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*Proposed Attorneys for the Debtors  
and Debtors in Possession*

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

In re:

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

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Jointly Administered)

**DEBTORS' APPLICATION FOR ENTRY OF AN ORDER  
AUTHORIZING (I) THE RETENTION OF  
ALVAREZ & MARSAL NORTH AMERICA, LLC TO  
PROVIDE THE DEBTORS A CHIEF RESTRUCTURING OFFICER AND  
CERTAIN ADDITIONAL PERSONNEL AND (II) DESIGNATING DOUGLAS STAUT  
AS CHIEF RESTRUCTURING OFFICER FOR THE DEBTORS  
EFFECTIVE AS OF THE PETITION DATE**

**If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at <https://ecf.txnb.uscourts.gov> at least two (2) business days before the start of the hearing. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk and filed on the docket at least two (2) business days before the start of the hearing. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.**

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



A hearing will be conducted on this matter on May 7, 2024 at 1:30 p.m. prevailing Central Time in Courtroom 1, Floor 14, 1100 Commerce Street, Dallas, TX 75242-1496.

You may participate in the hearing either in person or by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at 1.650.479.3207. Video communication will be by use of the Cisco WebEx platform. Connect via the Cisco WebEx application or click the link on Judge Jernigan's home page. The meeting code is 479 393 582. Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of electronic hearings. To make your appearance, click the "Electronic Appearance" link on Judge Jernigan's home page. Select the case name, complete the required fields and click "Submit" to complete your appearance.

The debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors") state as follows in support of this application (this "Application"):<sup>2</sup>

### **Relief Requested**

1. By this Application, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtors request entry of an order, substantially in the form of **Exhibit A** annexed hereto, authorizing, but not directing the Debtors to (i) retain Alvarez & Marsal North America, LLC ("A&M") to provide the Debtors with a Chief Restructuring Officer (the "CRO") and certain Additional Personnel (as defined below) and (ii) designate Douglas Staut as the Debtors' CRO, effective as of the Petition Date, on the terms and conditions set forth in the engagement letter, dated April 1, 2024 (which superseded the previously executed engagement letter, dated February 8, 2024), attached hereto as **Exhibit B** (the "**Engagement Letter**").

2. Mr. Staut will serve as the CRO to assist the Debtors with their reorganization efforts and their chapter 11 cases (the "Chapter 11 Cases"), as further described below. A&M will provide additional employees of it and its professional service provider affiliates (all of which are

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<sup>2</sup> A detailed description of the Debtors and their business, and the facts and circumstances supporting this Application and the Debtors' chapter 11 cases, are set forth in greater detail in the *Declaration of David Apelian in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 19] (the "First Day Declaration"). Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the First Day Declaration.

wholly-owned by its parent company and employees) (“Additional Personnel,” collectively with the CRO, the “Engagement Personnel”) as necessary to assist the CRO in the execution of the duties set forth more fully herein.

### **Jurisdiction and Venue**

3. The United States Bankruptcy Court for the Northern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the Court’s entry of a final order in connection with this Application.

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The bases for the relief requested herein are sections are sections 105(a) and 363(b) of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rule 2014(a), and rules 2014-1 and 2016-1 of the Bankruptcy Local Rules for the Northern District of Texas (the “Local Rules”), and the Procedures for Complex Cases in the Northern District of Texas.

### **Background**

6. The Debtors are a commercial-stage biopharmaceutical company focused on the development of innovative therapies for hepatitis delta virus (HDV) and other serious diseases. All of the Debtors’ rare disease programs have FDA Breakthrough Therapy designation.

7. On April 1, 2024 (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These chapter 11 cases have been consolidated for procedural purposes only and are being administered jointly. No party has requested the appointment of a trustee or examiner in these cases, and no statutory committee has been appointed.

**A&M's Qualifications**

8. In consideration of the size and complexity of their business, as well as the exigencies of the circumstances, the Debtors have determined that the services of experienced restructuring managers will substantially enhance their attempts to maximize the value of their estates. The Engagement Personnel are well qualified to act on the Debtors' behalf given their extensive knowledge and expertise with respect to chapter 11 proceedings.

9. The Engagement Personnel specialize in interim management, turnaround consulting, operational due diligence, creditor advisory services, and financial and operational restructuring. A&M's debtor advisory services have included a wide range of activities targeted at stabilizing and improving a company's financial position, including developing or validating forecasts and business plans and related assessments of a business's strategic position; monitoring and managing cash, cash flow, and supplier relationships; assessing and recommending cost reduction strategies; and designing and negotiating financial restructuring packages.

10. A&M professionals have advised and provided strategic advice to debtors-in-possession, official and unofficial committees, and other interested parties in many large and complicated chapter 11 proceedings, including, for example: *In re SVB Financial Group*, Case No. 23-10367 (MG) (Bankr. S.D.N.Y. June 2, 2023); *In re Ryze Renewables II, LLC, et al.*, Case No. 23-10289 (BLS) (Bankr. D. Del. Apr. 11, 2023); *In re Nielsen & Bainbridge, LLC*, Case No. 23-90071 (DRJ) (Bankr. S.D. Tex. Apr. 5, 2023); *In re Heritage Power*, Case No. 23-90032 (CML) (Bankr. S.D. Tex. Mar. 13, 2023); *In re Talen Energy Supply, LLC*, Case No. 22-90054 (MI) (Bankr. S.D. Tex. June 13, 2022); *In re Fore Machine, LLC, et al.*, Case No. 22-40487 (MXM) (Bankr. N.D. Tex. April 6, 2022); *In re Entrust Energy, Inc.*, Case No. 21-31070 (MI) (Bankr. S.D. Tex. Aug. 17, 2021); *In re Seadrill Limited*, Case No. 21-30427 (DRJ) (Bankr. S.D. Tex. Apr. 5, 2021).

11. Mr. Staut is a Managing Director with A&M. He has over 17 years of financial experience and nine years of experience providing financial advisory services to healthcare clients nationwide. During his tenure with A&M, he has provided interim management, cash and financial forecasting, strategic planning, crisis management, turnaround consulting, refinancing advisory and operational improvement services to clients both in and out of court. Mr. Staut has also developed detailed cash flow and operating models, liquidation analyses, operational improvement analyses, refinancing and business plan projections in preparation for restructurings and change of control.

12. In addition, A&M and the CRO are intimately familiar with the Debtors' businesses, financial affairs, and capital structure. Since A&M's initial engagement by the Debtors on February 8, 2024, the Engagement Personnel have worked closely with the Debtors' management and other professionals in assisting with the myriad requirements of these Chapter 11 Cases. Consequently, the Debtors believe that A&M has developed significant relevant experience and expertise regarding the Debtors, their operations and the unique circumstances of these cases. For these reasons, A&M is both well qualified and uniquely suited to deal effectively and efficiently with matters that may arise in the context of these cases. Accordingly, the Debtors submit that the retention of A&M and the designation of Mr. Staut as CRO on the terms and conditions set forth herein and in the Engagement Letter is necessary and appropriate, is in the best interests of the Debtors' estates, creditors, and all other parties in interest, and should be granted in all respects.

#### **Services to be Provided**

13. Subject to approval by the Court, the Debtors propose to retain A&M to provide Mr. Staut as CRO and to provide the Additional Personnel on the terms and conditions set forth in

the Engagement Letter,<sup>3</sup> except as otherwise explicitly set forth herein or in any order granting this Application.

14. Among other things, the Engagement Personnel will support the Debtors with respect to the following services:

- a. The Engagement Personnel in cooperation with the Chief Executive Officer (the “CEO”) or other applicable officers of the Debtors, shall perform a financial review of the Debtors, including but not limited to a review and assessment of financial information that has been, and that will be, provided by the Debtors to its creditors, including without limitation its projected cash flows and operating performance;
- b. The CRO will have oversight over the Debtors’ global cash and disbursement management with review of each potential disbursement;
- c. The CRO will have authority to transfer any cash or sums in the Debtors’ accounts;
- d. The CRO shall be authorized to communicate on behalf of the Debtors all material information about the Debtors’ assets, liabilities, and operational and financial performance to the Debtors’ secured lenders;
- e. The Engagement Personnel shall assist the Debtors with cash management including the development and maintenance of a weekly cash flow forecast, creation of a cash collateral budget as necessary, and preparation of reports and analyses to manage cash commitments and disbursements;
- f. The Engagement Personnel shall assist the Debtors with review and revision of its business plan, and such other related forecasts as may be required in negotiations or for other corporate purposes;
- g. The Engagement Personnel shall coordinate with other Debtor engaged professionals in developing for the review of the board of directors of the Debtors (the “Board”) and/or the Transaction

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<sup>3</sup> The summaries of the Engagement Letter (and indemnification agreement attached thereto) contained in this Application are provided for purposes of convenience only. In the event of any inconsistency between the summaries contained herein and the terms and provisions of the Engagement Letter, the terms of the Engagement Letter shall control unless otherwise set forth herein. Capitalized terms used in such summaries but not otherwise defined herein shall have the meanings set forth in the Engagement Letter.

Committee of the Board (the “Transaction Committee”) possible restructuring plans or strategic alternatives for maximizing the enterprise value of the Debtors’ various business lines;

- h. The CRO shall serve as the principal contact with the Debtors’ creditors with respect to the Debtors’ financial and operational matters; and
- i. The Engagement Personnel shall perform such other services as requested or directed by the Board, Transaction Committee, or other Debtor personnel as authorized by the Board or Transaction Committee, and agreed to by A&M that is not duplicative of work others are performing for the Debtors.

15. These services are necessary to enable the Debtors to maximize the value of their estates and successfully complete their restructuring.

**A&M’s Disinterestedness**

16. To the best of the Debtors’ knowledge, information, and belief, other than as set forth in the Declaration of Douglas Staut (the “Staut Declaration”), annexed hereto as **Exhibit C**, A&M: (i) has no connection with the Debtors, their creditors, other parties in interest, or the attorneys or accountants of any of the foregoing, or the U.S. Trustee or any person employed in the Office of the United States Trustee; and (ii) does not hold any interest adverse to the Debtors’ estates.

17. Although the Debtors submit that the retention of A&M is not governed by section 327 of the Bankruptcy Code, the Debtors attach the Staut Declaration, which discloses, among other things, any relationship that A&M, Mr. Staut or any individual member of the Additional Personnel has with the Debtors, their significant creditors, or other significant parties in interest known to A&M. Based upon the Staut Declaration, the Debtors submit that A&M is a “disinterested person” as that term is defined by section 101(14) of the Bankruptcy Code.

