without limitation, the HGEN AUS Receivable; (3) all Cash and Cash Equivalents other than any expressly included in the definition of Acquired Assets; (4) the Madison JV Interest, as described in more detail below; (5) all Executory Contracts and Unexpired Leases of the Debtor that are not Assigned Contracts (as defined in the APA) as of the closing of the Sale; (6) except with respect to the Foreign Subsidiary, all shares of capital stock, limited liability company interests, or other equity interests of the Debtor and each of its respective subsidiaries or securities convertible into, exchangeable or exercisable for any such shares of capital stock, limited liability company interests, or other equity interests; (7) all policies of insurance held by the Debtor, including, without limitation, all commercial general liability, property and casualty, professional liability, cyber liability, director and officer liability, employment practices liability, errors and omissions liability, and all rights and benefits of the Debtor of any nature with respect to such insurance policies, including all insurance recoveries or proceeds thereunder and rights to assert claims or actions with respect to any such insurance recoveries or proceeds; (8) the Debtor's rights under the APA, including the Purchase Price (as defined in the APA) and Milestone Payments (as defined in the APA), as described in more detail below; (9) the Causes of Action, including, without limitation, the Excluded Durrant Actions (as defined in the Sale Order and subject to the limitations of collection contained therein) and the Derivative Action; and (10) any and all other Assets that were not Acquired Assets under the APA.

1. Madison JV Interest

The Debtor holds an approximate 30% membership interest or other interest in (a) Madison Joint Venture LLC, a Delaware limited liability company ("Madison"), an entity which holds the assets and claims of its members relating to benznidazole, a critical treatment for a rare disease in children and/or (b) the Madison JV Litigation. The Debtor's resulting award from the litigation or settlement of the Madison JV Litigation, if any, will be distributed in accordance with the provisions of Madison's limited liability company agreement or such other governing documents or order of a court with competent jurisdiction over the claims and causes of action asserted in this litigation. The Debtor understands that plaintiffs allege damages in the approximate amount of $100,00,000 in the Madison JV Litigation.

The Debtor, formerly named KaloBios, as part of its bankruptcy reorganization in 2016, sought FDA approval of benznidazole and the accompanying award of a Priority Review Voucher ("PRV"), a lucrative incentive issued by the FDA that is transferrable and of substantial monetary value. In 2016, KaloBios acquired a development program for benznidazole, which included a Data License and Services Agreement ("Data License") from a company called Savant Neglected Diseases, LLC. This Data License gave KaloBios the exclusive right to use clinical data compiled by a doctor named Dr. Estani (the "Estani Data"). The Debtor alleges that Dr. Estani ("Estani")

disclosed the Estani Data to Chemo Research S.L. ("Chemo Research"), a direct competitor that was seeking its own approval for benznidazole and the grant of the PRV through its affiliate, Exeltis USA, Inc. ("Exeltis"). In 2017, the FDA approved Chemo Research and Exeltis' "New Drug Application" for benznidazole and awarded them a PRV. Chemo Research subsequently sold the PRV for a substantial sum. Madison has brought an action for damages and injunctive relief against Chemo Research, Exeltis, and Estani for their improper acquisition, use, and disclosure of Madison's highly valuable trade secrets and confidential information, and their intentional interference with the Data License.

In connection with the Sale, the Debtor received one bid for the Madison JV Interest. The Debtor, in consultation with and support from the Creditors' Committee, determined that it was in the best interest of the Debtor, its estate, and its creditors to decline the offer at this time. The Madison JV Interest was excluded from the Sale and the Debtor, or any successor, is entitled to its *pro rata* share of the proceeds from any sale of the Madison JV Interest or its *pro rata* share of any judgment, settlement, resulting award, or other proceeds from the pending litigation. However, the Debtor understands that any litigation, including the Madison JV Litigation, is inherently risky, outcomes are uncertain, and the Debtor makes no representation or warranty, and specifically disclaims any such representation or warranty, and no party shall be entitled to rely on anything set forth in this Combined Plan and Disclosure Statement as to the merits, probabilities of success, or possibilities of recoveries with respect to any Causes of Action or the Madison JV Litigation. The Debtor expects the Madison JV Litigation to proceed in due course. The allegations in the Madison JV Litigation may be vigorously defended by the defendants thereto. As such there are no assurances that the Madison JV Entity will be able to successfully prosecute this litigation to judgment or collect any of the asserted damages.

2. Milestone Payments[4]

The Purchaser, the Foreign Subsidiary, and any other entity that is an Affiliate of the Purchaser or Foreign Subsidiary that acquires any of the Acquired Assets (the "Regulatory Milestone Parties" which Regulatory Milestone Party shall include any entity that merges with or enters into a joint venture with any of the Regulatory Milestone Parties), may be obligated to pay to the Debtor or its successor or assignee (including, but not limited to, statutory trustees, plan trustees, plan administrators, litigation trustees, and liquidating trustees) certain contingent payments (the "Milestone Payments") in consideration for the Acquired Assets upon achievement of certain development and commercial milestone events set forth in more detail in section 2.5 of the APA (as amended by the *Third Amendment to Asset Purchase Agreement* [Docket No. 140] and the *Fourth Amendment to Asset Purchase Agreement* [Docket No. 153] (the "Fourth Amendment to the APA")) and summarized below:[5]

[4] Capitalized terms used but not otherwise defined in this Section C.2. of the Combined Plan and Disclosure Statement shall have the respective meanings ascribed to them in the Sale Order or APA, as applicable.

[5] The description of the APA provided herein is merely a summary for the convenience of parties in interest and is qualified in all respects by the governing terms of the Sale, as set forth in the APA, as amended, and the settlement of the parties as described on the record at the February 14, 2024 Hearing.

Milestone Event	Milestone Payment
First (1st) FDA or Regulatory Approval in the United States of any HGEN Product achieved by any Regulatory Milestone Party, provided such approval is granted within five (5) years following the closing of the Sale.	$3,000,000
The next three (3) FDA or Regulatory Approvals in the United States of any HGEN Product indication or follow-on indication in the United States achieved by any Regulatory Milestone Party, provided such approval(s) is granted within seven (7) years following the closing of the Sale.	$1,000,000 for each indication or follow-on indication
First (1st) Regulatory Approval of any HGEN Product indication or follow-on indication achieved by any Regulatory Milestone Party in the United Kingdom, Germany, France, Italy, Spain or Australia (each, an "Approved Country"), provided such approval is granted within five (5) years following the closing of the Sale.	$1,000,000 for each Approved Country

The three (3) potential Milestone Payments set forth in Section 2.5(d) of the APA (titled "Annual Net Sales Milestones") shall each be payable to the Debtor on a one-time only basis (for the first achievement of any Milestone set forth below), ninety (90) days after the end of the Annual Net Sales Period upon which the aggregate Annual Net Sales of any HGEN Product sold by Purchaser, its Affiliates, any other Regulatory Milestone Party, or any of the listed parties' successors, and their sublicensees (the "Annual Net Sales Parties") in any Territory for the first time reaches or exceeds the amounts set forth in the table below for any Annual Net Sales Period (which annual periods shall commence on the first day of the first fiscal quarter following the Closing Date and run for successive twelve month periods thereafter). For purposes of clarity: (a) each of the potential Milestone Payments set forth below may only be paid one time for each Milestone achieved, such that the Annual Net Sales Parties' maximum aggregate liability to the Debtor with respect to the achievement of each of the below listed Milestones shall, respectively, be $2,500,000, $5,000,000, and $7,500,000 (with a maximum aggregate liability of $15,000,000); (b) the Debtor may only be entitled to a Milestone Payment arising under this Section 2.5(d) if the Annual Net Sales Parties' aggregate Annual Net Sales for the Annual Sales Period for any HGEN Product in any Territory meets any of the below Milestone(s) and Annual Net Sales arising in different Territories (or for different HGEN Products) for a given Annual Sales Period shall not be aggregated for purposes of determining whether any Milestone has been achieved:

Milestone Event	Milestone Payment
Upon the first occasion that aggregate Annual Net Sales for any HGEN Product in any Territory is greater than $100,000,000, provided such Annual Net Sales are achieved within five (5) years after the first day of the first full fiscal quarter following the Closing Date.	$2,500,000

Upon the first occasion that aggregate Annual Net Sales for any HGEN Product in any Territory is greater than $200,000,000, provided such Annual Net Sales are achieved within six (6) years after the first day of the first full fiscal quarter following the Closing Date.	$5,000,000
Upon the first occasion that aggregate Annual Net Sales for any HGEN Product in any Territory is greater than $300,000,000 within seven (7) years after the first day of the first full fiscal quarter following the Closing Date.	$7,500,000

Pursuant to the settlement agreement by and among the Debtor, the Creditors' Committee and the Purchaser as set forth on the record of the February 14, 2024 Hearing and in the Fourth Amendment to the APA, if any Regulatory Milestone Party enters into a transaction in which it consummates the sale or transfer of any of the Acquired Assets within three years of the Closing, such Regulatory Milestone Party shall pay to Seller 5.25 (five and one-quarter of one) percent of the Net Income of any such sale or transfer received as set forth in the APA.

Further, pursuant to the settlement agreement of the Debtor, the Creditors' Committee and the Purchaser, if any Regulatory Milestone Party enters into a licensing agreement within three years of the Closing involving any of the Acquired Assets, the Regulatory Milestone Party shall pay Seller 5.25 (five and one-quarter of one) percent of the "Net Payment" received by Purchaser during the term of the agreement as set forth in the APA.

3. Insurance Policies

As set forth above, all policies of insurance held by the Debtor, including, without limitation, all commercial general liability, property and casualty, professional liability, cyber liability, director and officer liability, employment practices liability, errors and omissions liability, and all rights and benefits of the Debtor of any nature with respect to such insurance policies, including all insurance recoveries or proceeds thereunder and rights to assert claims or actions with respect to any such insurance recoveries or proceeds were excluded from the Sale and are not considered Acquired Assets. In particular, the Debtor's directors and officers insurance policies include:

(1) Executive and Corporate Securities Liability Insurance Policy No. ELU181045-22 (the "XL Policy") with XL Specialty Insurance Company ("XL Specialty") with a maximum aggregate limit of liability of $5 million;

(2) Management and Professional Liability Follow Form Excess Insurance Policy No. D77325221ASP (the "Starstone Policy") with Starstone Specialty Insurance Company ("Starstone") with a maximum aggregate limit of liability of $2.5 million;

(3) Follow Form Excess Insurance Policy No. OSIC-403-DOX-1-2022-1 (the "Obsidian Policy") with Obsidian Specialty Insurance Company with a maximum aggregate limit of liability of $2.5 million; and

(4) Side A $2 million policy for directors and officers.

The Debtor understands that the $5 million limit of liability under the XL Policy has been fully exhausted, subject to final approval of the Securities Settlement by the U.S. District Court for the District of New Jersey, which is currently stayed as a result of the filing of the Chapter 11 Case.

On March 25, 2024, Starstone filed the *Motion of Starstone Specialty Insurance Company for Relief from the Automatic Stay Under 11 U.S.C. § 362, to the Extent Applicable, to Authorize Payment of Defense Costs in Non-Bankruptcy Matters* [Docket No. 198] (the "Starstone Stay Relief Motion"), which seeks relief from the automatic stay, to the extent applicable, to authorize payment of the Starstone Policy's $2.5 million limit of liability by Starstone for reimbursement of defense costs incurred and to be incurred on behalf of the Debtor and the Debtor's directors and officers in certain non-bankruptcy investigation and litigation related matters described in more detail in the Starstone Stay Relief Motion. The Debtor understands that once the Starstone Stay Relief Motion is approved, the Starstone Policy will be exhausted in full. The Starstone Stay Relief Motion is scheduled to be heard before the Bankruptcy Court on April 16, 2024. Accordingly, subject to approval of the Starstone Stay Relief Motion, the Obsidian Policy is now the operative layer of the Debtor's insurance coverage.

On April 9, 2024, Obsidian filed the *Obsidian Specialty Insurance Company's Motion to Modify the Automatic Stay to Permit Advancement and/or Reimbursement of Defense Fees and Costs Under Directors and Officers Insurance Policy* [Docket No. 216] (the "Obsidian Stay Relief Motion"). The Obsidian Stay Relief Motion is scheduled to be heard before the Bankruptcy Court on May 15, 2024.

