

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

November 26, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-12245 (KBO)

(Jointly Administered)

**NOTICE OF FILING OF PLAN SUPPLEMENT TO
AMENDED COMBINED JOINT CHAPTER 11 PLAN OF
LIQUIDATION AND DISCLOSURE STATEMENT OF BIOLASE, INC.
AND ITS DEBTOR AFFILIATES**

PLEASE TAKE NOTICE that, on January 14, 2025, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) the *Amended Combined Joint Chapter 11 Plan of Liquidation and Disclosure Statement of Biolase, Inc. and its Debtor Affiliates [Solicitation Version]* [Docket No. 338] (as may be further modified, supplemented, and amended, the “Combined Plan and Disclosure Statement”).²

PLEASE TAKE FURTHER NOTICE that the Combined Plan and Disclosure Statement contemplates the submission of certain documents (or forms thereof) in advance of the Confirmation Hearing (the “Plan Supplement”).

PLEASE TAKE FURTHER NOTICE that the Debtors hereby file the following Plan Supplement documents:

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are: November 26, Inc. (f/k/a Biolase, Inc.) (2441); Nov. 26 Acquisition Corp. (f/k/a BL Acquisition Corp.) (4140); Nov. 26 Acquisition II, Inc. (f/k/a BL Acquisition II, Inc.) (6022); and Nov. 26 Office, LLC (f/k/a Model Dentist Office, LLC) (9372). The Debtors’ headquarters are located at 19800 MacArthur Blvd, Suite 820, Irvine, CA 92612.

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Combined Plan and Disclosure Statement.

Exhibit	Document
A	Liquidation Analysis
B	Form of Liquidation Trust Agreement
C	Identification of the Liquidation Trustee
D	Schedule of Retained Causes of Action

PLEASE TAKE FURTHER NOTICE that the documents in the Plan Supplement are integral to, and considered part of, the Combined Plan and Disclosure Statement. If the Combined Plan and Disclosure Statement is confirmed, the documents in the Plan Supplement will be approved by the Bankruptcy Court pursuant to the Confirmation Order.

PLEASE TAKE FURTHER NOTICE that the Debtors reserve the right to alter, amend, modify, or supplement any document of, or add any document to, the Plan Supplement, subject to the terms and conditions of the Combined Disclosure Statement and Plan.

PLEASE TAKE FURTHER NOTICE that the Plan Supplement and the Combined Plan and Disclosure Statement can be obtained free of charge at the website maintained by Epiq Corporate Restructuring, LLC (the “Claims Agent”) at <https://dm.epiq11.com/biolase> or by contacting the Claims Agent at biolaseinfo@epiqglobal.com and referencing “Biolase” in the subject line; or (888) 884-0959 (U.S.); or (503) 619-1698 (International).

PLEASE TAKE FURTHER NOTICE that a hearing to consider final approval of the adequacy of disclosures in, and confirmation of, the Combined Plan and Disclosure Statement will be held on **February 25, 2025 at 9:30 a.m. (prevailing Eastern Time)** before the Honorable Karen B. Owens, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6th Floor, Courtroom 3, Wilmington, Delaware 19801 (the “Confirmation Hearing”), and may be adjourned from time to time by the Bankruptcy Court or the Debtors without further notice other than by such adjournment being announced in open court or by a notice of adjournment filed with the Bankruptcy Court and served on other parties entitled to notice.

Dated: January 24, 2025
Wilmington, Delaware

Respectfully submitted,

/s/ Maria Kotsiras

M. Blake Cleary (No. 3614)
Brett M. Haywood (No. 6166)
Maria Kotsiras (No. 6840)
Shannon A. Forshay (No. 7293)
POTTER ANDERSON & CORROON LLP
1313 N. Market Street, 6th Floor
Wilmington, Delaware 19801
Telephone: (302) 984-6000
Facsimile: (302) 658-1192
Email: bcleary@potteranderson.com
bhaywood@potteranderson.com
mkotsiras@potteranderson.com
sforshay@potteranderson.com

-and-

Joshua D. Morse (admitted *pro hac vice*)
Claire K. Wu (admitted *pro hac vice*)
PILLSBURY WINTHROP SHAW PITTMAN LLP
Four Embarcadero Center, 22nd Floor
San Francisco, CA 94111-5998
Telephone: (415) 983-1000
Facsimile: (415) 983-1200
Email: joshua.morse@pillsburylaw.com
claire.wu@pillsburylaw.com

Dania Slim (admitted *pro hac vice*)
Caroline Tart (admitted *pro hac vice*)
PILLSBURY WINTHROP SHAW PITTMAN LLP
31 West 52nd Street
New York, NY 10019-6131
Telephone: (212) 858-1000
Facsimile: (212) 858-1500
Email: dania.slim@pillsburylaw.com
caroline.tart@pillsburylaw.com

Counsel to the Debtors and Debtors in Possession

Exhibit A

Liquidation Analysis

LIQUIDATION ANALYSIS FOR NOVEMBER 26, INC., *ET AL.*
(F/K/A BIOLASE, INC.)