18. In addition, as set forth in the Staut Declaration, if any new material facts or relationships are discovered or arise, A&M will provide the Court with a supplemental declaration.

**Professional Compensation**

19. In accordance with the terms of the Engagement Letter, A&M will be paid by the Debtors for the services of the Engagement Personnel at their customary hourly billing rates. The current hourly billing rates for the CRO and Additional Personnel, based on the position held by such Additional Personnel at A&M, are subject to the following ranges:

Title	Rate
CRO	\$1,125
Managing Directors	\$1,075-1,525
Directors	\$825-1,075
Associates	\$625-825
Analysts	\$425-625

Such rates and ranges shall be subject to adjustment annually at such time as A&M adjusts its rates generally.

20. In addition to compensation for professional services rendered by Engagement Personnel, A&M will seek reimbursement for reasonable and necessary expenses incurred in connection with these Chapter 11 Cases, including, but not limited to travel, lodging, computer research, and messenger and telephone charges. All fees and expenses due to A&M will be billed on a weekly basis, or, at A&M's discretion, more frequently, as further set forth in the Engagement Letter.

21. In addition to the hourly compensation, A&M will be entitled to incentive compensation in the amount of \$350,000 payable upon the earlier of (a) the closing of a reorganization of a material portion of the Debtors' obligations; (b) repayment of all the Debtors' senior secured indebtedness as a result of the sale, transfer, or other disposition of all or a



substantial portion of the assets of the Debtors in one or more transactions; or (c) the confirmation of a chapter 11 plan in these chapter 11 cases.

22. The fee structure described above is consistent with and typical of compensation arrangements entered into by A&M and other comparable firms in connection with the rendering of similar services under similar circumstances. The Debtors believe that A&M's compensation structure is reasonable, market-based, and designed to fairly compensate A&M for its work and to cover fixed and routine overhead expenses.

### **Indemnification**

23. As a material part of the consideration for which the Engagement Personnel have agreed to provide the services described herein, pursuant to the Engagement Letter (including the indemnification agreement attached to and made a part of the Engagement Letter (the "Indemnification Agreement")), the Debtors have agreed to (a) indemnify the Engagement Personnel acting as officers to the same extent as the most favorable indemnification the Debtors extends to their officers and directors and to cover such Engagement Personnel under the Debtors' director and officer liability policy and (b) indemnify and hold harmless A&M, its affiliates and their respective shareholders, members, managers, employees, agents, representatives, and subcontractors (collectively, the "Indemnified Parties") under certain circumstances.<sup>4</sup> The rights

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<sup>4</sup> The Indemnification Agreement generally provides that the Debtors will indemnify and hold harmless A&M and the other Indemnified Parties (as defined in the Indemnification Agreement) from and against any losses, claims, damages, liabilities, penalties, obligations, and expenses, including the costs for counsel and others in investigating, preparing, or defending any action or claim caused by, relating to, based upon, or arising out of the Indemnified Party's acceptance of or the performance or nonperformance of their obligations under the Engagement Letter. Notwithstanding the terms of the Indemnification Agreement, the Debtors and A&M have agreed, subject to the Court's approval of this Application, that in no event shall an Indemnified Person be indemnified or receive contribution or other payment under the Indemnification Agreement if the Debtors, their estates or the statutory committee of unsecured creditors appointed in these Chapter 11 Cases assert a claim against an Indemnified Person and the Court determines by final order that such claim arose out of the bad-faith, self-dealing, breach of fiduciary duty, if any, gross negligence or willful misconduct on the part of that or any other Indemnified Person.

to indemnification shall survive the termination of these Chapter 11 Cases or any cases into which they may be converted.

24. The Debtors believe the indemnity provisions of the Indemnification Agreement are a reasonable term and condition of A&M's engagement and were, along with all terms of the Engagement Letter, negotiated by the Debtors and A&M at arm's-length and in good faith. A&M and the Debtors believe that the indemnity provisions are comparable to those indemnification provisions generally obtained by crisis management firms of similar stature to A&M and for comparable engagements, both in and out of court. The Debtors respectfully submit that the indemnification provisions contained in the Indemnification Agreement, viewed in conjunction with the other terms of A&M's proposed retention, are reasonable and in the best interests of the Debtors, their estates, and creditors in light of the fact that the Debtors require A&M's services to successfully reorganize.

#### **Fees and Reporting**

25. If the Court approves the relief requested herein, A&M will be retained to provide the Debtors with the Engagement Personnel and Mr. Staut will be designated as the Debtors' CRO pursuant to section 363 of the Bankruptcy Code. Because A&M is not being employed as a professional under section 327 of the Code, A&M will not be required to submit fee applications pursuant to sections 330 and 331 of the Bankruptcy Code. Instead, A&M will file with the Court, with copies to the U.S. Trustee, counsel to the Debtors' secured lenders, and counsel to any statutory committee (collectively, the "Notice Parties"), a report of staffing on the engagement for the previous month (the "Staffing Report"). Such report shall include the names and functions filled by the individuals assigned, a summary chart that describes the compensation earned by each executive officer and staff employee, and itemizes the expenses incurred for the relevant period. The Notice Parties shall have 14 days after the date each Staffing Report is served on the Notice

Parties to object to such Staffing Report. In the event an objection is raised and not consensually resolved between the Debtors and the objecting party, all staffing and compensation shall be subject to review by the Court. If no objection is filed to a given Staffing Report, the fees and expenses in such report shall be allowed on a final basis. A final application for compensation shall be filed with the Court in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

26. A&M received \$100,000 as a retainer in connection with preparing for and conducting the filing of these Chapter 11 cases, as described in the engagement Letter. In the 90 days prior to the Petition Date, A&M received retainers and payments totaling \$577,261.83 in the aggregate for services performed for the Debtors. A&M has applied these funds to amounts due for services rendered and expenses incurred prior to the Petition Date.

27. A precise disclosure of the amounts or credits held, if any, as of the Petition Date will be provided in A&M's first report filed regarding compensation earned and expenses incurred. The unapplied residual retainer, which is estimated to total approximately \$30,000, will not be segregated by A&M in a separate account, and will be held until the end of these Chapter 11 cases and applied to A&M's finally approved fees in these proceedings, unless an alternate arrangement is agreed to by the Debtors.

28. Given the numerous issues which the Engagement Personnel may be required to address in the performance of their services, A&M's commitment to the variable level of time and effort necessary to address all such issues as they arise, and the market prices for such services for engagements of this nature in an out-of-court context, as well as in chapter 11, the Debtors submit that the fee arrangements set forth in the Engagement Letter are reasonable.

**Dispute Resolution Procedures**

29. The Debtors and A&M have agreed, subject to the Court's approval of this Application, that notwithstanding the Engagement Letter: (a) any controversy or claim with respect to, in connection with, arising out of, or in any way related to this Application or the services provided by the Engagement Personnel to the Debtors as outlined in this Application, including any matter involving a successor in interest or agent of any of the Debtors or of A&M, shall be brought in this Court or the United States District Court for the Northern District of Texas (the "District Court") (if the reference is withdrawn); (b) A&M, the Debtors, and any and all successors and assigns thereof, consent to the jurisdiction and venue of such court as the sole and exclusive forum (unless such courts do not have or retain jurisdiction over such claims or controversies) for the resolution of such claims, causes of actions, or lawsuits; (c) A&M and the Debtors, and any and all successors and assigns thereof, waive trial by jury, such waiver being informed and freely made; (d) if this Court, or the District Court (if the reference is withdrawn), does not have or retain jurisdiction over the foregoing claims and controversies, A&M and the Debtors, and any and all successors and assigns thereof, will submit first to non-binding mediation; and, if mediation is not successful, then to binding arbitration, in accordance with the dispute resolution procedures (as set forth in **Exhibit D** attached hereto); and (e) judgment on any arbitration award may be entered in any court having proper jurisdiction. By this Application, the Debtors seek approval of this agreement by the Court. Further, A&M and the Debtors have agreed not to raise or assert any defense based upon jurisdiction, venue, abstention or otherwise to the jurisdiction and venue of this Court or the District Court (if the reference is withdrawn) to hear or determine any controversy or claims with respect to, in connection with, arising out of, or in any way related to this Application or the services provided hereunder.

**Basis for Relief**

30. The Debtors seek approval of the employment of A&M pursuant to section 363 of the Bankruptcy Code, effective as of the Petition Date. Section 363(b)(1) of the Bankruptcy Code provides in relevant part that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Further, pursuant to section 105(a) of the Bankruptcy Code, the “court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

31. Under applicable case law, in this and other circuits, if a debtor’s proposed use of its assets pursuant to section 363(b) of the Bankruptcy Code represents a reasonable business judgment on the part of the debtor, such use should be approved. *See, e.g., Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983) (“The rule we adopt requires that a judge determining a §363(b) application expressly find from the evidence presented before him at the hearing a good business reason to grant such an application.”); *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.”).

32. The retention of A&M and its professionals is a sound exercise of the Debtors’ business judgment. Mr. Staut has extensive experience as a senior officer and as an advisor for many troubled companies. The Debtors believe that the Engagement Personnel will provide services that benefit the Debtors’ estates and creditors. In light of the foregoing, the Debtors believe that the retention of A&M is appropriate and in the best interests of the Debtors and their estates and creditors.

33. The retention of interim corporate officers and other temporary employees, therefore, is proper under section 363 of the Bankruptcy Code. This Court has authorized retention of officers utilizing this provision of the Bankruptcy Code on numerous occasions. *See, e.g., In re Ebix, Inc., et al.*, Case No. 23-80004 (SWE) Bankr. N.D. Tex. Feb. 6, 2024); *In re Impel Pharmaceuticals Inc., et al.*, Case No. 23-80016 (SGJ) (Bankr. N.D. Tex. Jan. 11, 2024) [Docket No. 147]; *In re Corsicana Bedding, LLC*, Case No. 22-90016 (ELM) (Bankr. N.D. Tex. Aug. 9, 2022) [Docket No. 285]; *In re Rockall Energy Holdings, LLC*, Case No. 22-90000 (MXM) (Bankr. N.D. Tex. Apr. 27, 2022) [Docket No. 325]; *In re Studio Movie Grill Holdings, LLC, et al.*, Case No. 20- 32633 (SGJ) (Bankr. N.D. Tex. Dec. 10, 2020) [Docket No. 328]; *In re Highland Capital Management, L.P.*, Case No. 19-34054 (SGJ) (Bankr. N.D. Tex. July 16, 2020) [Docket No. 854]; *In re American Workers Insurance Services, Inc.*, Case No. 19-44208 (MXM) (Bankr. N.D. Tex. Nov. 13, 2019) [Docket No. 90]; *In re Mid-Cities Home Medical Equipment Co., Inc.*, Case No. 19-41232 (ELM) (Bankr. N.D. Tex. May 17, 2019) [Docket No. 89]; *In re Senior Care Centers, LLC*, Case No. 18-33967 (Bankr. N.D. Tex. Feb. 27, 2019) [Docket No. 605].