D. Summary of Treatment of Claims under the Plan

The following chart summarizes the classification and treatment of the Classes:

Class	Estimated Allowed Claims[6]	Treatment	Entitled to Vote	Estimated Recovery to Holders of Allowed Claims[7]
Class 1 - Secured Claims	$0	Unimpaired	No	100%
Class 2 – Non-Tax Priority Claims	$0	Unimpaired	No	100%
Class 3 - General Unsecured Claims	$44,100,000	Impaired / Entitled to Vote	Yes	0.39% - 19.25%
Class 4 – Subordinated Claims	N/A	Impaired / Deemed to Reject	No	0%
Class 5 – Existing Equity Interests	N/A	Impaired / Deemed to Reject	No	0%

[6] These amounts represent estimated Allowed Claims against the Debtor and do not represent amounts actually asserted by creditors in proofs of claim or otherwise. The Debtor has not completed its analysis of Claims in the Chapter 11 Case, and all objections to such Claims have not been filed and/or fully litigated and may continue following the Effective Date. Therefore, there can be no assurances of the exact amount of the Allowed Claims at this time. Rather, the actual amount of the Allowed Claims may be greater or lower than estimated.

[7] The estimated percentage recovery is based upon, among other things, (a) an estimate of the Allowed Claims against the Debtor in the Chapter 11 Case and (b) the Debtor's reasonable estimate of proceeds that may be derived from the liquidation of the Liquidating Trust Assets, many of which may be contingent in nature, subject to dispute or defense (particularly in connection with Causes of Action), uncertain, or costly to pursue. The Debtor and the Creditors' Committee believe that Distributions of materially more than 0.5% are unlikely unless substantial recoveries are received on account of the Causes of Action, the Milestone Payments, or the Madison JV Interest. There is no assurance of any particular recovery, and recoveries could fall well outside of the projected range. As set forth above, the actual amount of the Allowed Claims may be greater or lower than estimated. Thus, the actual recoveries may be higher or lower than projected depending upon, among other things, the amounts and priorities of Claims that are actually Allowed by the Bankruptcy Court and the actual amount of cash available for Distribution.

As soon as practicable after payment in full of, or reserve for, all other Allowed Claims, the Liquidating Trust shall pay to each holder of an Allowed Subordinated Claim or an Allowed Existing Equity Interest its *pro rata* share of any remaining amounts in the Liquidating Trust subject to the terms and conditions of this Combined Plan and Disclosure Statement, the Liquidating Trust Agreement, and the Bankruptcy Code. **No distribution to Class 4 (Subordinated Claims) or Class 5 (Existing Equity Interests) is anticipated.** To preserve Estate and Liquidating Trust resources, and because no distribution Holders of Claims in Class 4 (Subordinated Claims) or Class 5 (Existing Equity Interests) is anticipated, the Debtor, in consultation with the Committee, has determined (a) not to solicit votes from Classes 4 and 5, (ii) to deem Classes 4 and 5 to reject the Combined Plan and Disclosure Statement, and (c) seek confirmation pursuant to section 1129(b) of the Bankruptcy Code. Pursuant to the Combined Plan and Disclosure Statement, the

E. Tax Consequences of the Plan

THE DEBTOR HAS NOT REQUESTED A RULING FROM THE INTERNAL REVENUE SERVICE OR AN OPINION OF COUNSEL WITH RESPECT TO ANY OF THE FEDERAL, STATE, LOCAL, OR OTHER TAX ASPECTS OR CONSEQUENCES TO HOLDERS OF CLAIMS OR EQUITY INTERESTS AS A RESULT OF CONFIRMATION OF THIS COMBINED PLAN AND DISCLOSURE STATEMENT. THUS, NO ASSURANCE CAN BE GIVEN AS TO THE TAX CONSEQUENCES OF THE COMBINED PLAN AND DISCLOSURE STATEMENT. EACH HOLDER OF A CLAIM IS URGED TO CONSULT ITS OWN TAX ADVISOR FOR THE FEDERAL, STATE, LOCAL, AND OTHER TAX CONSEQUENCES APPLICABLE UNDER THE COMBINED PLAN AND DISCLOSURE STATEMENT.

F. Certain Risk Factors to Be Considered

Holders of Claims who are entitled to vote on the Combined Plan and Disclosure Statement should read and carefully consider the following factors, before deciding whether to vote to accept or reject the Combined Plan and Disclosure Statement.

Effect of Failure to Confirm the Combined Plan and Disclosure Statement. If the Combined Plan and Disclosure Statement is not confirmed by the requisite majorities in number and amount as required by Bankruptcy Code section 1126, or if any of the other confirmation requirements imposed by the Bankruptcy Code are not met, the Chapter 11 Case may not have sufficient funding to proceed, which may result in conversion to a case under chapter 7 of the Bankruptcy Code or dismissal of the Chapter 11 Case.

Nonconsensual Confirmation, *i.e.*, "Cramdown". The Debtor intends to request confirmation under section 1129(b) of the Bankruptcy Code with respect to any Class that has not accepted or is deemed not to have accepted the Combined Plan and Disclosure Statement pursuant to the terms of the Combined Plan and Disclosure Statement or section 1126 of the Bankruptcy Code. The Debtor reserves the right to modify the Combined Plan and Disclosure Statement to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires any such modification.

Claims Estimation. While the Debtor has undertaken its best effort to estimate the amount of Claims in each Class, the actual amount of Allowed Claims may differ from the estimates and, thus, the potential Distributions to Creditors may be different.

Causes of Action. Pursuant to the Combined Plan and Disclosure Statement, the Liquidating Trust Assets, including Causes of Action will be transferred to the Liquidating Trust upon the establishment of the Liquidating Trust on the Effective Date. The ultimate recoveries under the Combined Plan and Disclosure Statement to Holders of Allowed Claims and Interests depends significantly upon the ability of the Liquidating Trust to realize favorable litigation

Liquidating Trustee, in its sole discretion, may establish the Existing Equity Interests Record Date should there be a Distribution to Holders of Allowed Existing Equity Interests.

outcomes or settlements of the Causes of Action. It is extremely difficult to place a value on litigation, and litigation outcomes cannot be predicted. It is possible the Estate may recover nothing at all, or very little, on account of such litigation. As a result, there is no assurance that the Liquidating Trust will be successful in prosecuting any Cause of Action or generate sufficient proceeds from the Causes of Action for Distribution. The risks in such litigation include, but are not limited to, risks associated with defenses and counterclaims of opposing parties to the litigation, the delay and expense associated with discovery and trial of factually intensive and complex disputes, the additional delay and expense in appellate review, the diminishing availability of former employees to serve as witnesses because they have moved from the geographic area or have otherwise become unavailable, the impossibility of predicting judicial outcomes, and the difficulty of collecting favorable judgments. To the extent Distributions are possible from the Causes of Action, the timing of any such Distribution is uncertain.

Delays. Any delay in confirmation of the Combined Plan and Disclosure Statement or delay to the Effective Date could result in additional Statutory Fees, Administrative Expense Claims, and/or other expenses. This may endanger ultimate approval of the effectiveness of the Combined Plan and Disclosure Statement or result in a decreased recovery for Holders of Claims entitled to a Distribution.

Sufficient Cash to Pay Claims. The Combined Plan and Disclosure Statement and the process for confirming the same is subject to the Debtor's and Estate's use of its Assets. To the extent that the Debtor or the Estate incurs costs beyond the Cash held by the Debtor, the Holders of Administrative Expense Claims, Secured Claims, Professional Fee Claims, Priority Tax Claims, and Non-Tax Priority Claims may not be paid in full.

Sufficient Cash for Distributions from the Liquidating Trust. There is no assurance that the Liquidating Trust Assets will be sufficient to fund the Liquidating Trust's expenses to enable the Liquidating Trust to hold and liquidate the Liquidating Trust Assets as envisioned under the Combined Plan and Disclosure Statement. Accordingly, there is no assurance that the Liquidating Trust will make any Distributions, the amount, if any, or the timing on which such Distributions may be made.

G. Feasibility

The Bankruptcy Code requires that, in order for a plan to be confirmed, the Bankruptcy Court must find that confirmation of such plan is not likely to be followed by the liquidation or need for further reorganization of the debtors unless contemplated by the plan. 11 U.S.C. § 1129(a)(1).

Here, the Combined Plan and Disclosure Statement provides for the liquidation and distribution of all of the Debtor's remaining Assets. Accordingly, the Debtor believes all chapter 11 plan obligations will be satisfied without the need for further reorganization of the Debtor.

H. Best Interests Test and Alternatives to the Combined Plan and Disclosure Statement

Notwithstanding acceptance of a plan by the requisite number of creditors in an impaired class, the Bankruptcy Court must still independently determine that such plan provides each

member of an impaired class of claims and interests a recovery that has a value at least equal to the value of the recovery that each such Person would receive if the debtor was liquidated under Chapter 7 of the Bankruptcy Code on the effective date of such plan.

In a typical Chapter 7 case, a trustee is elected or appointed to liquidate a debtor's assets for distribution to creditors in accordance with the priorities set forth in the Bankruptcy Code. Generally, secured creditors are paid first from the proceeds of sales of the properties securing their liens. If any assets are remaining in the bankruptcy estate after satisfaction of the secured creditors' claims, administrative expenses are next to receive payment, followed by priority claims such as certain tax claims. Unsecured creditors are paid from any remaining proceeds, according to their respective priorities. Unsecured creditors with the same priority share *pro rata*. Finally, equity interest holders receive the balance that remains, if any, after all other creditors are paid in full.

Here, the Debtor believes the Combined Plan and Disclosure Statement satisfies the best interests test as the recoveries expected to be available to Holders of Allowed Claims under the Combined Plan and Disclosure Statement will be greater than the recoveries expected in a liquidation under chapter 7 of the Bankruptcy Code. A hypothetical chapter 7 liquidation analysis is attached to this Combined Plan and Disclosure Statement as **Exhibit B**.

The Acquired Assets have already been sold to the Purchaser under the Sale Order, and the Debtor has limited Assets remaining in its Estate. While a liquidation under chapter 7 of the Bankruptcy Code would have the same goal, the Debtor believes that the Combined Plan and Disclosure Statement provides the best source of recovery for several reasons. First, liquidation under chapter 7 of the Bankruptcy Code would not provide for a timely Distribution and likely no Distribution at all. Second, Distributions would likely be in lesser amounts because of the fees and expenses incurred in a liquidation under chapter 7 of the Bankruptcy Code. Further, the Debtor believes that a liquidation under chapter 7 would not provide for a timely distribution and that such distributions would likely be smaller because a chapter 7 trustee and his/her professionals would have to expend significant time and resources familiarizing themselves with the history of the Debtor and the Causes of Action prior to pursuing any such Causes of Action.

Under the Combined Plan and Disclosure Statement, the Liquidating Trust Expenses, including the fees of the Liquidating Trustee and fees for the Liquidating Trustee's professionals, will be paid out of the Liquidating Trust Assets prior to any Distribution being made to creditors.

At this time, there are no alternative plans available to the Debtor. The closing of the Sale has already occurred, and the Debtor is no longer a going concern enterprise and has few Assets remaining, if any, to administer. Therefore, the Debtor believes that the Combined Plan and Disclosure Statement provides the greatest possible value to all stakeholders under the circumstances, and has the greatest chance to be confirmed and consummated.

IV. TREATMENT OF UNCLASSIFIED CLAIMS

A. DIP Facility Claims

The DIP Facility was paid in full by the Debtor pursuant to Purchaser's credit bid of all amounts outstanding under the DIP Facility in connection with the Sale. No DIP Facility Claims remain outstanding following the Closing of the Sale.

B. Administrative Expense Claims

Administrative Expense Claims (other than 503(b)(9) Claims, which are subject to the General Bar Date, Professional Fee Claims, and the Claims of Governmental Units arising under section 503(b)(1)(B), (C), or (D) of the Bankruptcy Code) incurred or arising between the Petition Date and February 20, 2024 are governed by the Bar Date Order and the Initial Administrative Claim Bar Date set therein. Requests for allowance and payment of Administrative Expense Claims (other than 503(b)(9) Claims, which are subject to the General Bar Date, Professional Fee Claims, and the Claims of Governmental Units arising under section 503(b)(1)(B), (C), or (D) of the Bankruptcy Code) arising on or after February 21, 2024 through the Effective Date must be filed no later than the Final Administrative Claim Bar Date. Any such Administrative Expense Claim must be Filed with the Bankruptcy Court with a copy served on Debtor's counsel and the Liquidating Trustee and its counsel by regular mail, overnight courier, or hand delivery to the Claims and Noticing Agent. Holders of Administrative Expense Claims arising on or after February 21, 2024 through the Effective Date that do not File requests for the allowance and payment thereof on or before the Final Administrative Claim Bar Date shall forever be barred from asserting such Administrative Expense Claims against the Debtor or the Estate, the Liquidating Trust, or the Liquidating Trust Assets. Except to the extent that a Holder of an Allowed Administrative Expense Claim agrees to a less favorable treatment or has been paid by the Debtor or Purchaser prior to the Effective Date, each Holder of an Allowed Administrative Expense Claim will be paid the full unpaid amount of such Allowed Administrative Expense Claim in cash from the Liquidating Trust Proceeds. Nothing in this Combined Plan and Disclosure Statement shall extend or be deemed to extend the deadline of April 22, 2024 previously fixed by the Bar Date Order for filing claims under (i) section 503(b)(9) of the Bankruptcy Code and (ii) Administrative Expense Claims arising between the Petition Date and February 20, 2024.