I. Introduction

All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Amended Combined Joint Chapter 11 Plan of Liquidation and Disclosure Statement of Biolase, Inc. and its Debtor Affiliates* (the “Combined Plan and Disclosure Statement”).

Under the “best interests” of creditors test set forth in section 1129(a)(7) of the Bankruptcy Code, the Bankruptcy Court may not confirm a plan unless the plan provides each holder of a claim or interest, who does not otherwise vote in favor of the plan, with property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the debtors were liquidated under Chapter 7 of the Bankruptcy Code. Accordingly, to demonstrate that the Combined Plan and Disclosure Statement satisfies the “best interests” of creditors test, the Debtors, with assistance of their advisors, have prepared the following hypothetical liquidation analysis presenting recoveries available to holders of claims and interests, assuming a hypothetical liquidation of the Debtors (the “Liquidation Analysis”). The Liquidation Analysis is based on certain assumptions detailed in the Combined Plan and Disclosure Statement, this Liquidation Analysis, and in the accompanying footnotes to the Liquidation Analysis.

Statement of Limitations

The determination of the costs of, and proceeds from, the hypothetical liquidation of the Debtors’ assets in a Chapter 7 case is an uncertain process involving the extensive use of estimates and assumptions that, although considered reasonable by the Debtors based on their business judgment and input from their advisors, is inherently subject to significant business, economic, and competitive uncertainties and contingencies beyond the control of the Debtors, their management, and their advisors. Inevitably, some assumptions in the Liquidation Analysis may not materialize in an actual Chapter 7 liquidation, and unanticipated events and circumstances could materially affect the ultimate results in an actual Chapter 7 liquidation.

The Liquidation Analysis was prepared for the sole purpose of generating a reasonable, good faith estimate of the proceeds that would be realized if the Debtors’ assets were liquidated in accordance with Chapter 7 of the Bankruptcy Code. The Liquidation Analysis is not intended and should not be used for any other purpose. The underlying financial information in the Liquidation Analysis was not compiled or examined by independent accountants in accordance with standards promulgated by the American Institute of Certified Public Accountants.

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

THE LIQUIDATION ANALYSIS IS A HYPOTHETICAL EXERCISE THAT HAS BEEN PREPARED FOR THE SOLE PURPOSE OF PRESENTING A REASONABLE, GOOD FAITH ESTIMATE OF THE PROCEEDS THAT WOULD BE REALIZED IF THE DEBTORS WERE LIQUIDATED IN ACCORDANCE WITH CHAPTER 7 OF THE BANKRUPTCY CODE AS OF THE EFFECTIVE DATE. THE LIQUIDATION ANALYSIS IS NOT INTENDED AND SHOULD NOT BE USED FOR ANY OTHER PURPOSE. THE LIQUIDATION ANALYSIS DOES NOT PURPORT TO BE A VALUATION OF THE DEBTORS' ASSETS AS A GOING CONCERN, AND THERE MAY BE A SIGNIFICANT DIFFERENCE BETWEEN THE LIQUIDATION ANALYSIS AND THE VALUES THAT MAY BE REALIZED OR CLAIMS GENERATED IN AN ACTUAL LIQUIDATION.

NOTHING IN THE LIQUIDATION ANALYSIS IS INTENDED TO BE, OR CONSTITUTES, A CONCESSION, ADMISSION, OR ALLOWANCE OF ANY CLAIM AGAINST OR INTERESTS IN THE DEBTORS, THEIR ESTATES, OR THE LIQUIDATION TRUST. THE ACTUAL AMOUNT OR PRIORITY OF ALLOWED CLAIMS IN THESE CASES COULD MATERIALLY DIFFER FROM THE ESTIMATED AMOUNTS SET FORTH AND USED IN THE LIQUIDATION ANALYSIS. THE DEBTORS RESERVE ALL RIGHTS TO SUPPLEMENT, MODIFY, OR AMEND THE LIQUIDATION ANALYSIS SET FORTH HEREIN.