34. Based upon the foregoing, the Debtors submit that the retention of A&M, and the designation of Douglas Staut as CRO on the terms set forth herein and in the Engagement Letter, is essential, appropriate, and in the best interest of the Debtors' estates, creditors, and other parties in interest and should be granted in these Chapter 11 Cases.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

35. The Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the fourteen-day stay period under Bankruptcy Rule 6004(h), which is necessary to implement the relief requested in this Application.

**Reservation of Rights**

36. Nothing contained herein or any action taken pursuant to relief requested is intended to be or shall be construed as (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any party in interest's rights to dispute any claim or interest on any grounds; (c) a promise or requirement to pay any claim; (d) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; (e) an implication or admission that any particular claim is of a type specified or defined in this Application or any order granting the relief requested in this Application or a finding that any particular claim is an administrative expense claim or other priority claim; (f) a request for or approval to assume, adopt, or reject any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code; or (g) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' or any party in interest's rights to subsequently dispute such claim.

**Notice**

37. The Debtors will provide notice of this Application to the following: (a) the U.S. Trustee for the Northern District of Texas; (b) the holders of the thirty (30) largest unsecured claims against the Debtors (on a consolidated basis); (c) Innovatus Life Sciences Lending Fund I, LP, as agent to the Debtors' secured lenders, and counsel thereto; (d) the United States Attorney's Office for the Northern District of Texas; (e) the Food and Drug Administration; (f) the Internal Revenue Service; (g) the United States Securities and Exchange Commission; (h) the state

attorneys general for the states in which the Debtors conduct business; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. No other or further notice is needed in light of the nature of the relief requested.

*[Remainder of the page intentionally left blank.]*



The Debtors respectfully request entry of the order granting the relief requested herein and granting such other relief as the Court deems appropriate under the circumstances.

Dated: April 22, 2024

**EIGER BIOPHARMACEUTICALS, INC.**

/s/ David Apelian

Name: David Apelian, M.D.

Title: Chief Executive Officer

**Certificate of Service**

I certify that on April 22, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas.

/s/ Thomas R. Califano

Thomas R. Califano

**Exhibit A**

**Proposed Order**

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

In re:

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

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Jointly Administered)

**ORDER AUTHORIZING (I) THE RETENTION OF  
ALVAREZ & MARSAL NORTH AMERICA, LLC TO  
PROVIDE THE DEBTORS A CHIEF RESTRUCTURING OFFICER AND  
CERTAIN ADDITIONAL PERSONNEL AND (II) DESIGNATING DOUGLAS STAUT  
AS CHIEF RESTRUCTURING OFFICER FOR THE DEBTORS  
EFFECTIVE AS OF THE PETITION DATE**

Upon the application (the “Application”)<sup>2</sup> of the above captioned debtors and debtors in possession (the “Debtors”), pursuant to sections 105(a) and 363(b) of title 11 of the United States

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

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

Code (the “Bankruptcy Code”), for entry of an order (this “Order”) (i) authorizing the retention of Alvarez & Marsal North America, LLC (“A&M”) to provide the Debtors with a CRO and certain Additional Personnel (as described in the Application) and (ii) designating Douglas Staut as the Debtors’ CRO, effective as of the Petition Date on the terms set forth in the Engagement Letter annexed to the Application as Exhibit B and the Staut Declaration annexed to the Application as Exhibit C, all as more fully described in the Application; and upon the Staut Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution; and it appearing to the Court that venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409;<sup>3</sup> and due and proper notice of the Application having been provided to the parties listed therein; and it appearing that no other or further notice need be provided; and the Court having reviewed the Application; and the Court having held a hearing on the Application; and the Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and it appearing that the relief requested in the Application is in the best interest of the Debtors, their estates, and all parties in interest; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor;

**IT IS HEREBY ORDERED THAT:**

1. The Application is granted to the extent set forth herein.

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<sup>3</sup> Nothing in this Order shall preclude any later order of the Court approving a motion to transfer venue.

2. The terms of the Engagement Letter, including without limitation, the compensation provisions and the indemnification provisions, as modified by this Order, are reasonable terms and conditions of employment and are hereby approved.

3. Pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtors are hereby authorized to retain A&M to provide the Debtors with a CRO and certain Additional Personnel and to designate Douglas Staut as the Debtors' CRO, effective as of the Petition Date on the terms set forth in the Application and the Engagement Letter.

4. A&M shall be compensated for such services, and shall be reimbursed for any related expenses, pursuant to the terms set forth in the Engagement Letter in the ordinary course of business, as modified by this Order.

5. Any dispute with regard to any controversy or claim arising under the Engagement Letter shall be resolved in accordance with the Dispute Resolution Procedures attached to the Application as Exhibit D.

6. The Debtors and A&M are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

7. To the extent there is inconsistency between the terms of the Engagement Letter, the Application, and this Order, the terms of this Order shall govern.

8. Notice of the Application as provided therein is deemed to be good and sufficient notice of such Application and satisfies the requirements of Bankruptcy Rule 6004(a), and the requirements of the Local Rules are satisfied by the contents of the Application.

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

10. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order, the Engagement Letter and/or the services provided by the Engagement Personnel.

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

Submitted By:

**SIDLEY AUSTIN LLP**

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William Curtin (admitted *pro hac vice*)  
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*Proposed Attorneys for the Debtors and  
Debtors in Possession*



**Exhibit B**

**Engagement Letter**



As of April 1, 2024

Eiger BioPharmaceuticals, Inc.  
2155 Park Boulevard  
Palo Alto, CA 94306  
Attention: Thomas Dietz

Dear Thomas:

This letter confirms and sets forth the terms and conditions of the engagement between Alvarez & Marsal North America, LLC (“A&M”) and Eiger BioPharmaceuticals, Inc., together with its subsidiaries, their respective assigns and successors (jointly and severally, the “Company”), including the scope of the services to be performed and the basis of compensation for those services. Upon execution of this letter by each of the parties below, this letter will constitute an agreement between the Company and A&M (the “Agreement”). Effective as of the date of this Agreement, the parties agree to terminate the engagement letter signed between A&M and the Company dated February 8, 2023 (the “Prior Agreement”). Notwithstanding the foregoing termination, any terms of the Prior Agreement which are meant to survive termination shall so survive (including but not limited to any obligations with respect to indemnification and insurance) and the Company shall remain responsible for any fees and expenses due as of the effective date of this Agreement that were incurred under the Prior Agreement. Description of Services

- (a) Officers. In connection with this engagement, A&M shall make available to the Company:
  - (i) Douglas Staut to serve as the Chief Restructuring Officer (the “CRO”); and
  - (ii) Upon the mutual agreement of A&M and the Company, A&M will provide additional employees of A&M and/or its affiliates and wholly-owned subsidiaries (“Additional Personnel”) as required (collectively, with the CRO, the “Engagement Personnel”), to assist the CRO in the execution of the duties set forth more fully herein.
- (b) Duties. The Engagement Personnel, at the direction of the board of directors of the Company (the “Board”) or the Transaction Committee of the Board (the “Transaction Committee”), will perform activities, which shall include the following:
  - (i) The Engagement Personnel in cooperation with the Chief Executive Officer (the “CEO”) or other applicable officers of the Company, shall perform a financial review of the Company, including but not limited to a review and assessment of financial information that has been, and that

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- will be, provided by the Company to its creditors, including without limitation its projected cash flows and operating performance;
- (ii) The CRO will have oversight over the Company's global cash and disbursement management with review of each potential disbursement;
  - (iii) The CRO will have authority to transfer any cash or sums in the Company's accounts;
  - (iv) The CRO shall be authorized to communicate on behalf of the Company all material information about the Company's assets, liabilities, and operational and financial performance to the Company's secured lenders;
  - (v) The Engagement Personnel shall assist the Company with cash management including the development and maintenance of a weekly cash flow forecast, creation of a Cash Collateral budget as necessary, and preparation of reports and analyses to manage cash commitments and disbursements;
  - (vi) The Engagement Personnel shall assist the Company with review and revision of its business plan, and such other related forecasts as may be required in negotiations or for other corporate purposes;
  - (vii) The Engagement Personnel shall coordinate with other Company engaged professionals in developing for the Board and/or Transaction Committee's review possible restructuring plans or strategic alternatives for maximizing the enterprise value of the Company's various business lines;
  - (viii) The CRO shall serve as the principal contact with the Company's creditors with respect to the Company's financial and operational matters; and
  - (ix) The Engagement Personnel shall perform such other services as requested or directed by the Board, Transaction Committee, or other Company personnel as authorized by the Board or Transaction Committee, and agreed to by A&M that is not duplicative of work others are performing for the Company.
- (c) The Engagement Personnel shall report to the Board, the Transaction Committee, and the CEO or other applicable officers, as directed by the Board or the Transaction Committee and, at the request of the Board or Transaction Committee, will make recommendations to and consult with the Board or Transaction Committee.
  - (d) The Engagement Personnel will continue to be employed by A&M and, while rendering services to the Company, will continue to work with other personnel at A&M in connection with unrelated matters that will not unduly interfere with

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the services rendered by the Engagement Personnel pursuant to this Agreement. With respect to the Company, however, the Engagement Personnel shall operate under the direction of the Board and the Transaction Committee and A&M shall have no liability to the Company for any acts or omissions of the Engagement Personnel related to the performance or non-performance of services at the direction of the Board and the Transaction Committee and consistent with the requirements of the Engagement and this Agreement.

- (e) In connection with the services to be provided hereunder, from time to time A&M may utilize the services of employees of its affiliates and subsidiaries as Engagement Personnel. Such affiliates and subsidiaries are wholly owned by A&M's parent company and employees.