C. Professional Fee Claims

All Professionals or other Persons requesting compensation or reimbursement of Professional Fee Claims for services rendered before the Effective Date (including compensation requested by any Professional or other entity for making a substantial contribution in the Chapter 11 Case) shall file an application for final allowance of compensation and reimbursement of expenses no later than the Final Administrative Claim Bar Date. Objections to Professional Fee Claims must be filed and served on the Liquidating Trustee, the Debtor, and the requesting Professional and/or party no later than twenty-one (21) days after service of such application for final allowance of compensation and reimbursement of expenses, unless otherwise ordered by the Court. A final fee hearing to determine the allowance of Professional Fee Claims shall be held as soon as practicable after the Final Administrative Claim Bar Date. The Debtor or the Liquidating Trustee shall file a notice of such final fee hearing. Such notice shall be posted on the Case Website

and served upon counsel for all Professionals and the U.S. Trustee. Allowed Professional Fee Claims shall be paid by the Debtor or Liquidating Trustee (a) as soon as is reasonably practicable following the later of (i) the Effective Date and (ii) the date upon which the order relating to any such Allowed Professional Fee Claims is entered by the Bankruptcy Court; or (b) upon such other terms as agreed by the Holder of such an Allowed Professional Fee Claim. Allowed Professional Fee Claims shall be paid in full in cash from the Professional Fee Escrow and, if insufficient funds remain in the Professional Fee Escrow to pay an Allowed Professional Fee Claim, from available Liquidating Trust Assets, and in accordance with the Final Orders entered in the Chapter 11 Case.

D. Priority Tax Claims

Except to the extent the Debtor and/or Liquidating Trustee and the Holder of an Allowed Priority Tax Claim agree to a different and less favorable treatment, the Debtor or the Liquidating Trustee, as applicable, shall pay, in full satisfaction and release of such Claim, to each Holder of a Priority Tax Claim, cash in an amount equal to such Allowed Priority Tax Claim, on the later of (a) the Effective Date; and (b) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, or as soon thereafter as is reasonably practicable in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code. After the Allowed Priority Tax Claim is paid in full, any liens securing such Allowed Priority Tax Claim shall be deemed released, terminated, and extinguished, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or the vote, consent, authorization, or approval of any Person.

E. Statutory Fees

All Statutory Fees incurred prior to the Effective Date shall be paid by the Debtor on the Effective Date. After the Effective Date, the Debtor and the Liquidating Trustee shall be jointly and severally liable to pay any and all Statutory Fees when due and payable. The Debtor shall file all monthly operating reports due prior to the Effective Date when they become due. After the Effective Date, the Liquidating Trustee shall file with the Bankruptcy Court separate post-confirmation reports when they become due. The Debtor and the Liquidating Trustee shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under Chapter 7 of the Bankruptcy Code. The U.S. Trustee shall not be required to file any Administrative Expense Claim in the case and shall not be treated as providing any release under the Plan.

V. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

A. Classification of Claims and Interests

The below categories of Claims and Interests classify such Claims and Interests for all purposes, including voting, Confirmation, and Distribution pursuant hereto and pursuant to Bankruptcy Code sections 1122 and 1123.

B. Treatment of Claims and Interests

1. **Class 1 –Secured Claims**

a. ***Classification:*** Class 1 consists of the Secured Claims.

b. ***Treatment:*** Except to the extent that a Holder of an Allowed Secured Claim agrees to less favorable treatment, in exchange for the full and final satisfaction, settlement, and release of each Allowed Secured Claim against the Debtor, each Holder of an Allowed Secured Claim shall receive, either (i) such other treatment as may be agreed upon by any such Holder of a Secured Claim and the Debtor or the Liquidating Trustee, as applicable, or (ii) at the Debtor's or Liquidating Trustee's option, as applicable, (x) payment in full in cash of the Allowed amount of such Secured Claim on the Effective Date or as soon thereafter as is practicable, or (y) treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.

c. ***Voting:*** Holders of Allowed Secured Claims in Class 1 are Unimpaired and deemed to have accepted the Combined Plan and Disclosure Statement and, therefore, are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

2. Class 2 – Non-Tax Priority Claims

a. ***Classification:*** Class 2 consists of the Non-Tax Priority Claims.

b. ***Treatment:*** Except to the extent that a Holder of an Allowed Non-Tax Priority Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, and release of each Allowed Non-Tax Priority Claim, each Holder of an Allowed Non-Tax Priority Claim shall receive payment in full in cash of the Allowed amount of such Claim on the Effective Date or as soon thereafter as is practicable.

c. ***Voting:*** Holders of Allowed Non-Tax Priority Claims in Class 2 are Unimpaired and deemed to have accepted the Combined Plan and Disclosure Statement and, therefore, are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

3. Class 3 – General Unsecured Claims

a. ***Classification***: Class 3 consists of the General Unsecured Claims.

b. ***Treatment***: Except to the extent that a holder of an Allowed General Unsecured Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, and release of each Allowed

General Unsecured Claim, each Holder of an Allowed General Unsecured Claim shall receive its Pro Rata share of the Liquidating Trust Proceeds.

c. ***Voting:*** Holders of General Unsecured Claims in Class 3 are Impaired and therefore, are entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

4. Class 4 – Subordinated Claims

a. ***Classification:*** Class 4 consists of Subordinated Claims.

b. ***Treatment:*** Following payment in full of all other Allowed Claims, except to the extent that a holder of an Allowed Subordinated Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, and release of each Allowed Subordinated Claim, each Holder of such Allowed Subordinated Claim shall receive its Pro Rata share of the Liquidating Trust Proceeds.

c. ***Voting:*** Class 4 is Impaired. To preserve Estate resources and because no Distribution to Holders of Allowed Class 4 Claims is projected or anticipated, Class 4 is deemed to reject the Combined Plan and Disclosure Statement, and no votes will be solicited from Holders of Claims in Class 4. Notwithstanding the deemed rejection of Class 4, the Debtor intends to seek Confirmation pursuant to Section V.D. hereof.

5. Class 5 – Existing Equity Interests

a. ***Classification:*** Class 5 consists of all Existing Equity Interests.

b. ***Treatment***: On the Effective Date, Existing Equity Interests shall be cancelled and will be of no further force or effect. Following payment in full of all other Allowed Claims, except to the extent that a Holder of an Allowed Existing Equity Interest agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, and release of each Allowed Existing Equity Interest, each Holder of such Allowed Existing Equity Interest shall receive its Pro Rata share of the Liquidating Trust Proceeds.

c. ***Voting***: Class 5 is Impaired. To preserve Estate resources and because no Distribution to Holders of Allowed Class 5 Interests is projected or anticipated, Class 5 is deemed to reject the Combined Plan and Disclosure Statement, and no votes will be solicited from Holders of Claims in Class 5. Notwithstanding the deemed rejection of Class 5, the Debtor intends to seek Confirmation pursuant to Section V.D. hereof.

d. ***Allowance:*** Existing Equity Interests held by Holders thereof as of the Existing Equity Interests Distribution Record Date (which such date may be established by the Liquidating Trustee in its sole and absolute discretion) shall be Allowed Existing Equity Interests under the Combined Plan and Disclosure Statement (as reflected by DTC and/or the Debtor's official register of holders of common stock).

C. Impaired Claims and Interests

Under the Combined Plan and Disclosure Statement, Holders of Claims or Interests in Classes 3, 4, and 5 are Impaired pursuant to Bankruptcy Code section 1124 because the Combined Plan and Disclosure Statement alters the legal, equitable, or contractual rights of the Holders of such Claims or Interests treated in such Classes.

D. Cramdown and No Unfair Discrimination

To the extent that any Impaired Class does not vote to accept the Combined Plan and Disclosure Statement, the Debtor will seek Confirmation pursuant to Bankruptcy Code section 1129(b). This provision allows the Bankruptcy Court to confirm a plan accepted by at least one impaired class so long as it does not unfairly discriminate and is fair and equitable with respect to each class of claims and interest that is impaired and has not accepted the plan. Colloquially, this mechanism is known as a "cramdown."

The Debtor believes the treatment of Claims and Interests described in the Combined Plan and Disclosure Statement are fair and equitable and do not discriminate unfairly. The proposed treatment of Claims and Interests provides that each Holder of such Allowed Claim or Interest will be treated identically within its respective Class and that, except when agreed to by such Holder, no Holder of any Claim or Interest junior will receive or retain any property on account of such junior Claim or Interest.

VI. CONFIRMATION PROCEDURES

A. Confirmation Procedures

1. Confirmation Hearing

The Confirmation Hearing before the Bankruptcy Court has been scheduled for **June 13, 2024 at 10:00 a.m. (prevailing Eastern time)** at the United States Bankruptcy Court, 824 North Market Street, 6th Floor, Courtroom No. 1, Wilmington, Delaware 19801 to consider (a) approval of the Combined Plan and Disclosure Statement as providing adequate information pursuant to Bankruptcy Code section 1125, and (b) confirmation of the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code section 1129. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing and filed with the Bankruptcy Court.

2. Procedure for Objections

Any objection to approval or confirmation of the Combined Plan and Disclosure Statement must be made in writing and specify in detail the name and address of the objector, all grounds for the objection and the amount of the Claim held by the objector. Any such objection must be filed by **June 6, 2024 at 4:00 p.m. (prevailing Eastern time)** with the Bankruptcy Court and served on (i) counsel to the Debtor, Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware, Attn: Aaron H. Stulman, Esq. (astulman@potteranderson.com) and Brett M. Haywood, Esq. (bhaywood@potteranderson.com); (ii) counsel for the Creditors' Committee, (A) Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036, Attn: Gianfranco Finizio (gfinizio@ktslaw.com) and Danielle Barav-Johnson (dbarav-johnson@ktslaw.com) and (B) Womble Bond Dickinson (US) LLP, 1313 North Market Street, Suite 1200, Wilmington, Delaware 19801, Attn: Matthew Ward (matthew.ward@wbd-us.com) and Donald Detweiler (don.detweiler@wbd-us.com); and (iii) the Office of the United States Trustee for the District of Delaware, Attn: Hannah McCollum (hannah.mccollum@usdoj.gov). **Unless an objection is timely Filed and served, it may not be considered by the Bankruptcy Court.**

3. Requirements for Confirmation

The Bankruptcy Court will confirm the Combined Plan and Disclosure Statement only if the requirements of Bankruptcy Code section 1129 are met. As set forth in the Combined Plan and Disclosure Statement, the Debtor believes that the Combined Plan and Disclosure Statement: (a) meets the cramdown requirements; (b) meets the feasibility requirements; (c) is in the best interests of creditors; (d) has been proposed in good faith; and (e) meets all other technical requirements imposed by the Bankruptcy Code.

Additionally, pursuant to Bankruptcy Code section 1126, under the Combined Plan and Disclosure Statement, only the Voting Class is entitled to vote.

B. Solicitation and Voting Procedures

1. Eligibility to Vote on the Combined Plan and Disclosure Statement

To preserve Estate resources, and because no Distribution to Holders of Claims or Interests in Classes 4 and 5 is anticipated, the Debtor has determined (i) not to solicit votes from Classes 4 and 5, (ii) to deem Classes 4 and 5 to reject the Combined Plan and Disclosure Statement, and (iii) to seek Confirmation pursuant to section 1129(b) of the Bankruptcy Code. Accordingly, Class 3 is the Voting Class. Except as otherwise ordered by the Bankruptcy Court, only Holders of Claims in Class 3 against the Debtor may vote on the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code section 1126. To vote on the Combined Plan and Disclosure Statement, a Holder must hold a Claim in Class 3 and have timely filed a Proof of Claim or have a Claim that is identified on the Schedules and is not listed as disputed, unliquidated, or contingent, or be the holder of a Claim that has been temporarily Allowed for voting purposes only under Bankruptcy Rule 3018(a).