- 2. Information Provided by Company and Forward Looking Statements. The Company shall use all reasonable efforts to: (i) provide the Engagement Personnel with access to management and other representatives of the Company; and (ii) to furnish all data, material, and other information concerning the business, assets, liabilities, operations, cash flows, properties, financial condition and prospects of the Company that Engagement Personnel reasonably request in connection with the services to be provided to the Company. The Engagement Personnel shall rely, without further independent verification, on the accuracy and completeness of all publicly available information and information that is furnished by or on behalf of the Company and otherwise reviewed by Engagement Personnel in connection with the services performed for the Company. The Company acknowledges and agrees that the Engagement Personnel are not responsible for the accuracy or completeness of such information and shall not be responsible for any inaccuracies or omissions therein. A&M and Engagement Personnel are under no obligation to update data submitted to them or to review any other areas unless specifically requested by the Board to do so.

You understand that the services to be rendered by the Engagement Personnel may include the preparation of projections and other forward-looking statements, and numerous factors can affect the actual results of the Company's operations, which may materially and adversely differ from those projections. In addition, Engagement Personnel will be relying on information provided by the Company in the preparation of those projections and other forward-looking statements.

- 3. Limitation of Duties. Neither A&M, nor the Engagement Personnel make any representations or guarantees that, *inter alia*, (i) an appropriate restructuring proposal or strategic alternative can be formulated for the Company, (ii) any restructuring proposal or strategic alternative presented to the Company's management or the Board will be more successful than all other possible restructuring proposals or strategic alternatives, (iii) restructuring is the best course of action for the Company, or (iv) if formulated, that any proposed restructuring plan or strategic alternative will be accepted by any of the Company's creditors, shareholders and other constituents. Further, neither A&M, nor the Engagement Personnel, assume any responsibility for the Company's decision to pursue, or not pursue any business strategy, or to effect, or not to effect any transaction. The Engagement Personnel shall be responsible for implementation only of the

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restructuring proposal or alternative approved by the Board and only to the extent and in the manner authorized and directed by the Board.

Depending on future developments the spread of the Coronavirus has the potential to affect the services provided under this Agreement. Travel, work place and mobility restrictions (to include measures reasonably mandated by A&M with respect to its employees and personnel) may restrict travel to the Company and other work sites as well as limit access to facilities, infrastructure, information and personnel of A&M, the Company or others. Such circumstances may adversely affect the timetable or content of A&M's deliverables and completion of the scope of services included in this Agreement. A&M will discuss with the Company if A&M believes that the services may be impacted in this way. The Company accepts and acknowledges that A&M employees and personnel may attend at the Company's locations or physically interact with the Company's employees and personnel in connection with the services, unless A&M or the Company decide that this should not be the case.

4. Compensation.

- (a) A&M will receive fees for the services of the Engagement Personnel based on the following hourly rates:

CRO:	\$1,125
Managing Directors	\$1,075-1,525
Directors	\$825-1,075
Associates	\$625-825
Analysts	\$425-625

Such rates shall be subject to adjustment annually at such time as A&M adjusts its rates generally.

- (b) In addition, A&M will be reimbursed for its reasonable out-of-pocket expenses incurred in connection with this assignment, such as travel, lodging, meals, messenger and wireless charges. All fees and expenses will be billed on a weekly basis or, at A&M's discretion, more frequently. Invoices are payable upon receipt.
- (c) The Company hereby directs A&M to continue to hold the pre-petition retainer in the amount of \$30,000 (the "Retainer") provided under the Prior Agreement, which shall be credited against any amounts due at the termination of this engagement and returned upon the satisfaction of all obligations hereunder. The Retainer will be held in a segregated non-interest-bearing account (which may hold other A&M and A&M affiliate client retainers), separate from the general account to which A&M will direct payment of ongoing fees and expenses. Absent your agreement to the contrary, A&M may only draw on the Retainer (or a portion thereof) in order to apply to invoices that are due and payable or other

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amounts due under this Agreement or as the Company may otherwise agree and the Company will be informed of such application of the Retainer.

- (d) In addition to the hourly compensation, A&M will be entitled to incentive compensation in the amount of \$350,000 (the “Completion Fee”) payable upon the earlier of (x) the closing of a reorganization of a material portion of the Company’s obligations; (y) repayment of all the Company’s senior secured indebtedness as a result of the sale, transfer, or other disposition of all or a substantial portion of the assets of the Company in one or more transactions; or (z) the confirmation of a Chapter 11 plan in the Company’s chapter 11 cases.
- (e) A&M understands that its retention and the Company’s payment of fees and expenses hereunder are subject to court approval in the Company’s chapter 11 cases.

5. Termination.

- (a) This Agreement will apply from the commencement of the services referred to in Section 1 and may be terminated with immediate effect by either party without cause by written notice to the other party.
- (b) A&M normally does not withdraw from an engagement unless the Company misrepresents or fails to disclose material facts, fails to pay fees or expenses, or makes it unethical or unreasonably difficult for A&M to continue performance of the engagement, or other just cause exists.
- (c) On termination of the Agreement, any fees and expenses due to A&M shall be remitted promptly (including fees and expenses that accrued prior to but are invoiced subsequent to such termination).
- (d) If the Company terminates this Agreement without “Cause” or if A&M terminates this Agreement for “Good Reason”, A&M shall also be entitled to receive the Completion Fee upon the occurrence of any of the events specified in Section 4(d) if any such event occurs within one year of the termination. “Cause” shall mean gross negligence, willful default or fraud by A&M; “Good Reason” shall mean the Company’s misrepresentation of or failure to disclose material facts, failure to pay fees or expenses when due (or circumstances indicating to A&M that fees or expenses will not be paid when due), circumstances such that it is unethical or unreasonably difficult for A&M to continue performance of the engagement, or other just cause.
- (e) The provisions of this Agreement that give the parties rights or obligations beyond its termination shall survive and continue to bind the parties.

6. No Audit. Company acknowledges and agrees that A&M and Engagement Personnel are not being requested to perform an audit, review or compilation, or any other type of financial statement reporting engagement that is subject to the rules of the AICPA, SEC or other state or national professional or regulatory body.

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7. No Third Party Beneficiary. The Company acknowledges that all advice (written or oral) provided by A&M and the Engagement Personnel to the Company in connection with this engagement is intended solely for the benefit and use of the Company (limited to its Board and management) in considering the matters to which this engagement relates. The Company agrees that no such advice shall be used for any other purpose or reproduced, disseminated, quoted or referred to at any time in any manner or for any purpose other than accomplishing the tasks referred to herein without A&M's prior approval (which shall not be unreasonably withheld), except as required by law.
8. Conflicts. A&M is not currently aware of any relationship that would create a conflict of interest with the Company or those parties-in-interest of which you have made us aware. Because A&M and its affiliates and subsidiaries comprise a consulting firm (the "Firm") that serves clients on an international basis in numerous cases, both in and out of court, it is possible that the Firm may have rendered or will render services to, or have business associations with, other entities or people which had or have or may have relationships with the Company, including creditors of the Company. The Firm will not be prevented or restricted by virtue of providing the services under this Agreement from providing services to other entities or individuals, including entities or individuals whose interests may be in competition or conflict with the Company's, provided the Firm makes appropriate arrangements to ensure that the confidentiality of information is maintained and provided that A&M will not represent the interests of any such entities or individuals in connection with the Company's restructuring efforts to the extent that such engagement would prevent A&M from meeting the court disinterestedness standard.
9. Confidentiality/Non-Solicitation.

A&M and Engagement Personnel shall keep as confidential all non-public information received from the Company in conjunction with this engagement, except: (i) as requested by the Company or its legal counsel; (ii) as required by legal proceedings; or (iii) as reasonably required in the performance of this engagement. To the extent permitted by law, if any confidential information is requested or required to be disclosed pursuant to any applicable law, regulation, or legal process, A&M will promptly notify company in writing and provide Company with a copy of such request (to the extent legally permissible) and will provide the Company with a reasonable opportunity to object in whole or in part to producing such documents. All obligations as to non-disclosure shall cease as to any part of such information to the extent that such information is, or becomes, public other than as a result of a breach of this provision. The Company, on behalf of itself and its subsidiaries and affiliates and any person which may acquire all or substantially all of its assets agrees that, until two (2) years subsequent to the termination of this engagement, it will not solicit, recruit, hire or otherwise engage any employee of A&M or any of its affiliates who worked on this engagement while employed by A&M or its affiliates ("Solicited Person"). Should the Company or any of its subsidiaries or affiliates or any person who acquires all or substantially all of its assets extend an offer of employment to or otherwise engage any Solicited Person and should such offer be accepted, A&M shall be entitled to a fee from the Company equal to the Solicited Person's hourly client billing rate at the time of the offer multiplied by 4,000

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hours for a Managing Director, 3,000 hours for a Senior Director and 2,000 hours for any other A&M employee. The Company acknowledges and agrees that this fee fairly represents the loss that A&M will suffer if the Company breaches this provision. The fee shall be payable at the time of the Solicited Person's acceptance of employment or engagement.

10. Indemnification/Limitations on Liability. The Company shall indemnify the Engagement Personnel acting as officers (the "Indemnified Professionals") to the same extent as the most favorable indemnification it extends to its officers or directors, whether under the Company's bylaws, its certificate of incorporation, by contract or otherwise, and no reduction or termination in any of the benefits provided under any such indemnities shall affect the benefits provided to the Indemnified Professionals. The Indemnified Professionals shall be expressly covered as officers under the Company's existing director and officer liability insurance policy(ies) and such coverage shall be primary to any insurance or indemnification made available to the Indemnified Professionals by A&M or resulting from the Indemnified Professionals' employment with A&M. Prior to the effective date of this engagement and as a condition of A&M accepting this engagement, the Company shall make such policy(ies) and all amendments thereto available to A&M for review and approval. The Company shall also maintain such insurance coverage for the Indemnified Professionals for a period of not less than six years following the date of the termination of the Indemnified Professionals' services hereunder. Company shall furnish evidence of any subsequent renewals of the applicable policy(ies) and shall give thirty (30) days' prior written notice to A&M of cancellation, non-renewal, or material change in coverage, scope, or amount of such director and officer liability policy. The provisions of this section are in the nature of contractual obligations and no change in applicable law or the Company's charter, bylaws or other organizational documents or policies shall affect the Indemnified Professionals' rights hereunder. The attached indemnity and limitation on liability provisions are incorporated herein and the termination of this agreement or the engagement shall not affect those provisions, which shall remain in full force and effect.
11. Privacy and Data Protection. In the provision of Services under this Agreement, A&M may Process certain Company Personal Data. Capitalized terms used herein but not otherwise defined in the Agreement or in paragraph (b), below, shall have the meanings ascribed in paragraph (e), below.

(a) Mutual Obligations. A&M and Company shall each comply with Data Protection Laws applicable to their respective Processing of Company Personal Data.

(b) A&M Obligations. (i) A&M shall Process Company Personal Data on behalf of Company as reasonably necessary to providing the Services, which Company acknowledges consist of the services as described in the Agreement. (ii) A&M shall implement and maintain appropriate physical, technical, and organizational safeguards reasonably designed to protect the confidentiality and security of Company Personal Data, and to protect Company Personal Data against a Personal Data Breach. (iii) For purposes of this clause (iii), the terms "consumer", "business", "business purpose", "commercial purpose", "sell", and "share" shall have the meanings ascribed under the California Consumer Protection Act of 2018, as amended



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by the California Privacy Rights Act of 2020 (“CCPA”) and, where applicable, other relevant Data Protection Laws. A&M shall not: (A) sell or share Company Personal Data; (B) retain, use, or disclose Company Personal Data for any purpose other than for providing the Services; (C) retain, use, or disclose Company Personal Data for a commercial purpose other than for providing the Services, or as otherwise permitted under Data Protection Laws; (D) retain, use, or disclose Company Personal Data outside of the direct business relationship between Company and A&M, except as otherwise permitted under Data Protection Laws; or (E) combine Company Personal Data it receives from, or on behalf of, Company with Personal Data that it receives from, or on behalf of, another person or persons, or collects from its own interaction with the consumer, except as otherwise provided under Data Protection Laws. A&M shall provide the same level of privacy protection to Company Personal Data as required of businesses under applicable Data Protection Laws and will notify Company if it determines that it can no longer meet its obligations under applicable Data Protection Laws. A&M and Company shall promptly notify and reasonably assist the other if it receives a request from a consumer seeking to exercise individual rights (e.g., access, deletion) with respect to Company Personal Data, including by providing all information necessary to enable the other to comply with the request. Company shall have the right to take reasonable and appropriate steps to ensure that A&M Processes Company Personal Data in a manner that is consistent with Company’s obligations under applicable Data Protection Laws; specifically, Company shall have the right to monitor A&M’s compliance with its privacy and data protection obligations herein through written questionnaires once every 12 months. Company shall have the right, upon no less than ten (10) business days’ written notice, to request documentation from A&M demonstrating A&M’s compliance with its privacy and data protection obligations herein, and to take other reasonable and appropriate steps to stop and remediate any unauthorized use of Company Personal Data by A&M. (iv) Notwithstanding anything in this paragraph (b) to the contrary, Company acknowledges and agrees: (A) A&M may disclose Company Personal Data to A&M’s affiliates to assist A&M in Processing Company Personal Data as reasonably necessary to providing the Services; (B) A&M has Company’s general authorization for the engagement of sub-processors to assist A&M in Processing Company Personal Data as reasonably necessary to providing the Services; provided, A&M shall notify Company of that engagement and each sub-processor shall be subject to written agreement that complies with applicable Data Protection Law and is no less protective than as set forth herein; and (C) where reasonably necessary to provide the Services or as instructed by Company, A&M may disclose Company Personal Data to Company’s other advisors, constituents, and/or counterparties in the matter for which Company engaged A&M to provide the Services.

(c) Company Obligations. (i) Company confirms that it has established all rights (including, where relevant, providing a privacy notice and obtaining any necessary consents) necessary under applicable Data Protection Laws for A&M to provide the Services under the Agreement. (ii) Company shall not do or permit anything to be done, through any act or omission, in providing or making available to A&M any Company Personal Data, that would cause A&M or any of its affiliates to contravene or incur any liability under any Data Protection Laws. (iii) If Company’s transfer of Company Personal Data to A&M would be prohibited by the EU General Data Protection Regulation 2016/679 of the European Parliament and of the Council (“GDPR”) or other Data Protection Laws in the absence of an adequacy decision, standard contractual clauses, or other permitted transfer mechanism, Company shall be responsible for ensuring that appropriate safeguards are in place including, where applicable,

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by entering into standard contractual clauses with A&M. (iv) Company shall use its reasonable efforts, where practicable, to limit the Personal Data that it provides or makes available to A&M to information that is necessary and relevant for A&M's performance of the Services, including by removing and/or de-identifying datasets, and to notify A&M in advance regarding categories, types and volume of Personal Data that it will provide or make available so that the parties can implement appropriate data transmission, handling and storage safeguards. (v) If Company is a covered entity or business associate as defined under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Company shall not disclose protected health information (PHI) or electronic protected health information (ePHI) to A&M (in its own capacity as a business associate) unless and until the parties have entered into a mutually acceptable HIPAA business associate agreement, which will supersede this Privacy and Data Protection Provision with respect to such PHI/ePHI.

(d) Deidentified Data. To the extent A&M is permitted under the Agreement to deidentify, anonymize and/or aggregate Company Personal Data ("Deidentified Data"), Company acknowledges that A&M undertakes such actions in connection with and for the purpose of performing the Services, and Deidentified Data shall not be considered Company Personal Data.

(e) Definitions. (i) "Data Protection Laws" means all laws, rules and regulations pertaining to the privacy and security of Personal Data, including but not limited to CCPA and GDPR; (ii) "Personal Data" means all "personal data", "personal information", "personally identifiable information", "special categories of data", "sensitive personal information", and similarly defined terms under Data Protection Laws; (iii) "Company Personal Data" means any Personal Data that Company provides or makes available to A&M, or that A&M collects directly from individuals, in connection with A&M's performance of the Services (but excluding contact details about Company's personnel that A&M processes to manage the business relationship with Company); (iv) "Process" has the meaning under applicable Data Protection Laws, and in all events means to collect, access, analyze, use, store, transfer (including by remote access), or disclose by transmission; (v) "Personal Data Breach" has the meaning under applicable Data Protection Laws, and in all events means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data; and (vi) "Services" means services to be performed under this Agreement.

12. Miscellaneous. This Agreement (together with the attached indemnity provisions), and all claims, proceedings or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement or the services provided hereunder (the "Related Matters"), shall be governed by, and enforced in accordance with, the internal laws of the State of New York, including its statutes of limitations, without regard to principles of conflict of law that would defer to the laws of another jurisdiction.

The Company and A&M agree to waive trial by jury in any action, proceeding or counterclaim brought by or on behalf of the parties hereto with respect to any Related

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Matters. The Company and A&M agree, to the extent permitted by applicable law, that any action with respect to any Related Matters shall be brought and adjudicated exclusively in the United States District Court for the Southern District of New York or, if such court lacks jurisdiction, in the New York state courts with jurisdiction over New York, New York; that those courts shall have exclusive jurisdiction over any Related Matters; to submit to the personal jurisdiction of such courts; and to waive any and all personal rights under the law of any jurisdiction to object on any basis (including, without limitation, inconvenience of forum) to jurisdiction or venue in any legal proceeding.

This Agreement shall be binding upon A&M and the Company, their respective heirs, successors, and assignees, and any heir, successor, or assignee of a substantial portion of A&M's or the Company's respective businesses and/or assets, including any Chapter 11 Trustee. This Agreement incorporates the entire understanding of the parties with respect to the subject matter hereof and may not be amended or modified except in writing executed by the Company and A&M. The Company agrees that A&M may aggregate information provided by or on behalf of the Company during this engagement with information provided by or on behalf of others and use and disclose that information in de-identified form as part of research and advice, including, without limitation, benchmarking services. Notwithstanding anything herein to the contrary, A&M may reference or list the Company's name and/or logo and/or a general description of the services in A&M's marketing materials, including, without limitation, on A&M's website.

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If the foregoing is acceptable to you, kindly sign the enclosed copy to acknowledge your agreement with its terms.

Very truly yours,

Alvarez & Marsal North America, LLC

By:  DocuSigned by:  
7271701644A14F6  
Douglas Staut  
Managing Director

Accepted and agreed:

Eiger BioPharmaceuticals, Inc.  
*(on behalf of itself and its subsidiaries)*

By:  DocuSigned by:  
1B70BAF6BBEAM03  
Thomas Dietz  
Independent Director

## **INDEMNIFICATION AND LIMITATION ON LIABILITY AGREEMENT**

This indemnification and limitation on liability agreement is made part of an agreement, dated as of April 1, 2024 (which together with any renewals, modifications or extensions thereof, is herein referred to as the "Agreement"), by and between Alvarez & Marsal North America, LLC ("A&M") and Eiger BioPharmaceuticals, Inc. together with its subsidiaries, their respective assigns and successors (jointly and severally, the "Company"), for services to be rendered to the Company by A&M, which such Agreement replaces in its entirety the engagement letter signed between A&M and the Company dated February 8, 2023 (the "Prior Agreement").

A. The Company agrees to indemnify and hold harmless each of A&M, its affiliates and their respective shareholders, members, managers, employees, agents, representatives and subcontractors (each, an "Indemnified Party" and collectively, the "Indemnified Parties") against any and all losses, claims, damages, liabilities, penalties, obligations and expenses, including the reasonable and documented costs for counsel or others (including employees of A&M, based on their then current hourly billing rates) in investigating, preparing or defending any action or claim, whether or not in connection with litigation in which any Indemnified Party is a party, or enforcing the Agreement (including these indemnity provisions) or the Prior Agreement, as and when incurred, caused by, relating to, based upon or arising out of (directly or indirectly) the Indemnified Parties' acceptance of or the performance or nonperformance of their obligations under the Agreement or the Prior Agreement; provided, however, such indemnity shall not apply to any such loss, claim, damage, liability or expense to the extent it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted primarily from such Indemnified Party's gross negligence, fraud, or willful misconduct, or, with respect to the Company, any claim by the Company against A&M as to A&M's breach of its express obligations under the Agreement or the Prior Agreement. The Company also agrees that (a) no Indemnified Party shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Company for or in connection with the engagement of A&M, except to the extent that any such liability for losses, claims, damages, liabilities or expenses are found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted primarily from such Indemnified Party's gross negligence, fraud, or willful misconduct and (b) in no event will any Indemnified Party have any liability to the Company for special, consequential, incidental or exemplary damages or loss (nor any lost profits, savings or business opportunity). The Company further agrees that it will not, without the prior consent of an Indemnified Party, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which such Indemnified Party seeks indemnification hereunder (whether or not such Indemnified Party is an actual party to such claim, action, suit or proceedings) unless such settlement, compromise or consent includes an unconditional release of such Indemnified Party from all liabilities arising out of such claim, action, suit or proceeding. Any Indemnified Party will not, without the prior consent of the Company (which consent shall not be unreasonably withheld, conditioned, or delayed), settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit, or proceeding in respect of which such Indemnified Party seeks indemnification hereunder (whether or not such Indemnified Party is an actual party to

Eiger BioPharmaceuticals, Inc.  
April 1, 2024

such claim, action, suit, or proceeding).