ACCORDINGLY, A BALLOT FOR ACCEPTANCE OR REJECTION OF THE COMBINED PLAN AND DISCLOSURE STATEMENT IS BEING PROVIDED ONLY TO HOLDERS OF CLAIMS IN CLASS 3.

2. Solicitation Package

The Solicitation Packages provided to Holders of Claims in Class 3 (General Unsecured Claims) will contain: (a) notice of the hearing on, among other things, final approval of the disclosures contained in, and confirmation of, the Combined Plan and Disclosure Statement (the "Confirmation Notice"); (b) an appropriate Ballot, including voting instructions and a pre-addressed, postage prepaid return envelope; (c) the Creditors' Committee Support Letter; and (d) such other materials as the Bankruptcy Court may direct or approve, or that the Debtor deems appropriate.

Holders of Claims in non-voting classes that are deemed to either accept or reject the Combined Plan and Disclosure Statement and other parties in interest will receive only the Confirmation Notice.

Copies of the Combined Plan and Disclosure Statement and any exhibits annexed thereto shall be available on the Claims and Noticing Agent's website at https://dm.epiq11.com/case/humanigen. Any creditor or party-in-interest can request a hard copy of the Combined Plan and Disclosure Statement be sent to them by regular mail by contacting the Claims and Noticing Agent by email at humanigen@epiqglobal.com, or phone at (855) 526-2173 (toll-free).

3. Voting Procedures and Voting Deadline

The Voting Record Date for determining which Holders of Claims in Class 3 may vote on the Combined Plan and Disclosure Statement is May 1, 2024.

The Voting Deadline by which the Solicitation Agent must *RECEIVE* original Ballots is **June 6, 2024 at 4:00 p.m. (prevailing Eastern time)**. To be counted as votes to accept or reject the Combined Plan and Disclosure Statement, Ballots must be properly executed, completed, and delivered to the Solicitation Agent at the following address, if by first class mail: Humanigen, Inc., c/o Epiq Ballot Processing, P.O. Box 4422, Beaverton, OR 97076-4422; or if by overnight courier, messenger, or hand delivery: Humanigen, Inc., c/o Epiq Ballot Processing, 10300 SW Allen Boulevard, Beaverton, OR 97005. In addition to accepting paper Ballots by mail, overnight courier, and personal delivery, the Debtor request authorization to accept Ballots from Holders of Claims in the Voting Class by electronic Ballots (an "E-Ballot") transmitted solely through a customized online balloting portal on the Debtor's case website maintained by Epiq (the "E-Balloting Portal"). Parties entitled to vote may cast an electronic Ballot and electronically sign and submit the Ballot instantly by utilizing E-Ballot, which allows a Holder to submit an electronic signature. The instructions for submission of E-Ballots will be set forth on the Ballot. The encrypted Ballot data and audit trail created by such electronic submission shall become part of the record of any Ballot submitted in this manner and the creditor's electronic signature will be deemed to be immediately legally valid and effective.

If you are entitled to vote to accept or reject the Combined Plan and Disclosure Statement, a Ballot is enclosed. Please carefully review the Ballot instructions and complete the Ballot by: (a) indicating your acceptance or rejection of the Combined Plan and Disclosure Statement; and (b) signing and returning the Ballot to the Solicitation Agent.

If you are a member of the Voting Class and did not receive a Ballot, received a damaged Ballot, or lost your Ballot, contact the Claims and Noticing Agent – Epiq Corporate Restructuring, LLC – at (855) 526-2173 (U.S. and Canada); (503) 987-3446 (outside the U.S. and Canada); or at humanigen@epiqglobal.com.

Subject to the Tabulation Procedures (as defined in the Solicitation Procedures Order), which are incorporated into this Combined Plan and Disclosure Statement by reference, any Ballot that is timely and properly submitted electronically or received physically will be counted and will be deemed to be cast as an acceptance, rejection, or abstention, as the case may be, of the Combined Plan and Disclosure Statement.

4. Deemed Acceptance or Rejection

Holders of Claims in Class 1 (Secured Claims) and Class 2 (Non-Tax Priority Claims) are Unimpaired, and thus deemed to accept the Combined Plan and Disclosure Statement. Under Bankruptcy Code section 1126(f), Holders of such Claims are conclusively presumed to have accepted the Combined Plan and Disclosure Statement, and the votes of the Holders of such Claims shall not be solicited.

To preserve Estate and Liquidating Trust resources, and because no distribution Holders of Claims in Class 4 (Subordinated Claims) or Class 5 (Existing Equity) is anticipated, the Debtor, in consultation with the Creditors' Committee, has determined (a) not to solicit votes from Classes 4 and 5, (ii) to deem Classes 4 and 5 to reject the Combined Plan and Disclosure Statement, and (c) seek confirmation pursuant to section 1129(b) of the Bankruptcy Code. Pursuant to the Combined Plan and Disclosure Statement, the Liquidating Trustee, in its sole discretion, may establish the Existing Equity Interests Record Date should there be a Distribution to Holders of Allowed Existing Equity Interests.

5. Acceptance by an Impaired Class

In order for the Combined Plan and Disclosure Statement to be accepted by an Impaired Class of Claims, a majority in number (*i.e.*, more than half) and two-thirds in dollar amount of the Voting Class must vote to accept the Combined Plan and Disclosure Statement. At least one (1) Impaired Class of creditors, excluding the votes of insiders, must actually vote to accept the Combined Plan and Disclosure Statement. The Debtor and Creditors' Committee urge that you vote to accept the Combined Plan and Disclosure Statement.

YOU ARE URGED TO COMPLETE, DATE, SIGN, AND PROMPTLY MAIL THE BALLOT ATTACHED TO THE NOTICE. PLEASE BE SURE TO COMPLETE THE BALLOT PROPERLY AND LEGIBLY IDENTIFY THE EXACT AMOUNT OF YOUR CLAIM AND THE NAME OF THE CREDITOR.

6. Elimination of Vacant Classes; Presumed Acceptance by Non-Voting Classes

Any Class of Claims or Interests that does not contain, as of the date of the Voting Deadline, a Holder of an Allowed Claim or Interest, or a Holder of a Claim temporarily allowed under Bankruptcy Rule 3018, shall be deemed deleted from the Combined Plan and Disclosure Statement for all purposes, including for purposes of determining acceptance of the Combined Plan and Disclosure Statement by such Class under section 1129(a)(8) of the Bankruptcy Code. If a Class contains Claims or Interests eligible to vote and no Holders of Claims or Interests eligible to vote in such Class vote to accept or reject the Combined Plan and Disclosure Statement, the Holders of such Claims or Equity Interests in such Class shall be deemed to have accepted the Combined Plan and Disclosure Statement.

VII. IMPLEMENTATION AND EFFECT OF CONFIRMATION OF THE COMBINED PLAN AND DISCLOSURE STATEMENT

A. Means for Implementation of the Combined Plan and Disclosure Statement

1. Corporate Action, Officers and Directors, and Effectuating Documents

On the Effective Date, all matters and actions provided for under the Combined Plan and Disclosure Statement that would otherwise require approval of the officer(s) or director(s) of the Debtor, shall be deemed to have been authorized and effective in all respects as provided herein and shall be taken without any requirement for further action by the Board. The Debtor or the Liquidating Trustee, as applicable, are authorized to execute, deliver, file, or record such contracts, instruments, releases, and other agreements or documents and take such other actions as may be necessary or appropriate to effectuate and implement the provisions of the Combined Plan and Disclosure Statement.

On the Effective Date, the Debtor's directors, officers, and any remaining employees shall be deemed to have resigned and the Debtor dissolved for all purposes and of no further legal existence under any applicable state or federal law, without the need to take any further action or file any plan of dissolution, notice or application with the Secretary of State of the State of Delaware or any other state or government authority, and without the need to pay any franchise or similar taxes in order to effectuate such dissolution.

B. Records

The Liquidating Trustee shall retain, and be provided with, those documents maintained by the Debtor in the ordinary course of business and which were not otherwise transferred to the Purchaser pursuant to the Sale Order. After receipt of such documents, the Liquidating Trustee shall be authorized to destroy any documents he or she deems necessary or appropriate in his or her reasonable judgment; *provided*, *however*, that the Liquidating Trustee shall not destroy any documents, including but not limited to tax documents, that the Liquidating Trust is required to retain under applicable law.

C. Liquidating Trust

1. Establishment of the Liquidating Trust

The Liquidating Trust will be formed on the Effective Date in accordance with the Combined Plan and Disclosure Statement and pursuant to the Liquidating Trust Agreement for the purpose of, among other things, (i) implementing the Combined Plan and Disclosure Statement, (ii) investigating and, if appropriate, pursuing Causes of Action, (ii) administering, monetizing and/or liquidating the Liquidating Trust Assets, (iv) resolving all Disputed Claims, and (v) making all Distributions to Holders of Allowed Claims or Interests, as applicable, from the Liquidating Trust and as provided for in the Combined Plan and Disclosure Statement and the Liquidating Trust Agreement.

The Liquidating Trust shall be established for the purpose of liquidating the Liquidating Trust Assets, prosecuting any Causes of Action transferred to the Liquidating Trust to maximize recoveries for the benefit of the Liquidating Trust Beneficiaries, and making Distributions in accordance with the Combined Plan and Disclosure Statement to the Liquidating Trust Beneficiaries, with no objective to continue or engage in the conduct of a trade or business in accordance with Treas. Reg. § 301.7701-4(d). The Liquidating Trust is intended to qualify as a "grantor trust" for federal income tax purposes and, to the extent permitted by applicable law, for state and local income tax purposes, with the Liquidating Trust Beneficiaries treated as grantors and owners of the trust.

Upon establishment of the Liquidating Trust, all Liquidating Trust Assets shall be deemed transferred to the Liquidating Trust without any further action of the Debtor, or any employees, officers, directors, members, partners, shareholders, agents, advisors, or representatives of the Debtor. The Debtor shall have the power and authority to enter into the Liquidating Trust Agreement on the Effective Date.

The Liquidating Trust Agreement will be filed by no later than the filing of the Plan Supplement and will be considered an integral part of the Combined Plan and Disclosure Statement and is incorporated herein by reference in its entirety.

2. Appointment and Duties of Liquidating Trustee

Appointment of the Liquidating Trustee. The Liquidating Trustee will be designated jointly by the Debtor and the Creditors' Committee, and identified in the Plan Supplement. The material terms of the Liquidating Trustee's compensation are included in the Liquidating Trust Agreement.

The Liquidating Trustee shall carry out the duties as set forth herein and in the Liquidating Trust Agreement. Pursuant to Bankruptcy Code section 1123(b)(3), the Liquidating Trustee shall be deemed the appointed representative to, and shall have all rights and powers set forth in the Liquidating Trust Agreement, including, without limitation, the powers of a trustee under Section 704 and 1106 of the Bankruptcy Code and Rule 2004 of the Bankruptcy Rules to act on behalf of the Liquidating Trust. In the event that the Liquidating Trustee resigns, is removed, terminated, or otherwise unable to serve as the Liquidating Trustee, then a successor shall be appointed as set forth in the Liquidating Trust Agreement. Any successor Liquidating Trustee

appointed shall be bound by and comply with the terms of the Combined Plan and Disclosure Statement, the Confirmation Order, and the Liquidating Trust Agreement. Any abatement, interruption, or tolling of the statutes of limitation pertaining to the Liquidating Trust Assets in favor of the Debtor or the Estate shall also apply to the benefit of the Liquidating Trustee; for the avoidance of doubt, the Liquidating Trustee shall be construed to be a "trustee" for purposes of 11 U.S.C. § 108.