B. These indemnification provisions shall be in addition to any liability which the Company may otherwise have to the Indemnified Parties. In the event that, at any time whether before or after termination of the engagement or the Agreement, as a result of or in connection with the Agreement or the Prior Agreement or A&M's and its personnel's role under the Agreement or the Prior Agreement, A&M or any Indemnified Party is required to produce any of its personnel (including former employees) for examination, deposition or other written, recorded or oral presentation, or A&M or any of its personnel (including former employees) or any other Indemnified Party is required to produce or otherwise review, compile, submit, duplicate, search for, organize or report on any material within such Indemnified Party's possession or control pursuant to a subpoena or other legal (including administrative) process, the Company will reimburse the Indemnified Party for its reasonable and documented out of pocket expenses, including the reasonable and documented fees and expenses of its counsel, and will compensate the Indemnified Party for the documented time expended by its personnel based on such personnel's then current hourly rate.

C. If any action, proceeding or investigation is commenced to which any Indemnified Party proposes to demand indemnification hereunder, such Indemnified Party will notify the Company with reasonable promptness; provided, however, that any failure by such Indemnified Party to notify the Company will not relieve the Company from its obligations hereunder, except to the extent that such failure shall have actually prejudiced the Company or the defense of such action. The Company shall promptly pay reasonable and documented expenses reasonably incurred by any Indemnified Party in defending, participating in, or settling any action, proceeding or investigation in which such Indemnified Party is a party or is threatened to be made a party or otherwise is participating in by reason of the engagement under the Agreement or the Prior Agreement, upon submission of invoices therefor, whether in advance of the final disposition of such action, proceeding, or investigation or otherwise. Each Indemnified Party hereby undertakes, and the Company hereby accepts its undertaking, to repay any and all such amounts so advanced if it shall ultimately be determined that such Indemnified Party is not entitled to be indemnified therefor. If any such action, proceeding or investigation in which an Indemnified Party is a party is also against the Company, the Company may, in lieu of advancing the expenses of separate counsel for such Indemnified Party, provide such Indemnified Party with legal representation by the same counsel who represents the Company, provided such counsel is reasonably satisfactory to such Indemnified Party, at no cost to such Indemnified Party; provided, however, that if such counsel or counsel to the Indemnified Party shall determine that due to the existence of actual or potential conflicts of interest between such Indemnified Party and the Company such counsel is unable to represent both the Indemnified Party and the Company, then the Indemnified Party shall be entitled to use separate counsel of its own choice, and the Company shall promptly pay the reasonable and documented fees and expenses of such separate counsel upon submission of invoices therefor. Nothing herein shall prevent an Indemnified Party from using separate counsel of its own choice at its own expense. The Company will be liable for any settlement of any claim against an Indemnified Party made with the Company's written consent, which consent shall not be unreasonably withheld.

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D. In order to provide for just and equitable contribution if a claim for indemnification pursuant to these indemnification provisions is made but it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) that such indemnification may not be enforced in such case, even though the express provisions hereof provide for indemnification, then the relative fault of the Company, on the one hand, and the Indemnified Parties, on the other hand, in connection with the statements, acts or omissions which resulted in the losses, claims, damages, liabilities and costs giving rise to the indemnification claim and other relevant equitable considerations shall be considered; and further provided that in no event will the Indemnified Parties' aggregate contribution for all losses, claims, damages, liabilities and expenses with respect to which contribution is available hereunder exceed the amount of fees actually received by the Indemnified Parties pursuant to the Agreement. No person found liable for a fraudulent misrepresentation shall be entitled to contribution hereunder from any person who is not also found liable for such fraudulent misrepresentation.


E. In the event the Company and A&M seek judicial approval for the assumption of the Agreement or authorization to enter into a new engagement agreement pursuant to either of which A&M would continue to be engaged by the Company, the Company shall promptly pay reasonable and documented expenses reasonably incurred by the Indemnified Parties, including reasonable and documented attorneys' fees and expenses, in connection with any motion, action or claim made either in support of or in opposition to any such retention or authorization, whether in advance of or following any judicial disposition of such motion, action or claim, promptly upon submission of invoices therefor and regardless of whether such retention or authorization is approved by any court. The Company will also promptly pay the Indemnified Parties for any documented expenses reasonably incurred by them, including reasonable attorneys' fees and expenses, in seeking payment of all amounts owed it under the Agreement (or any new engagement agreement) whether through submission of a fee application or in any other manner, without offset, recoupment or counterclaim, whether as a secured claim, an administrative expense claim, an unsecured claim, a prepetition claim or a postpetition claim.

F. Neither termination of the Agreement nor termination of A&M's engagement nor the filing of a petition under Chapter 7 or 11 of the United States Bankruptcy Code (nor the conversion of an existing case to one under a different chapter) shall affect these indemnification provisions, which shall hereafter remain operative and in full force and effect.

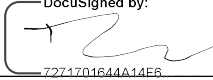
G. The rights provided herein shall not be deemed exclusive of any other rights to which the Indemnified Parties may be entitled under the certificate of incorporation or bylaws of the Company, any other agreements, any vote of stockholders or disinterested directors of the Company, any applicable law or otherwise.

Eiger BioPharmaceuticals, Inc.  
April 1, 2024

Eiger BioPharmaceuticals, Inc.  
*(on behalf of itself and its subsidiaries)*

By:   
1B70BAF6BBCA403  
Name: Thomas Dietz  
Title: Independent Director

ALVAREZ & MARSAL NORTH  
AMERICA, LLC

By:   
7271701644A14E6  
Name: Douglas Staut  
Title: Managing Director



**Exhibit C**

**Staut Declaration**

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

In re:

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

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Jointly Administered)

**DECLARATION OF DOUGLAS STAUT IN SUPPORT  
OF DEBTORS' APPLICATION FOR ENTRY OF AN ORDER  
AUTHORIZING (I) THE RETENTION OF  
ALVAREZ & MARSAL NORTH AMERICA, LLC TO  
PROVIDE THE DEBTORS A CHIEF RESTRUCTURING OFFICER AND  
CERTAIN ADDITIONAL PERSONNEL AND (II) DESIGNATING DOUGLAS STAUT  
AS CHIEF RESTRUCTURING OFFICER FOR THE DEBTORS  
EFFECTIVE AS OF THE PETITION DATE**

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I, Douglas Staut, being duly sworn, herby state as follows:

1. I am a Managing Director with Alvarez & Marsal North America, LLC (together with employees of its professional service provider affiliates (all of which are wholly-owned by its parent company and employees), its wholly-owned subsidiaries and independent contractors, "A&M"), a restructuring advisory services firm with numerous offices throughout the country. I submit this declaration on behalf of A&M (the "Declaration") in support of the *Debtors' Application for Entry of an Order Authorizing (I) the Retention of Alvarez & Marsal North America, LLC to Provide the Debtors a Chief Restructuring Officer and Certain Additional Personnel and (II) Designating Douglas Staut as Chief Restructuring Officer For the Debtors as*

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

of the *Petition Date* (the “Application”)<sup>2</sup> filed contemporaneously herewith. Except as otherwise noted, I have personal knowledge of the matters set forth herein.<sup>3</sup>

**Disinterestedness and Eligibility**

2. A&M together with its professional service provider affiliates (the “Firm”) utilizes certain procedures (the “Firm Procedures”) to determine its relationships, if any, to parties that may have a connection to any of the Debtors in the Chapter 11 Cases. In implementing the Firm Procedures, the following actions were taken to identify parties that may have connections to the Debtors and to determine the Firm’s relationship with such parties:

- a. A&M requested and obtained from the Debtors extensive lists of interested parties and significant creditors (the “Potential Parties in Interest”).<sup>4</sup> The list of Potential Parties in Interest which A&M reviewed is annexed hereto as **Schedule A**. The Potential Parties in Interest reviewed include, among others, the Debtors and their non-filing affiliates, prepetition and proposed post-petition lenders, current and former officers and directors, potential officers and directors, significant unsecured creditors of the Debtors (on a consolidated basis), significant competitors, parties holding ownership interests in the Debtors and various professionals related to the Engagement.
- b. A&M then compared the names of each of the Potential Parties in Interest to the names in the master electronic database of the Firm’s current and former clients (the “Client Database”). The Client Database generally includes the name of each client of A&M, the name of each party who is or was known to be adverse to such client of the Firm in connection with the matter in which the Firm is representing such client, the name of each party that has, or has had, a substantial role with regard to the subject matter of the Firm’s

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Application.

<sup>3</sup> Certain of the disclosures herein relate to matters within the personal knowledge of other professionals at A&M and are based on information provided by such professionals.

<sup>4</sup> As may be necessary, A&M will supplement this Declaration if it becomes aware of a relationship that may adversely affect A&M’s retention in these cases or would otherwise require disclosure.

retention, and the names of Engagement Personnel who are or were primarily responsible for matters for such clients.

- c. An email was issued to all Firm professionals requesting disclosure of information regarding: (i) any known personal connections between the respondent and/or the Firm on the one hand, and certain significant Potential Parties in Interest or the Debtors, on the other hand;<sup>5</sup> (ii) any known connection or representation by the respondent and/or the Firm of any of those Potential Parties in Interest in matters relating to the Debtors; and (iii) any other conflict or reason why the Firm may be unable to represent the Debtors.
- d. Known connections between the Firm and the Potential Parties in Interest were compiled for purposes of preparing this Declaration. These connections are listed in **Schedule B** annexed hereto.

3. As a result of the Firm Procedures, I have thus far ascertained that, except as may be set forth herein, upon information and belief, if retained, A&M:

- a. is not a creditor of the Debtors (including by reason of unpaid fees for prepetition services) or an equity security holder of the Debtors (except certain Firm employees may own de minimis amounts representing not more than 0.01% of the equity interests in the related entity);
- b. is not and has not been, within 2 years before the date of the filing of the petition, a director, officer (other than by virtue of A&M employees serving in the roles as Engagement Personnel (pre and post petition) as described in the Application), or an employee of the Debtors; and
- c. does not have any interest materially adverse to the interests of the Debtors' estates, or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors, or for any other reason.