Powers and Responsibilities of the Liquidating Trustee. The Liquidating Trustee shall have the power and authority to perform the acts described in the Liquidating Trust Agreement (subject to approval by the Bankruptcy Court where required by the Liquidating Trust Agreement or applicable law), in addition to any powers granted by law or conferred to it by any other provision of the Combined Plan and Disclosure Statement, including without limitation any powers set forth herein, *provided however*, that enumeration of the following powers shall not be considered in any way to limit or control the power and authority of the Liquidating Trustee to act as specifically authorized by any other provision of the Combined Plan and Disclosure Statement, the Liquidating Trust Agreement, the Confirmation Order, and/or any applicable law, and to act in such manner as the Liquidating Trustee may deem necessary or appropriate, including, without limitation, to discharge all obligations assumed by the Liquidating Trustee or provided herein and to conserve and protect the Liquidating Trust or to confer on the creditors the benefits intended to be conferred upon them by the Combined Plan and Disclosure Statement. The Liquidating Trustee shall have the power and authority, without further need for documentation or approval by the Bankruptcy Court, to take any action as shall be necessary to administer the Chapter 11 Case and the Liquidating Trust and effect the closing of the Chapter 11 Case, including, without limitation, the power to: (i) liquidate the non-cash Liquidating Trust Assets; (ii) hire professionals to assist the Liquidating Trustee as necessary to carry out the purposes of the Liquidating Trust and pay the professional fees and expenses of such professionals from the Liquidating Trust Assets; (iii) establish and administer reserves, including the Disputed Claims Reserve (as defined below), and invest funds, in accordance with Bankruptcy Code section 345; (iv) prepare and file tax returns for the Debtor and the Liquidating Trust as set forth herein; (v) pay taxes and other obligations owed by the Liquidating Trust from the Liquidating Trust Assets in accordance with the Combined Plan and Disclosure Statement and the Liquidating Trust Agreement; (vi) make interim and final Distributions to the Holders of Allowed Claims that are Liquidating Trust Beneficiaries pursuant to the terms of the Combined Plan and Disclosure Statement and Liquidating Trust Agreement; (vii) evaluate, pursue, prosecute, resolve, abandon, and compromise and settle any Causes of Action on behalf of the Liquidating Trust in accordance with the Liquidating Trust Agreement; (viii) object to and reconcile Claims and Interests, including, without limitation, the power to subordinate and recharacterize Claims by objection, motion, or adversary proceeding and to resolve, compromise and settle such disputed Claims; (ix) abandon any Liquidating Trust Assets that cannot be sold or distributed economically; (x) assert or waive any attorney-client privilege on behalf of the Debtor and the Estate with regard to the Liquidating Trust Assets; (xi) destroy records once they are no longer needed for administration of the Chapter 11 Case or the Liquidating Trust; (xii) wind up the affairs of the Liquidating Trust and dissolve it under applicable law; (xiii) prepare and file reports and other documents necessary to conclude and close the Chapter 11 Case; and (xiv) take such other actions and execute all agreements, instruments, and other documents as are consistent with the powers as may be vested in or assumed by the Liquidating Trustee pursuant to the Combined Plan and Disclosure Statement, the Liquidating Trust Agreement, the Confirmation Order, any other Bankruptcy Court order, or as may be necessary

and proper to carry out the provisions of the Combined Plan and Disclosure Statement. Except as expressly set forth in the Combined Plan and Disclosure Statement and in the Liquidating Trust Agreement, the Liquidating Trustee, on behalf of the Liquidating Trust, shall have absolute discretion to pursue or not to pursue any Causes of Action as it determines is in the best interests of the Liquidating Trust Beneficiaries and consistent with the purposes of the Liquidating Trust, and neither the Liquidating Trustee nor any of his or her professionals shall have any liability for the outcome of such decision, other than those decisions constituting gross negligence or willful misconduct. The Liquidating Trustee may incur any reasonable and necessary expenses in liquidating and converting the Liquidating Trust Assets to cash. Subject to the other terms and provisions of the Combined Plan and Disclosure Statement, the Liquidating Trustee shall be granted standing, authority, power, and right to assert, prosecute and/or settle the Causes of Action and/or make a claim under any primary director and officer liability, employment practices liability, or fiduciary liability insurance policies based upon its powers as a Court-appointed representative of the Estate with the same or similar abilities possessed by insolvency trustees, receivers, examiners, conservators, liquidators, rehabilitators, or similar officials.

Enforcement of Any Avoidance Actions and Other Causes of Action. Pursuant to Bankruptcy Code section 1123(b), the Liquidating Trustee, on behalf of and for the benefit of the Liquidating Trust Beneficiaries, shall be vested with and shall retain and may enforce any Avoidance Actions and D&O Claims and other Causes of Action transferred to the Liquidating Trust that were held by, through, or on behalf of the Debtor and/or the Estate against any other Person, arising before the Effective Date that have not been fully resolved or disposed of prior to the Effective Date, whether or not such Avoidance Actions and D&O Claims are specifically identified in the Combined Plan and Disclosure Statement and whether or not litigation with respect to same has been commenced prior to the Effective Date. The recoveries from any Avoidance Action, D&O Claim, and other Causes of Action transferred to the Liquidating Trust will be deposited into the Liquidating Trust and distributed in accordance with the Liquidating Trust Agreement and the Combined Plan and Disclosure Statement.

Compensation of Liquidating Trustee. The Liquidating Trustee shall be compensated as set forth in the Liquidating Trust Agreement; *provided, however* that such compensation shall only be payable from the Liquidating Trust Assets. The Liquidating Trustee shall fully comply with the terms, conditions, and rights set forth in the Combined Plan and Disclosure Statement, the Confirmation Order, and the Liquidating Trust Agreement. The Liquidating Trustee shall not be required to file a fee application to receive compensation.

Retention and Payment of Professionals. The Liquidating Trustee shall have the right to retain the services of attorneys, accountants, and other professionals and agents, including counsel, to assist and advise the Liquidating Trustee in the performance of his or her duties and compensate such professionals from the Liquidating Trust Assets as set forth in the Liquidating Trust Agreement, including but not limited to, Professionals retained by the Creditors' Committee, without the need for an order of the Bankruptcy Court.

Limitation of Liability of the Liquidating Trustee. The Liquidating Trust shall indemnify the Liquidating Trustee and his or her professionals against any losses, liabilities, expenses (including attorneys' fees and disbursements), damages, taxes, suits, or claims that the Liquidating Trustee or his or her professionals may incur or sustain by reason of being or having been a

Liquidating Trustee or professional of the Liquidating Trustee for performing any functions incidental to such service; *provided*, *however*, the foregoing shall not relieve the Liquidating Trustee or his or her professionals from liability for willful misconduct, reckless disregard of duty, breach of fiduciary duty, criminal conduct, gross negligence, fraud, or self-dealing.

3. Purpose of Liquidating Trust

The Liquidating Trust shall be established for the purpose of liquidating the Liquidating Trust Assets, prosecuting any Causes of Action transferred to the Liquidating Trust to maximize recoveries for the benefit of the Liquidating Trust Beneficiaries, and making Distributions in accordance with the Combined Plan and Disclosure Statement to the Liquidating Trust Beneficiaries with no objective to continue or engage in the conduct of a trade or business in accordance with Treas. Reg. § 301.7701-4(d).

The Liquidating Trust shall be responsible for filing all required federal, state, and local tax returns and/or informational returns for the Liquidating Trust, and, to the extent not previously filed, for the Debtor. The Liquidating Trust shall comply with all withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all Distributions made by the Liquidating Trust shall be subject to any such withholding and reporting requirements. The Liquidating Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements including, without limitation, requiring that, as a condition to the receipt of a Distribution, the Holder of an Allowed Claim complete the appropriate IRS Form W-8 or IRS Form W-9, as applicable to each Holder. Notwithstanding any other provision of this Combined Plan and Disclosure Statement, (a) each Holder of an Allowed Claim or Interest that is to receive a Distribution from the Liquidating Trust 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 and other tax obligations, on account of such Distribution, and (b) no Distribution shall be made to or on behalf of such Holder pursuant to this Combined Plan and Disclosure Statement unless and until such Holder has made arrangements satisfactory to the Liquidating Trustee to allow it to comply with its tax withholding and reporting requirements. Any property to be distributed by the Liquidating Trust shall, pending the implementation of such arrangements, be treated as an unclaimed Distribution to be held by the Liquidating Trustee, as the case may be, until such time as the Liquidating Trustee is satisfied with the Holder's arrangements for any withholding tax obligations.

In connection with the consummation of this Combined Plan and Disclosure Statement, the Debtor and the Liquidating Trustee shall comply with all withholding and reporting requirements imposed by any federal, state, or local taxing authority and all Distributions hereunder shall be subject to any such withholding and reporting requirements. All Liquidating Trust Beneficiaries, as a condition to receiving any Distribution, shall provide the Liquidating Trustee with a completed and executed Tax Form W-8 or Tax Form W-9, or similar form within sixty (60) days of a written request by the Liquidating Trustee or be forever barred from receiving a Distribution.

4. Transfer of Liquidating Trust Assets to Liquidating Trust

Pursuant to Bankruptcy Code sections 1123(a)(5) and 1141, all transfers and contributions made to the Liquidating Trust shall be made free and clear of all Claims, liens, encumbrances, charges, and other Interests. Upon completion of the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Debtor will have no further interest in, or with respect to, the Liquidating Trust Assets or the Liquidating Trust. For all federal income tax purposes, all parties (including, without limitation, the Debtor, the Liquidating Trustee, and the Liquidating Trust Beneficiaries) will treat the transfer of the Liquidating Trust Assets to the Liquidating Trust in accordance with the terms of the Combined Plan and Disclosure Statement as a transfer to the Liquidating Trust Beneficiaries, followed by a transfer by such Liquidating Trust Beneficiaries to the Liquidating Trust, and the Liquidating Trust Beneficiaries will be treated as the grantors and owners thereof.

5. Preservation of Rights

Except as provided in this Combined Plan and Disclosure Statement or in any contract, instrument, release or other agreement entered into or delivered in connection with this Combined Plan and Disclosure Statement, in accordance with section 1123(b) of the Bankruptcy Code, the Liquidating Trust or Liquidating Trustee on its behalf (solely to the extent provided in the Combined Plan and Disclosure Statement and the Liquidating Trust Agreement) will retain and may enforce the Causes of Action. The Liquidating Trust or Liquidating Trustee on its behalf (solely to the extent provided in the Combined Plan and Disclosure Statement and the Liquidating Trust Agreement) may pursue any such Causes of Action, as appropriate, in accordance with the best interests of the Liquidating Trust Beneficiaries.

The Debtor's inclusion or failure to include any right of action or claim in the Causes of Action shall not be deemed an admission, denial or waiver of any claims, demands, rights or Causes of Action that the Debtor or Estate may hold against any Person or Entity. No preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable, or otherwise) or laches shall apply to any Causes of Action upon or after the entry of the Confirmation Order or Effective Date based on the Combined Plan and Disclosure Statement or Confirmation Order, except where such Causes of Action have been expressly released or otherwise resolved by a Final Order (including the Confirmation Order).

6. Liquidating Trust Expenses

The Liquidating Trustee may, in the ordinary course of business and without the necessity for any application to, or approval of, the Bankruptcy Court, pay any accrued but unpaid Liquidating Trust Expenses. All Liquidating Trust Expenses shall be charged against and paid from the Liquidating Trust Assets as provided in the Liquidating Trust Agreement.

7. Privileges

On and subject to the terms of the Combined Plan and Disclosure Statement, all of the Debtor's privileges (the "Privileges"), including, but not limited to, corporate privileges, confidential information, work product protections, attorney-client privileges, and other immunities or protections shall be transferred, assigned, and delivered to the Liquidating Trust,

without waiver, limitation, or release, and shall vest with the Liquidating Trust on the Effective Date.

The Liquidating Trust shall hold and be the beneficiary of all Privileges and entitled to assert all Privileges. No Privilege shall be waived by disclosures to the Liquidating Trustee of the Debtor's documents, information, or communications subject to any privilege, protection, or immunity or protections from disclosure jointly held by the Debtor and the Liquidating Trust.

The Debtor's Privileges relating to the Liquidating Trust Assets will remain subject to the rights of third parties under applicable law, including any rights arising from the common interest doctrine, the joint defense doctrine, joint attorney-client representation, or any agreement. Nothing contained herein or in the Confirmation Order, nor any Professional's compliance herewith and therewith, shall constitute a breach or waiver of any Privileges.

8. Liquidating Trust Interest

Each Liquidating Trust Interest will entitle its Holder to Distributions from the Liquidating Trust in accordance with the terms of the Liquidating Trust Agreement. The Liquidating Trust Interests will be uncertificated; thus, Distributions from a Liquidating Trust Interest will be accomplished solely by the entry of names of the Holders and their respective Liquidating Trust Interests in the books and records of the Liquidating Trust. Each Holder of a Liquidating Trust Interest shall take and hold its uncertificated beneficial Interest subject to all the terms and provisions of the Combined Plan and Disclosure Statement, the Confirmation Order, and the Liquidating Trust Agreement.