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<sup>5</sup> In reviewing its records and the relationships of its professionals, A&M did not seek information as to whether any Firm personnel or member of their immediate family: (a) indirectly owns, through a public mutual fund or through partnerships in which certain A&M personnel have invested but as to which such professionals have no control over or knowledge of investment decisions, securities of the Debtors or any other party in interest, or (b) has engaged in any ordinary course consumer transaction with any party in interest. If any such relationship does exist, I do not believe it would impact A&M's disinterestedness or otherwise give rise to a finding that A&M holds or represents an interest adverse to the Debtors' estates. It is also noted that in the course of our review it came to A&M's attention that A&M personnel hold de minimis investments, representing not more than 0.01% of the equity interests in the related entity, in various parties in interest, including but not limited to AbbVie Inc., Accenture LLP, Bristol-Meyers Squibb Company and JP Morgan.

4. As can be expected with respect to any international professional services firm such as the Firm, the Firm provides services to many clients with interests in the Debtors' Chapter 11 Cases. To the best of my knowledge, except as indicated below, the Firm's services for such clients do not relate to the Debtors' Chapter 11 Cases.

5. In addition to the relationships disclosed on Schedule B, I note that JPMorgan Chase Bank, N.A., together with certain of its affiliates (collectively, "JPMC") are Potential Parties in Interest. Under a credit facility (the "Credit Facility") to A&M's parent company Alvarez & Marsal Holdings, LLC ("A&M Holdings"), JPMC is a lender and the syndication agent and one of the joint lead arrangers and joint book runners. JPMC receives certain customary and negotiated fees and reimbursement of expenses in connection with its roles under the Credit Facility.

6. Further, as part of its diverse practice, the Firm appears in numerous cases and proceedings, and participates in transactions that involve many different professionals, including attorneys, accountants, and financial consultants, who represent claimants and parties-in-interest in the Debtors' Chapter 11 Cases. Further, A&M has performed in the past, and may perform in the future, advisory consulting services for various attorneys and law firms, and has been represented by several attorneys and law firms, some of which may be involved in these proceedings. Based on our current knowledge of the professionals involved, and to the best of my knowledge, none of these relationships create interests materially adverse to the Debtors in matters upon which the Firm is to be employed, and none are in connection with these cases.

7. If any new material relevant facts or relationships are discovered or arise, A&M will promptly file a supplemental declaration.

#### **Professional Compensation**

8. Subject to Court approval of the Application and in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, applicable U.S. Trustee guidelines, and

the Local Rules, A&M will seek from the Debtors payment for compensation on an hourly basis for the CRO and all Additional Personnel, and reimbursement of actual and necessary expenses incurred by A&M. All fees and expenses due to A&M will be billed on a weekly basis, or, at A&M's discretion, more frequently, as further set forth in the Engagement Letter. A&M's customary hourly rates as charged in bankruptcy and non-bankruptcy matters of this type by the professionals assigned to this engagement are outlined below:

<b>Title</b>	<b>Rate</b>
CRO	\$1,125
Managing Directors	\$1,075-1,525
Directors	\$825-1,075
Associates	\$625-825
Analysts	\$425-625

These hourly rates are adjusted annually.

9. In addition to the hourly compensation, A&M will be entitled to incentive compensation in the amount of \$350,000 payable upon the earlier of (a) the closing of a reorganization of a material portion of the Debtors' obligations; (b) repayment of all the Debtors' senior secured indebtedness as a result of the sale, transfer, or other disposition of all or a substantial portion of the assets of the Debtors in one or more transactions; or (c) the confirmation of a chapter 11 plan in these chapter 11 cases.

10. To the best of my knowledge, (i) no commitments have been made or received by A&M with respect to compensation or payment in connection with these cases other than in accordance with applicable provisions of the Bankruptcy Code and the Bankruptcy Rules, and

(ii) A&M has no agreement with any other entity to share with such entity any compensation received by A&M in connection with these Chapter 11 Cases.

*[Remainder of the page intentionally left blank.]*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: April 22, 2024

/s/ Douglas Staut  
Douglas Staut  
Managing Director,  
Alvarez & Marsal North America, LLC



**Schedule 1**

**Potential Parties in Interest**

## **Schedule 1**

### **Potential Parties in Interest List<sup>1</sup>**

#### **Schedule (a): Debtors and Including Trade**

##### **Names and Aliases**

Eiger Biopharmaceuticals Inc.  
EBPI Merger, Inc.  
EB Pharma LLC  
EigerBio Europe Limited  
Eiger BioPharmaceuticals Europe  
Limited

#### **Schedule (b): Debtors' Known Affiliates**

Celladon Corporation  
Eiger Biotherapeutics, Inc.

#### **Schedule (c): Current Directors and Officers**

Apelian, David  
Craig, Colleen  
Dietz, Thomas J.  
Eiger Group International, Inc.  
Glenn, Jeffrey S.  
Hislop, Colin  
Kaichoff, William  
Kelly-Croswell, Lisa  
Kurtz, Christopher  
Loh, Evan  
Sablich, Kimberly Lynn  
Sachdev, Amit K.  
Vollins, James

#### **Schedule (d): Former Directors and Officers**

Cory, David A.  
Mathieson, Sarah  
Mayer, Eldon, III  
Murray, Christine

#### **Schedule (e): Banks**

Bank of Ireland  
JP Morgan  
Merill Lynch  
Silicon Valley Bank

#### **Schedule (f): 5% or More Equity Holders**

Ameriprise Financial, Inc.  
Moshe Arkin  
Propel Bio Partners LLC

#### **Schedule (g): 363 Sale Parties**

Eton Pharmaceuticals  
Sentynl Therapeutics, Inc

#### **Schedule (h): Administrative and Collateral Agents**

Innovatus Life Sciences Lending  
Fund I, LP

#### **Schedule (i): Customers**

AnGes Inc.  
CVS  
Sciensus

#### **Schedule (j): Debtors' Professionals**

Alvarez & Marsal North America LLC  
Kurtzman Carson Consultants LLC

#### **Schedule (k): Insurance**

Arch Specialty Insurance Company  
Ascot Specialty Insurance Company  
Asteria Grup J.S.C  
Chubb  
Coalition Insurance Solutions, Inc.  
"Evanston Insurance  
Company"  
Falvey

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<sup>1</sup> The parties included on this list (and the categories contained herein) are for purposes of a conflicts check only and should not be relied upon by any party as a list of creditors or for any other purpose. As listing a party once allows our conflicts specialists to run a check on such party, we have attempted to remove duplicate entries where possible. Accordingly, a party that would otherwise fall under multiple categories is likely to be listed under only one category.

Fireman's Fund Indemnity Corporation  
Fortegra Specialty Insurance Company  
Hudson Insurance Company  
Ingosstrakh Insurance Company  
JSC Insurance Company GPI Holding  
Lloyd's of London  
Newfront Insurance Services  
The Travelers Indemnity Company Of  
Connecticut  
Travelers Corp.  
Travelers Property Casualty Co. Of  
America  
XL Insurance Company SE  
XL Professional Insurance

**Schedule (l): Lenders**

Innovatus Flagship Fund I, LP  
Innovatus Flagship Offshore Fund I, LP  
Innovatus Life Sciences Lending  
Fund I, LP  
Innovatus Life Sciences Lending I, LP  
Innovatus Life Sciences Offshore  
Fund I-A, LP

**Schedule (m): Lenders' Professionals**

Bradley Arant  
Greenberg Traurig, LLP  
SCS Financial

**Schedule (n): Landlord**

McDonald Family Co. LLC  
Regus CME Ireland Limited

**Schedule (o): Adverse Litigation Parties**

Progeria Research Foundation  
Schoen, Ronald A.  
Skinner, Shane

**Schedule (p): Material Contract  
Counterparties**

AbbVie Inc.  
Apelian, David  
Atkisson, Erik  
Baker Hughes Oilfield Operations, Inc.  
Bristol-Meyers Squibb Company  
Choong, Ingrid

Cory, David A.  
Craig, Colleen  
Danforth Advisors, LLC  
Eiger Group International, Inc.  
JTC a California General Partnership  
Mayer, Eldon  
McLaughlin, Tracey  
Merck Corporation  
Merck Sharp & Dohme Corp. (MSD) -  
f/k/a Schering Corporation  
Oxford Finance LLC  
Patton, Stephana E.  
Progeria Research Foundation  
RRD International, LLC  
Ryali, Sriram  
Schering Corporation  
Shaffer, James  
The Children's Hospital of Philadelphia  
Trustees of the University of  
Pennsylvania  
Vollins, James

**Schedule (q): Ordinary Course  
Professionals**

KPMG LLC

**Schedule (r): Significant Competitors**

Albireo  
Assembly Biosciences  
Crinetics  
Gilead  
Hamni  
Janssen Research & Development, LLC  
PharmaEssentia  
PRG Science & Technology  
Replicor, Inc.  
Rezolute, Inc.  
Vir Biotechnology  
Vogenyx  
Xeris Pharmaceuticals  
Zealand Pharmaceuticals

**Schedule (s): Surety & Letters of Credit**

Harco National Insurance Company  
State of California, Board of Pharmacy  
State of Kentucky, Board of Pharmacy

Tokio Marine Europe S.A.

**Schedule (t): Taxing Authority/  
Governmental/Regulatory Agencies**

County of Santa Clara Office of The  
Assessor  
Department of Tax and Collections  
European Medicines Agency  
Medicines & Healthcare products  
Regulatory Agency  
Pharma Solutions USA, Inc.  
San Diego County Treasurer  
State of California, Franchise Tax Board  
State of Delaware Department of Finance  
- Office Of Unclaimed Property  
State of Delaware, Secretary of State  
State of Kentucky Board of Pharmacy  
State of New Jersey, Department of  
Health  
State of New Jersey, Division of Taxation  
State of Oregon, Department of  
Consumer & Business Services  
State of Texas, Comptroller of Public  
Accounts  
State of Texas, Department of State  
Health Services, Food & Drug  
Licensing  
U.S. Food and Drug Administration  
U.S. Internal Revenue Service  
U.S. Securities and Exchange  
Commission

**Schedule (u): Top 30 Creditors**

Merck Sharp & Dohme LLC  
IQVIA Biotech LLC  
SATT Conectus Alsace SAS  
RRD International, LLC  
Real Staffing Group  
Patheon Inc.  
Biorasi LLC  
Connor Group Global Services LLC  
Sharp Packaging Services LLC  
Patheon Manufacturing Services LLC  
Trustees of the University of  
Pennsylvania

Yuki Gosei Kogyo Co Ltd  
ICON Clinical Research Limited  
Bachem Americas, Inc.  
Fisher Clinical Services, Inc.  
Kilpatrick Townsend and Stockton LLP  
IQVIA Inc.  
Frontage Laboratories, Inc.  
CPA Global Limited  
Fisher BioServices, Inc.  
Eurofins Lancaster Laboratories, Inc.  
Intsel Chimos  
Addison Whitney  
Oracle America Inc.  
Partners4access B.V.  
Broadridge ICS  
Integrichain, Inc.  
Clinigen Inc.  
Accenture LLP  
TRG Communications LLC

**Schedule (v): UCC Lien Parties**

Innovatus Life Sciences Lending  
Fund I, LP

**Schedule (w): Vendors<sup>2</sup>**

AllCare Plus Pharmacy LLC  
Altasciences Clinical Kansas, P.A.  
Axis Clinicals LLC  
Bachem  
Becton, Dickinson and Company  
Bend Research/ Lonza Bend, Inc.  
Biorasi LLC  
Bristol-Meyers Squibb  
Charles River Laboratories  
Montreal ULC  
Connor Group Global Services LLC  
Corden Pharma Colorado Inc.  
Danforth Advisors LLC  
Donnelley Financial Solutions, LLC  
Fisher Clinical Services, Inc.  
Food and Drug Administration  
Fujifilm Diosynth Biotechnologies  
USA, Inc.  
GLSynthesis, Inc.  
Innovatus Capital Partners, LLC

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<sup>2</sup> Represents 10% materiality standard of accounts payable over the last three years.