9. Termination of Liquidating Trust

The Liquidating Trust shall be dissolved upon the earlier of the Distribution of all of the Liquidating Trust Assets to the Liquidating Trust Beneficiaries or the fifth (5th) anniversary of the Effective Date, *provided that* the Liquidating Trustee shall, in his/her sole discretion, be authorized to seek to extend the dissolution date upon Bankruptcy Court approval by the filing of a motion served on the master service list for cause shown.

D. Effective Date and Other Transactions

1. Transfer of Assets to Liquidating Trust

On the Effective Date, except as otherwise expressly provided in the Combined Plan and Disclosure Statement, title to the Liquidating Trust Assets shall vest in the Liquidating Trust free and clear of all liens, encumbrances, or interests of any kind. Except as otherwise provided in the Sale Order or the Combined Plan and Disclosure Statement, the Liquidating Trust shall succeed to all rights and interests retained by or provided to the Debtor and the Estate. On the Effective Date, the Debtor will transfer to the Liquidating Trust the Liquidating Trust Assets, except any excess amounts in the Professional Fee Escrow which the Debtor will transfer to the Liquidating Trust after payment in full or other satisfaction of Allowed Professional Fee Claims.

E. Provisions Governing Distributions under the Combined Plan and Disclosure Statement

1. Method of Payment

Except as otherwise provided herein, any Distributions and deliveries to be made hereunder with respect to Claims that are Allowed as of the Effective Date shall be made on the Effective Date or as soon thereafter as is reasonably practicable. Except as otherwise provided herein, any Distributions and deliveries to be made hereunder with respect to Claims that are Allowed after the Effective Date shall be made as soon as is reasonably practicable after the date on which such Claim becomes Allowed. Distributions made after the Effective Date to Holders of Allowed Claims shall be deemed to have been made on the Effective Date and, except as otherwise provided in the Combined Plan and Disclosure Statement, no interest shall accrue or be payable with respect to such Claims or any Distribution related thereto. In the event that any payment or act under the Combined Plan and Disclosure Statement 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.

All Distributions hereunder shall be made by the Debtor, the Liquidating Trustee, or his/her named successor or assign, as "Disbursing Agent," on or after the Effective Date or as otherwise provided herein. A Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court, and, in the event that a Disbursing Agent is so ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Disbursing Agent.

Unless otherwise expressly agreed in writing, all cash payments to be made pursuant to the Combined Plan and Disclosure Statement shall be made by check drawn on a domestic bank or an electronic wire.

2. Distribution Record Date

Except as otherwise provided in a Final Order of the Bankruptcy Court, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 or otherwise on or prior to the Distribution Record Date will be treated as Holders of those Claims or Interests for all purposes under the Combined Plan and Disclosure Statement. The Debtor, the Liquidating Trustee, or the Disbursing Agent, as applicable, shall have no obligation to recognize any transfer of any Claim or Interest occurring after the Distribution Record Date. In making any Distribution with respect to any Claim or Interest, the Debtor, the Liquidating Trustee, or Disbursing Agent, as applicable, shall be entitled instead to recognize and deal with, for all purposes hereunder, only the Person or Entity that is listed on the Proof of Claim Filed with respect thereto or on the Schedules as the Holder thereof as of the close of business on the Distribution Record Date and upon such other evidence or record of transfer or assignment that is actually known to the Debtor, the Liquidating Trustee, or the Disbursing Agent, as applicable, as of the Distribution Record Date.

In the event the Liquidating Trustee, in its sole discretion, establishes the Existing Equity Interests Record Date, the Liquidating Trustee may coordinate with DTC and/or the Disbursing Agent to coordinate Distributions on account of such Allowed Existing Equity Interests.

3. Delivery of Distributions

Except as otherwise provided herein, Distributions to Holders of Allowed Claims shall be made: (a) at the addresses set forth on the respective Proofs of Claim filed by such Holders; (b) at the addresses set forth in any written notice of address changes delivered to the Liquidating Trustee after the date of any related Proof of Claim; or (c) at the address reflected in the Schedules or other more recent records of the Debtor if no Proof of Claim is filed and the Liquidating Trustee has not received a written notice of a change of address.

Subject to applicable Bankruptcy Rules, all Distributions to Holders of Allowed Claims shall be made to the Disbursing Agent who shall transmit such Distributions to the applicable Holders of Allowed Claims or their designees. If any Distribution to a Holder of an Allowed Claim is returned as undeliverable, the Disbursing Agent shall have no obligation to determine the correct current address of such Holder, and no Distribution to such Holder shall be made unless and until the Disbursing Agent is notified, in writing, by the Holder of the current address of such Holder within ninety (90) days of such Distribution, at which time a Distribution shall be made to such Holder without interest; provided that such Distributions shall be deemed unclaimed property or an unclaimed Distribution under Bankruptcy Code section 347(b) at the expiration of ninety (90) days from the Distribution. After such date, all unclaimed property or interest in property shall revert to the Liquidating Trust to be distributed to other Holders of Allowed Claims in accordance with the terms of the Liquidating Trust Agreement and the Combined Plan and Disclosure Statement, and the Claim of any other Holder to such property or interest in property shall be released and forever barred.

4. Objection to and Resolution of Claims

Except as expressly provided herein, or in any order entered in the Chapter 11 Case prior to the Effective Date, including the Confirmation Order, no Claim or Interest shall be deemed Allowed unless and until such Claim or Interest is deemed Allowed under the Combined Plan and Disclosure Statement or the Bankruptcy Code or the Bankruptcy Court has entered a Final Order, including the Confirmation Order, in the Chapter 11 Case allowing such Claim or Interest. On or after the Effective Date, the Liquidating Trust shall be vested with any and all rights and defenses the Debtor had with respect to any Claim or Interest immediately prior to the Effective Date.

Except as provided in the Combined Plan and Disclosure Statement, the Liquidating Trustee or other party in interest with standing, to the extent permitted pursuant to section 502(a) of the Bankruptcy Code, shall file and serve any objection to any Claim no later than the Claims Objection Deadline.

5. Preservation of Rights to Settle Claims

Except as otherwise expressly provided herein, nothing contained in the Combined Plan and Disclosure Statement and related documents, or in the Confirmation Order shall be deemed to be a waiver or the relinquishment of any rights or Causes of Action that the Debtor or its Estate

may have or which the Liquidating Trustee may choose to assert on behalf of the Estate under any provision of the Bankruptcy Code or any applicable non-bankruptcy law or rule, common law, equitable principle or other source of right or obligation, including, without limitation, (a) any and all claims against any Person or Entity, to the extent such Person or Entity asserts a crossclaim, counterclaim, and/or claim for setoff which seeks affirmative relief against the Debtor, its Officers, directors, or representatives, and (b) the turnover of all property of the Estate. This section shall not apply to any Claims sold, released, waived, relinquished, exculpated, compromised, or settled under the Combined Plan and Disclosure Statement or pursuant to a Final Order, expressly including the Sale Order. Except as expressly provided in the Combined Plan and Disclosure Statement, nothing contained in the Combined Plan and Disclosure Statement and related documents, or in the Confirmation Order shall be deemed to be a waiver or relinquishment of any Claim, Cause of Action, right of setoff, or other legal or equitable defense. No Entity may rely on the absence of a specific reference in the Combined Plan and Disclosure Statement, the Plan Supplement, or any other document related to the Combined Plan and Disclosure Statement to any Cause of Action against it as any indication that the Debtor or the Liquidating Trustee, as applicable, will not pursue any and all available Causes of Action against them. The Debtor and the Liquidating Trustee expressly reserve all rights to prosecute any and all Causes of Action against any Person or Entity, except as otherwise expressly provided in the Combined Plan and Disclosure Statement.

6. Miscellaneous Distribution Provisions

Disputed Claims. At such time as a Disputed Claim becomes an Allowed Claim, or upon the next round of Distributions commenced thereafter, the Disbursing Agent shall distribute to the Holder of such Claim the Distribution to which such Holder is entitled under the Combined Plan and Disclosure Statement with respect to the Class in which such Claim belongs. To the extent that all or a portion of a Disputed Claim is Disallowed, the Holder of such Claim shall not receive any Distribution on account of the portion of such Claim that is Disallowed and any property withheld pending the resolution of such Claim shall be reallocated Pro Rata to the Holders of Allowed Claims in the same Class.

Disputed Claims Reserve. The Liquidating Trustee may establish a separate Disputed Claims reserve (the "Disputed Claims Reserve") in accordance with the Liquidating Trust Agreement on account of Distributions of cash or other property as necessary hereunder. The Liquidating Trustee shall not make any Distributions of Liquidating Trust Assets to the Liquidating Trust Beneficiaries unless the Liquidating Trustee retains and reserves in the Disputed Claims Reserve such amounts as are reasonably necessary to satisfy amounts that would have been distributed in accordance with the Combined Plan and Disclosure Statement in respect of Disputed Claims if the Disputed Claims were determined to be Allowed Claims immediately prior to such proposed Distribution to the Liquidating Trust Beneficiaries.

Distributions After Allowance. To the extent that a Disputed Claim becomes an Allowed Claim after the Effective Date, a Distribution shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Combined Plan and Disclosure Statement. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Liquidating Trustee or, as applicable, the Disbursing Agent shall provide to the Holder of such Claim the Distribution to which such Holder is entitled hereunder.

Setoff. The Debtor or Liquidating Trustee, as applicable, retains the right to reduce any Claim by way of setoff in accordance with the Debtor's books and records and in accordance with the Bankruptcy Code. A claimant may challenge any such setoff made by the Debtor or the Liquidating Trustee in the Bankruptcy Court or any other court with jurisdiction.

Postpetition Interest. Except as may be expressly provided herein, interest shall not accrue on any Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date. No prepetition Claim shall be Allowed to the extent it is for postpetition interest or other similar charges, except to the extent permitted for Holders of Secured Claims, if any, under section 506(b) of the Bankruptcy Code.

Minimum Distributions. Notwithstanding anything herein to the contrary, (a) the Liquidating Trustee shall not be required to make Distributions or payments of fractions of dollars, and whenever any Distribution of a fraction of a dollar under the Combined Plan and Disclosure Statement would otherwise be required, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down; and (b) the Liquidating Trustee shall have no duty to make a Distribution on account of any Allowed Claim (i) if the aggregate amount of all Distributions authorized to be made on such date is less than $100,000.00, in which case such Distributions shall be deferred to the next Distribution date, (ii) if the amount to be distributed to a Holder on the particular Distribution date is less than $100.00, unless such Distribution constitutes the final Distribution to such Holder, or (iii) if the amount of the final Distribution to such Holder is $50.00 or less, in which case no Distribution will be made to that Holder and such Distribution shall revert to the Liquidating Trust for distribution on account of other Allowed Claims.

Donation of Remaining Liquidating Trust Assets. After final Distributions have been made in accordance with the terms of the Combined Plan and Disclosure Statement and the Liquidating Trust Agreement, if the amount of remaining cash is less than $30,000, the Liquidating Trustee may, in its sole discretion, donate such amount to charity in accordance with the terms of the Liquidating Trust Agreement.

VIII. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Executory Contracts and Unexpired Leases

All Executory Contracts and Unexpired Leases of the Debtor which have not been assumed, assigned, and/or rejected prior to the Effective Date and that are not subject to a motion to assume or reject as of the Effective Date (if any) shall be deemed rejected on the Effective Date, but the rejection will be effective as of the entry of the Confirmation Order.

B. Rejection Claims

In the event that the rejection of an Executory Contract or Unexpired Lease by the Debtor pursuant to the Combined Plan and Disclosure Statement results in a Rejection Claim in favor of a counterparty to such Executory Contract or Unexpired Lease, such Rejection Claim, if not heretofore evidenced by a timely and properly filed Proof of Claim, shall be forever barred and shall not be enforceable against the Debtor or the Liquidating Trust, or their respective properties or Interests in property as agents, successors, or assigns, unless a Proof of Claim is filed with the

Bankruptcy Court and served upon counsel for the Debtor and the Liquidating Trustee on or before the date that is thirty (30) days after service of notice of the Effective Date, which notice shall set forth the bar date for Rejection Claims. All Allowed Rejection Claims shall be treated as General Unsecured Claims in Class 3 pursuant to the terms of the Combined Plan and Disclosure Statement.