Inotiv, Inc.  
IntegriChain, Inc. - Disbursement  
Account  
IQVIA Biotech LLC  
IQVIA Inc.  
Kilpatrick Townsend and Stockton LLP  
KPMG LLP  
L.E.K. Consulting LLC  
McDonald Family Company LLC  
Medpace Inc.  
Newfront Insurance Services  
Oxford Finance LLC  
Patheon Inc  
Patheon Manufacturing Services LLC  
Patheon UK Limited  
Pharmaceutical Research Associates, Inc.  
Platform Lifesciences Inc.  
Real Staffing Group  
RRD International, LLC  
Safeguardworld International Limited  
Sidley Austin LLP  
Yuki Gosei Kogyo Co Ltd.

Garnica, Fernando  
Goodier, C. Marie  
Hersh, Susan  
Hughes, Alexandria  
Kippes, Meredyth  
Lambert, Lisa L.  
Palos, Felicia P.  
Resnick, Nancy S.  
Rust, Kendra M.  
Schmidt, Erin  
Suchedina, Rafay  
Wilcoxson, Cheryl H.  
Young, Elizabeth

**Schedule (x): Judges for the Northern  
District of Texas**

Everett, Scott W. (Hon. Judge)  
Jernigan, Stacey G. C. (Hon. Chief Judge)  
Jones, Robert L. (Hon. Judge)  
Larson, Michelle V. (Hon. Judge)  
Morris, Edward L. (Hon. Judge)  
Mullin, Mark X. (Hon. Judge)

**Schedule (y): Courtroom Deputies for the  
Northern District of Texas**

Bergreen, Jenni  
Calfee, Jennifer  
Ellison, Traci  
Graham, Christi  
Harden, Dawn  
Rueter, Karyn

**Schedule (z): U.S. Trustee Personnel,**

**Region 6**

Bublick, Asher  
Croop, Kara  
Epstein, Kevin M.

**Schedule 2**

**Results of Conflicts Search**

**Current and Former Clients of A&M  
and/or its Affiliates<sup>1</sup>**

AbbVie Inc.  
Accenture LLP  
Altasciences Clinical Kansas, P.A.  
Anaplan, Inc.  
Arch Specialty Insurance Company  
Ascot Specialty Insurance Company  
August Bioservices LLC  
Baker Hughes Oilfield Operations, Inc.  
Bank of Ireland  
Bill and Melinda Gates Foundation  
Bristol-Meyers Squibb Company  
Broadridge ICS  
Celladon Corporation  
Chubb  
Cision US Inc  
Covington & Burling LLP  
CVS  
Danforth Advisors LLC  
Digital Media Innovations LLC  
DocuSign, Inc  
Ernst & Young U.S. LLP  
ETrade Financial Corporate Services  
Eurofins Advantur Laboratories, Inc.  
Federal Express Corporation  
Fireman's Fund Indemnity Corporation  
Greenberg Traurig, LLP  
Innovatus Life Sciences Lending Fund I, LP  
Integrichain, Inc.  
IQVIA Biotech LLC  
Iron Mountain  
JAMS, Inc  
JP Morgan  
KPMG LLC  
Life Technologies Corporation  
Lloyd's of London  
McKesson Corporation  
Merck Sharp & Dohme LLC  
Merill Lynch

Moss-Adams LLP  
Nasdaq Corporate Solutions  
Newfront Insurance Services  
Okta, Inc.  
Oracle America Inc.  
Oxford Finance LLC  
ProPharma Group LLC  
Quest Diagnostics Clinical Laboratories, Inc  
Robert Half International, Inc  
RSM US LLP  
Silicon Valley Bank  
Stanford University - Office of Technology  
Licensing  
Tokio Marine Europe S.A.  
Transperfect Translations International, Inc.  
Travelers Corp.  
World Courier Inc.  
XL Insurance Company SE

**Significant Equity Holders of Current  
and Former A&M Clients<sup>2</sup>**

Accenture LLP  
Ameriprise Financial, Inc.  
Ascot Specialty Insurance Company  
Baker Hughes Oilfield Operations, Inc.  
Bank of Ireland  
Bill and Melinda Gates Foundation  
Bristol-Meyers Squibb Company  
CVS  
ETrade Financial Corporate Services  
IQVIA Biotech LLC  
Iron Mountain  
JP Morgan  
KPMG LLC  
Lloyd's of London  
McKesson Corporation  
Merck Sharp & Dohme LLC  
Merill Lynch

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<sup>1</sup> A&M and/ or an affiliate is currently providing or has previously provided certain consulting or interim management services to these parties or their affiliates (or, with respect to those parties that are investment funds or trusts, to their portfolio or asset managers or their affiliates) in wholly unrelated matters.

<sup>2</sup> These parties or their affiliates (or, with respect to those parties that are investment funds or trusts, their portfolio or asset managers or other funds or trusts managed by such managers) are significant equity holders of clients or former clients of A&M or its affiliates in wholly unrelated matters.

Quest Diagnostics Clinical Laboratories,  
Inc.  
Shred-it USA  
Silicon Valley Bank  
Stanford University - Office of Technology  
Licensing  
Tokio Marine Europe S.A.  
Travelers Corp.  
XL Insurance Company SE

**Professionals & Advisors<sup>3</sup>**

Accenture LLP  
Aon Consulting Inc  
Bank of Ireland  
Bradley Arant  
Broadridge ICS  
Covington & Burling LLP  
CPA Global Limited  
CT Corporation  
Dechert LLP  
Deloitte Tax LLP  
Dentons Europe AARPI  
DLA Piper LLP  
Donahue & Partners LLP  
Donnelley Financial Solutions, LLC  
Ernst & Young U.S. LLP  
Federal Express Corporation  
Greenberg Traurig, LLP  
JP Morgan  
Kilpatrick Townsend and Stockton LLP  
King & Spalding LLP  
KPMG LLC  
Kurtzman Carson Consultants LLC  
Latham and Watkins LLP  
L.E.K. Consulting LLC  
Mediant Communications Inc.

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<sup>3</sup> These professionals have represented clients in matters where A&M was also an advisor (or provided interim management services) to the same client. In certain cases, these professionals may have engaged A&M on behalf of such client.

<sup>4</sup> These parties or their affiliates are significant joint venture partners of other clients or former clients of A&M or its affiliates in wholly unrelated matters.

Moss-Adams LLP  
Nasdaq Corporate Solutions  
OneSource Regulatory LLC  
Pearl Meyer  
Robert Half International, Inc  
Ropes & Gray LLP  
RSM US LLP  
Russell Reynolds Associates, Inc.  
Sard Verbinen & Co, LLC  
Seyfarth Shaw LLP  
Sidley Austin LLP  
Silicon Valley Bank  
Transperfect Translations International, Inc  
Workiva, Inc.

**Significant Joint Venture Partners<sup>4</sup>**

Accenture LLP  
IQVIA Inc. - f/k/a Quintiles and IMS  
Health, Inc.  
JP Morgan

**Board Members/Officers/Employees<sup>5</sup>**

Arkin, Moshe  
Mathieson, Sarah

**A&M Vendors<sup>6</sup>**

Canon Financial Services, Inc  
CDW Direct LLC, CDW Direct  
Chubb  
Dentons Europe AARPI  
DLA Piper LLP  
Ernst & Young U.S. LLP  
Federal Express Corporation  
Greenberg Traurig, LLP  
Ingosstrakh Insurance Company  
Iron Mountain

<sup>5</sup> These parties or their affiliates are or were board members, officers or members of management of other clients or former clients of A&M or their affiliates in wholly unrelated matters.

<sup>6</sup> These parties or their affiliates provide or have provided products, goods and/or services (including but not limited to legal representation) to A&M and/or its affiliates



JAMS, Inc  
JP Morgan  
JSC Insurance Company GPI Holding  
Kilpatrick Townsend and Stockton LLP  
King & Spalding LLP  
KPMG LLC  
Latham and Watkins LLP  
Lloyd's of London  
McCarter & English LLP  
Merill Lynch  
Oracle America Inc.  
PCAOB Public Company Accounting  
Oversight Board  
Resources Global Professionals (RGP)  
RHO Ventures  
Robert Half International, Inc  
Ropes & Gray LLP  
RSM US LLP  
Russell Reynolds Associates, Inc.  
Shred-it USA  
Sidley Austin LLP  
Stanford University - Office of Technology  
Licensing  
Transperfect Translations International, Inc.  
Trustees of the University of Pennsylvania  
XL Insurance Company SE

**Exhibit D**

**Dispute Resolution Procedures**

### **Dispute Resolution Procedures**

The following procedures shall be used to resolve any controversy or claim (a “Dispute”) as provided in this agreement. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

#### **Mediation**

A dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator will be designated by the American Arbitration Association (“AAA”) or JAMS/Endispute at the request of a party. Any mediator so designated must be acceptable to all parties.

The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute. The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.

Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

#### **Arbitration**

If a dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute will be settled by arbitration and judgment on the award rendered

by the arbitration may be entered in any court having jurisdiction thereof. The arbitration will be conducted in accordance with the procedures in this document and the Arbitration Rules for Professional Accounting and Related Services Disputes of the AAA.