C. Debtor's Insurance Policies

Nothing in the Combined Plan and Disclosure Statement alters the rights and obligations of the Debtor, its Estate, and its successors and assigns and the Debtor's insurers (and third-party claims administrators) under the Debtor's insurance policies or modifies the coverage or benefits provided thereunder or the terms or conditions thereof or diminishes or impairs the enforceability of the Debtor's insurance policies.

IX. CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

A. Conditions Precedent to the Effective Date

The following is the list of conditions precedent to the Effective Date:

(1) The Bankruptcy Court shall have entered the Confirmation Order acceptable to the Debtor and the Confirmation Order shall be a Final Order;

(2) no stay of the Confirmation Order shall then be in effect;

(3) the Liquidating Trust Agreement shall be executed and the Liquidating Trustee shall have been appointed and accepted such appointment; and

(4) the Combined Plan and Disclosure Statement shall not have been materially amended, altered, or modified from the Combined Plan and Disclosure Statement as confirmed by the Confirmation Order, unless such material amendment, alteration, or modification has been made in accordance with Article XII herein.

B. Waiver of Conditions

The conditions precedent to the Effective Date may be waived in whole or in part, in writing, without further order of the Bankruptcy Court, by the Debtor upon consultation with the Creditors' Committee.

C. Effect of Nonoccurrence of Conditions

If the conditions precedent to the Effective Date are not satisfied or waived, the Debtor may, upon motion and notice to parties in interest, seek to vacate the Confirmation Order; *provided, however*, that notwithstanding the filing of such motion, the Confirmation Order may not be vacated if each of the conditions precedent to the Effective Date are satisfied or waived before the Bankruptcy Court enters an order granting such motion.

If the Confirmation Order is vacated: (a) the Combined Plan and Disclosure Statement is null and void in all respects; and (b) nothing contained in the Combined Plan and Disclosure Statement shall (i) constitute a waiver or release of any Claims by or against the Debtor, or (ii) prejudice, in any manner, the rights of the Debtor or any other party in interest.

X. Exculpation and Injunction

A. Injunction

Except as otherwise provided in the Combined Plan and Disclosure Statement or to the extent necessary to enforce the terms and conditions of the Combined Plan and Disclosure Statement, the Confirmation Order, or a separate order of the Bankruptcy Court, all entities who have held, hold, or may hold Claims against or Interests in the Debtor shall be permanently enjoined from taking any of the following actions against the Debtor, the Debtor's Estate, the Debtor's successors and assigns, or any of the Debtor's Assets, including property that is to be distributed under the terms of the Combined Plan and Disclosure Statement (including Liquidating Trust Assets), on account of any such Claims or Interests: (a) commencing or continuing, in any manner or in any place, any action or other proceeding; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order; (c) creating, perfecting, or enforcing any lien or encumbrance; (d) asserting a right of setoff, other than any rights of setoff that were exercised prior to the Petition Date; and (e) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Combined Plan and Disclosure Statement.

B. Exculpation

THE EXCULPATED PARTIES SHALL NOT HAVE OR INCUR, AND ARE HEREBY RELEASED FROM, ANY CLAIM, CAUSE OF ACTION, OBLIGATION, SUIT, JUDGMENT, DAMAGES, DEBT, RIGHT, REMEDY OR LIABILITY TO ONE ANOTHER OR TO ANY HOLDER OF ANY CLAIM OR EQUITY INTEREST, OR ANY OTHER PARTY-IN-INTEREST, FOR ANY ACT OR OMISSION ORIGINATING OR OCCURRING ON OR AFTER THE PETITION DATE THROUGH AND INCLUDING THE EFFECTIVE DATE IN CONNECTION WITH, RELATED TO, OR ARISING OUT OF THE CHAPTER 11 CASE, INCLUDING, BUT NOT LIMITED TO, THE SALE OR POTENTIAL SALE OF THE DEBTOR'S ASSETS, THE APA, THE SETTLEMENT OF CLAIMS OR RENEGOTIATION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, THE COMBINED PLAN AND DISCLOSURE STATEMENT, THE PURSUIT OF CONFIRMATION, THE SOLICITATION OF VOTES ON THE COMBINED PLAN AND DISCLOSURE STATEMENT, THE CONFIRMATION OF THE COMBINED PLAN AND DISCLOSURE STATEMENT, THE CONSUMMATION OF THE COMBINED PLAN AND DISCLOSURE STATEMENT, THE ADMINISTRATION OF THE COMBINED PLAN AND DISCLOSURE STATEMENT, THE PROPERTY TO BE LIQUIDATED AND/OR DISTRIBUTED UNDER THE COMBINED PLAN AND DISCLOSURE STATEMENT, OR THE LIQUIDATION OF THE DEBTOR, INCLUDING THE PURSUIT AND ENTRY OF THE SALE ORDER, EXCEPT FOR THEIR CRIMINAL CONDUCT, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE AS

SUBSEQUENTLY DETERMINED BY A FINAL ORDER OF A COURT OF COMPETENT JURISDICTION.

XI. RETENTION OF JURISDICTION

Following the Confirmation Date and the Effective Date, the Bankruptcy Court shall retain jurisdiction for the following purposes:

(1) to hear and determine any objections to Claims and to address any issues relating to Disputed Claims;

(2) to enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;

(3) to issue such orders in aid of execution and consummation of the Combined Plan and Disclosure Statement, to the extent authorized by Bankruptcy Code section 1142;

(4) to consider any amendments to or modifications of the Combined Plan and Disclosure Statement, to cure any defect or omission, or to reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(5) to hear and determine all requests for compensation and reimbursement of expenses to the extent allowed by the Bankruptcy Court under Bankruptcy Code sections 330 or 503;

(6) to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Combined Plan and Disclosure Statement;

(7) to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Sale Order;

(8) to hear and determine matters concerning state, local, and federal taxes in accordance with Bankruptcy Code sections 346, 505, and 1146;

(9) to hear any other matter as to which the Bankruptcy Court has jurisdiction;

(10) to enter the Final Decree;

(11) to ensure that Distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Combined Plan and Disclosure Statement;

(12) to decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters and grant or deny any applications involving the Debtor that may be pending on the Effective Date;

(13) to issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with the occurrence of the Effective Date or enforcement of the Combined Plan and Disclosure Statement, except as otherwise provided herein;

(14) to determine any other matters that may arise in connection with or related to the Combined Plan and Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created or implemented in connection with the Combined Plan and Disclosure Statement;

(15) to determine any other matters that may arise in connection with or related to the Sale Order or any contract, instrument, release, indenture, or other agreement or document created or implemented in connection with the Sale Order;

(16) to enforce, interpret, and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, exculpations, and rulings entered in connection with the Chapter 11 Case (whether or not the Chapter 11 Case has been closed);

(17) to resolve disputes concerning any reserves with respect to Disputed Claims or the administration thereof; and

(18) to resolve any disputes concerning whether a Person or Entity had sufficient notice of the Chapter 11 Case, the General Bar Date, the administrative claim bar date set forth in the Bar Date Order, the Governmental Bar Date, or the Confirmation Hearing for the purpose of determining whether a Claim or Interest is released or enjoined hereunder, or for any other purpose.

XII. MISCELLANEOUS PROVISIONS

A. Amendment or Modification of the Combined Plan and Disclosure Statement

The Debtor may amend or modify the Combined Plan and Disclosure Statement, upon consultation with the Creditors' Committee regarding any material modifications, at any time prior to entry of the Confirmation Order in accordance with the Bankruptcy Code and the Bankruptcy Rules, or after Confirmation and before substantial consummation, provided that the Combined Plan and Disclosure Statement, as modified, meets the requirements of Bankruptcy Code sections 1122 and 1123 and the circumstances warrant such modifications and any such modifications are in compliance with section 1127(b) of the Bankruptcy Code and Bankruptcy Rule 3019(b). A Holder of a Claim that has accepted the Combined Plan and Disclosure Statement shall be deemed to have accepted such Combined Plan and Disclosure Statement as modified if the proposed alteration, amendment, or modification does not materially and adversely change the treatment of the Claim of such Holder.

B. Plan Supplement

The Debtor will file the Plan Supplement no later than seven (7) days prior to the Voting Deadline.

C. Filing of Additional Documents

On or before substantial consummation of the Combined Plan and Disclosure Statement, the Liquidating Trustee shall 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 Combined Plan and Disclosure Statement.

D. Entire Agreement

Except as otherwise indicated, this Combined Plan and Disclosure Statement supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Combined Plan and Disclosure Statement.

E. Binding Effect of Plan

The Combined Plan and Disclosure Statement shall be binding upon and inure to the benefit of the Debtor, the Holders of Claims, the Liquidating Trust, the Holders of Interests, other parties-in-interest and their respective successors, assigns and heirs. Notwithstanding anything to the contrary herein, nothing in the Combined Plan and Disclosure Statement modifies, alters, or amends the respective rights and obligations of the Debtor or Purchaser under the Sale Order or any other document governing the Sale.

F. Application of Bankruptcy Rule 7068

The Debtor, before the Effective Date, and the Liquidating Trustee following the Effective Date, are authorized to serve upon a Holder of Disputed Claim an offer to allow judgment to be taken on account of such Disputed Claim, and, pursuant to Bankruptcy Rule 7068 and 9014, Federal Rule of Civil Procedure 68 shall apply to such offer of judgment. To the extent the Holder of a Disputed Claim must pay the costs incurred by the Debtor or the Liquidating Trustee after the making of such offer, the Debtor and the Liquidating Trustee are entitled to set off such amounts against the amount of any Distribution to be paid to such Holder without any further notice to or action, order, or approval of the Bankruptcy Court.

G. Governing Law

Except as required by the Bankruptcy Code, the Bankruptcy Rules, or the Local Rules, the rights and obligations arising under the Combined Plan and Disclosure Statement shall be governed by, and construed and enforced in accordance with the laws of the State of Delaware.

H. Time

To the extent that any time for the occurrence or happening of an event as set forth in the Combined Plan and Disclosure Statement falls on a day that is not a Business Day, the time for the next occurrence or happening of said event shall be extended to the next Business Day.

I. Severability

Should any provision of the Combined Plan and Disclosure Statement be deemed unenforceable after the Effective Date, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of the Combined Plan and Disclosure Statement.

J. Revocation

The Debtor reserves the right to revoke and withdraw the Combined Plan and Disclosure Statement prior to the entry of the Confirmation Order. If the Debtor revokes or withdraws the Combined Plan and Disclosure Statement, the Combined Plan and Disclosure Statement shall be deemed null and void, and nothing contained herein shall be deemed to constitute a waiver or release of any claims by or against the Debtor or any other Person, or to prejudice in any manner the rights of such parties in any further proceedings involving the Debtor.

K. Claims and Noticing Agent

The Claims and Noticing Agent shall be relieved of such duties on the date of the entry of the Final Decree or upon written notice by the Debtor or Liquidating Trustee, and subject to approval by the Bankruptcy Court.

L. Inconsistency

To the extent that the Combined Plan and Disclosure Statement conflicts with or is inconsistent with any agreement related to the Combined Plan and Disclosure Statement, the provisions of the Combined Plan and Disclosure Statement shall control; *provided, however*, that nothing in the Combined Plan and Disclosure Statement shall be deemed to supersede, amend, or modify the provisions of the Sale Order or the Final DIP Order. In the event of any inconsistency between any provision of any of the foregoing documents, and any provision of the Confirmation Order, the Confirmation Order shall control and take precedence.

M. No Admissions

Notwithstanding anything herein to the contrary, nothing contained in the Combined Plan and Disclosure Statement shall be deemed an admission by any Entity with respect to any matter set forth herein.

N. Successors and Assigns

The rights, benefits, and obligations of any Person or Entity named or referred to in this Combined Plan and Disclosure Statement shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor, or assign of such Person or Entity.

O. Post-Effective Date Limitation of Notice

After the Effective Date, in order to continue receiving documents pursuant to Bankruptcy Rule 2002, Persons and Entities must file with the Bankruptcy Court a renewed request to receive

documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Liquidating Trustee is authorized to limit the list of Persons and Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Persons and Entities that have filed with the Bankruptcy Court such a renewed request *provided, however*, that parties in interest shall also serve those parties directly affected by, or having a direct interest in, the particular filing in accordance with Local Bankruptcy Rule 2002-1(b).

P. Post-Confirmation Reporting

After the Effective Date, in accordance with the Guidelines established by the U.S. Trustee, the Liquidating Trustee will file quarterly operating reports with the Bankruptcy Court.

Q. Substantial Consummation of the Plan

On the Effective Date, the Combined Plan and Disclosure Statement shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

R. Reservation of Rights

Except as expressly set forth herein, the Combined Plan and Disclosure Statement shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of the Combined Plan and Disclosure Statement, any statement or provision contained herein, or the taking of any action by the Debtor with respect to the Combined Plan and Disclosure Statement shall be or shall be deemed to be an admission or waiver of any rights of the Debtor, Holders of Claims, or Holders of Interests before the Effective Date.

S. No Discharge

As set forth in Bankruptcy Code section 1141(d)(3), the Combined Plan and Disclosure Statement does not grant the Debtor a discharge.

T. Term of Injunction or Stays

Unless otherwise provided in the Combined Plan and Disclosure Statement or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Case pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and existing on the Confirmation Date (excluding any injunctions or stays contained in the Combined Plan and Disclosure Statement or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Combined Plan and Disclosure Statement or the Confirmation Order shall remain in full force and effect in accordance with their terms.

XIII. RECOMMENDATION

In the opinion of the Debtor, with the support of the Creditors' Committee, the Combined Plan and Disclosure Statement is superior and preferable to the alternatives described in the Combined Plan and Disclosure Statement. Accordingly, the Debtor recommends that Holders of Claims entitled to vote on the Combined Plan and Disclosure

Statement vote to accept the Combined Plan and Disclosure Statement and support Confirmation.

Dated: June 13, 2024
Wilmington, Delaware

/s/ Craig Jalbert
Craig Jalbert

EXHIBIT A

Creditors' Committee Support Letter

The Official Committee of Unsecured Creditors of Humanigen, Inc.

Kilpatrick Townsend & Stockton LLP
The Grace Building
1114 Avenue of the Americas
New York, New York 10036

Womble Bond Dickinson (US) LLP
1313 North Market Street, Suite 1200
Wilmington, Delaware 19801

May 1, 2024

To All Unsecured Creditors of Humanigen, Inc.:

The Official Committee of Unsecured Creditors (the "Creditors' Committee") of Humanigen, Inc. (the "Debtor") submits this letter to all unsecured creditors in connection with the solicitation of your vote on the *Combined Chapter 11 Plan of Liquidation and Disclosure Statement for Humanigen, Inc.*, filed on May 1, 2024 (as amended from time to time, the "Combined Plan and Disclosure Statement").[1]

The Creditors' Committee believes that the Combined Plan and Disclosure Statement represents the best option for unsecured creditors to maximize the value of the Debtor's assets through this Chapter 11 Case. The Combined Plan and Disclosure Statement provides for, among other things: (i) the establishment of a trust to administer and liquidate the remaining assets of the Estate and distribute the proceeds of such assets to unsecured creditors, including monetizing and distributing contingent assets such as the Milestone Payments and the Madison JV Interest; and (ii) preservation of all claims and Causes of Action of the Debtor and the Estate that are not expressly sold or released, including Avoidance Actions and potential claims against certain of the Debtor's insiders, for the benefit of unsecured creditors.

NOTWITHSTANDING THE RECOMMENDATION SET FORTH HEREIN, EACH CREDITOR MUST MAKE ITS OWN INDEPENDENT DETERMINATION AS TO WHETHER THE COMBINED PLAN AND DISCLOSURE STATEMENT IS ACCEPTABLE TO THAT CREDITOR AND SHOULD CONSULT ITS OWN LEGAL AND/OR FINANCIAL ADVISOR(S). THE BRIEF SUMMARY THAT FOLLOWS IS DESIGNED TO HIGHLIGHT CERTAIN PROVISIONS OF THE COMBINED PLAN AND DISCLOSURE STATEMENT AND IS QUALIFIED IN ITS ENTIRETY BY THE COMBINED PLAN AND DISCLOSURE STATEMENT AND ALL RELATED EXHIBITS AND SUPPLEMENTS.

FOR THE REASONS SET FORTH HEREIN, THE CREDITORS' COMMITTEE RECOMMENDS YOU VOTE TO ACCEPT THE COMBINED PLAN AND DISCLOSURE STATEMENT. THE COMBINED PLAN AND DISCLOSURE STATEMENT DOES NOT PROVIDE FOR THE RELEASE OF THE DEBTOR OR ANY OTHER PARTY, OTHER THAN WITH RESPECT TO EXCULPATION. THE CREDITORS' COMMITTEE BELIEVES THE COMBINED PLAN AND DISCLOSURE STATEMENT IS IN THE BEST INTERESTS OF UNSECURED CREDITORS.

[1] Capitalized terms used herein and not otherwise defined have the meanings given to them in the Combined Plan and Disclosure Statement.

On January 3, 2024, the Debtor filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). On January 16, 2024, the Office of the United States Trustee for Region 3 appointed the Creditors' Committee pursuant to section 1102(a)(1) of the Bankruptcy Code. The Creditors' Committee retained the following professionals: (i) Kilpatrick Townsend & Stockton LLP as its lead counsel; (ii) Womble Bond Dickinson (US) LLP as its Delaware counsel; and (iii) Dundon Advisers LLC as its financial advisor. The Creditors' Committee members and professionals have devoted a considerable amount of their own time working on this case to protect the rights of all unsecured creditors.

Prior to the filing of the Combined Plan and Disclosure Statement, the Debtor conducted a sale of substantially all of its assets. On January 3, 2024, the Debtor entered into an asset purchase agreement (the "APA") with Taran Therapeutics, Inc. ("Taran")[2], who was the lender under the Debtor's DIP Facility and served as the stalking horse purchaser. When no other qualified bids were received by the bid deadline for substantially all of the Debtor's assets, the Debtor cancelled the auction and named Taran the successful bidder. The Creditors' Committee initially objected to the sale to Taran (the "Sale") but ultimately reached a settlement with the Debtor and Taran pursuant to which certain terms of the Sale and the APA were amended as described on the record at the hearing before the Bankruptcy Court on February 14, 2024. The settlement amended the APA to, among other things, significantly expand the events that will trigger the contingent "Milestone Payments" and increase the amount of those payments under the APA.

On February 17, 2024, the Bankruptcy Court entered an order (the "Sale Order") approving the Sale upon the modified terms agreed by the Creditors' Committee, the Debtor, and Taran. The Sale closed on February 20, 2024. In connection with the Sale, the DIP Facility was repaid in full pursuant to Taran's credit bid of all outstanding amounts due thereunder.

During this Chapter 11 Case, the Creditors' Committee evaluated various options to maximize the Debtor's assets and engaged in extensive discussions and negotiations with the Debtor regarding ways to do so. The Creditors' Committee believes that the approach set forth in the Combined Plan and Disclosure Statement represents the best available option for maximizing the value of the Estate for the benefit of General Unsecured Creditors.

The Combined Plan and Disclosure Statement provides for, among other things:

a. **Liquidating Trust:** All assets of the Debtor's Estate as of the Effective Date, other than the Acquired Assets[3] and the Professional Fee Escrow,[4] will be transferred to the Liquidating Trust (the "Liquidating Trust Assets") to be liquidated for the benefit of creditors. The Liquidating Trust Assets include (i) the Debtor's right to receive value on account of the Madison JV Litigation and the Milestone Payments under the APA, (ii) D&O Claims, (iii) Avoidance Actions, and (iv) any other retained causes of action of the Debtor (the "Causes of Action"). The Liquidating Trust shall, among other things,

[2] Taran is led by the Debtor's Chairman of the Board, CEO, and acting CFO, Cameron Durrant.
[3] The "Acquired Assets" are the Debtor's assets that were sold to Taran pursuant to the Sale Order and the APA.
[4] After all Allowed Professional Fee Claims have been paid in full or otherwise satisfied, any excess amounts in the Professional Fee Escrow will become Liquidating Trust Assets.

(I) liquidate the non-cash Liquidating Trust Assets; (II) evaluate, pursue, prosecute, resolve, abandon, and/or compromise and settle any Causes of Action on behalf of the Liquidating Trust; and (III) object to and reconcile Claims and Interests, including, without limitation, resolving, compromising and settling disputed Claims. Any Liquidating Trust Proceeds will be distributed on a Pro Rata basis to the Holders of Allowed Claims.

b. **Class 3 – General Unsecured Claims Treatment:** Except to the extent that a holder of an Allowed General Unsecured Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, and release of each Allowed General Unsecured Claim, each Holder of an Allowed General Unsecured Claim shall receive its Pro Rata share of the Liquidating Trust Proceeds, which are all proceeds and other receipts from the Liquidating Trust Assets described above (including, for example, any amounts collected by the Liquidating Trustee on account of (i) judgments resulting from the pursuit of any Causes of Action, (ii) the Madison JV Litigation, and/or (iii) the Milestone Payments under the APA) after the expenses of the Liquidating Trust have been paid.

c. **No Releases.** The Combined Plan and Disclosure Statement does <u>not</u> include any releases for any parties.[5]

In summary, the Combined Plan and Disclosure Statement effectuates the wind down of the Debtor on terms that, based upon the information provided to the Creditors' Committee, the Creditors' Committee believes are favorable to unsecured creditors and represent the best achievable outcome for unsecured creditors under the present circumstances. **<u>Accordingly, the Creditors' Committee supports the Combined Plan and Disclosure Statement</u>.**

For purposes of voting on the Combined Plan and Disclosure Statement, the Debtor provided you with a <u>ballot which should be completed by you</u> for either accepting or rejecting the Combined Plan and Disclosure Statement. The ballot should be mailed or transmitted through the online portal in accordance with the procedures set forth on the ballot, and <u>must be received prior to the voting deadline, June 6, 2024</u>.

This letter provides only a brief description of the provisions of the Combined Plan and Disclosure Statement that impact unsecured creditors. As such, all unsecured creditors are urged to carefully review the Combined Plan and Disclosure Statement and consult with their legal and financial advisors accordingly. This communication does not constitute, and shall not be construed as, a recommendation or solicitation by any individual member of the Creditors' Committee.

If you have any questions regarding the foregoing, please contact counsel to the Creditors' Committee, Gianfranco Finizio at gfinizio@ktslaw.com or Danielle Barav-Johnson at dbarav-johnson@ktslaw.com.

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF HUMANIGEN, INC.

[5] For the avoidance of doubt, the Combined Plan and Disclosure Statement does exculpate certain fiduciaries of the estate including the Debtor, the Creditors' Committee, and certain related parties from Claims arising out of the Chapter 11 Case. *See* Combined Plan and Disclosure Statement, § X.B.

EXHIBIT B

Liquidation Analysis

Humanigen, Inc.
Liquidation Analysis
(000's)

	Notes	Proposed Plan (Low)	Proposed Plan (High)	Chapter 7 Liquidation (Low)	Chapter 7 Liquidation (High)
Assets:					
Cash		$ 200	$ 200	$ 200	$ 200
Accounts Receivable	A	50	100	50	100
Proceeds from Litigation Claims	B	350	4,000	350	4,000
Proceeds from Milestones from Purchaser		-	5,000	-	5,000
Miscellaneous Assets	C	50	100	50	100
Estimated Proceeds		**$ 650**	**$ 9,300**	**$ 650**	**$ 9,300**
Estimated Administrative Fees:					
Chapter 7 Trustee Fees	D	$ -	$ -	$ 20	$ 233
Chapter 7 Trustee Professional Fees		-	-	400	800
Liquidating Trustee Fees		80	160	-	-
Liquidating Trustee Professional Fees		200	300	-	-
Administrative Expenses		150	300	150	300
Winddown Costs		50	50	-	-
Total Administrative Fees		**$ 480**	**$ 810**	**$ 570**	**$ 1,333**
Net Proceeds Available for Unsecured Creditors:		**$ 170**	**$ 8,490**	**$ 80**	**$ 7,967**
General Unsecured Claims:	E	**$ 44,100**	**$ 44,100**	**$ 44,100**	**$ 44,100**
Percentage Return to Unsecured Creditors:		**0.39%**	**19.25%**	**0.18%**	**18.07%**

Notes:

A Accounts Receivable to include: ~$2.5m AUS intercompany from Foreign Subsidiary
B Litigation Claims to include: (i) Derivative Action; (ii) Madison JV Interest; (iii) other Causes of Action
C Miscellaneous Assets to include: (i) deposits; (ii) tax refunds/assets; (iii) insurance proceeds
D Chapter 7 Trustee Fees assumes 3% of total proceeds distrbuted
E Amounts based on the Debtor's books and records, not as-filed claims
** All amounts subject to review and amendment, as necessary