Basis of Presentation

The Liquidation Analysis is based on unaudited financial statements and the most recently available financial information, as noted in the footnotes to the Liquidation Analysis. The actual assets available to the Debtors' estates and claims arising in the event of an actual liquidation may differ from the assets assumed to be available pursuant to the Liquidation Analysis.

The amount of the final Allowed Claims against the Debtors' estates may differ materially from the claim amounts used in the Liquidation Analysis.

Conversion Date and Appointment of a Chapter 7 Trustee

The Liquidation Analysis has been prepared assuming that the Debtors converted their cases from Chapter 11 to Chapter 7 on or about February 28, 2025 ("Conversion Date"), which is around the anticipated Effective Date. On the Conversion Date, it is assumed that the Bankruptcy Court would appoint a Chapter 7 trustee ("Trustee") to oversee the liquidation of the Debtors' estates.

Consolidated Liquidation

The Liquidation Analysis assumes that the Debtors would be liquidated in a jointly administered and substantively consolidated proceeding. Therefore, the Liquidation Analysis considers a consolidated company liquidation for the Debtors. Intercompany claims are disregarded in the liquidation analysis. To the extent that intercompany claims are allowed on a pre- or post-petition basis, including as administrative expense claims, recoveries may differ materially from those set forth in the Liquidation Analysis.

Global Notes and Assumptions

The Liquidation Analysis should be read in conjunction with the following global notes and assumptions.

1. *Significant dependence on unaudited financial statements.* The Liquidation Analysis contains numerous estimates. Proceeds available for distribution are based on unaudited financial statements and the most recently available financial information, as noted in the footnotes to the Liquidation Analysis. These amounts are assumed to be substantially the same as of the Conversion Date, unless otherwise noted.
2. *Chapter 7 liquidation costs and length of liquidation process.* The Liquidation Analysis assumes that liquidation would occur during a three-month period after the Conversion Date (“Liquidation Period”) to arrange distributions and otherwise administer and wind-down the estates. In an actual liquidation, the wind-down process and Liquidation Period could vary significantly, thereby impacting distributions and recoveries. For example, the potential for priority, contingent, and other claims, litigation and rejection costs, and delays in the final determination of Allowed Claims could substantially impact both the timing and amount of distributions and recoveries. Accordingly, there can be no assurance that the values reflected in the Liquidation Analysis would be realized if the Debtors were, in fact, to undergo such a liquidation.
3. *Distribution of liquidation proceeds.* Administrative Claims, Priority Claims, professional and trustee fees, and other Claims that may arise in a liquidation scenario would be paid in full from the liquidation proceeds before the balance of any proceeds will be made available to pay any General Unsecured Claims. The Liquidation Analysis assumes that proceeds will be distributed in accordance with the priority scheme set forth in the Bankruptcy Code.

Liquidation Analysis for the Debtors

The schedule shown below presents the net liquidation proceeds available for distribution in a hypothetical Chapter 7 case. The Liquidation Analysis estimates recoveries under an assumed immediate liquidation of the Debtors’ assets including high and low asset recoveries, which are based on unaudited financial statements and the most recently available financial information, as noted in the footnotes to the Liquidation Analysis.

Ch. 7 Liquidation Asset Recovery Estimates					Ch. 11 Plan Asset Recovery Estimates				
	<u>Book Value</u>	<u>Recovery %</u>	<u>Estimated Recovery</u>	<u>Recovery %</u>	<u>Estimated Recovery</u>	<u>Recovery %</u>	<u>Estimated Recovery</u>	<u>Recovery %</u>	<u>Estimated Recovery</u>
		<u>Low %</u>	<u>Low \$</u>	<u>High %</u>	<u>High \$</u>	<u>Low %</u>	<u>Low \$</u>	<u>High %</u>	<u>High \$</u>
[1] Cash US Entity	\$ 6,294,195	100%	\$ 6,294,195	100%	\$ 6,294,195	100%	\$ 6,294,195	100%	\$ 6,294,195
[2] Cash Foreign Entity	\$ 146,946	100%	\$ 146,946	100%	\$ 146,946	100%	\$ 146,946	100%	\$ 146,946
[3] German Entity	\$ 3,284,971	0%	\$ -	1%	\$ 32,850	9%	\$ 300,000	9%	\$ 300,000
[4] India Accounts Receivable	\$ 152,375	0%	\$ -	15%	\$ 22,856	20%	\$ 30,475	75%	\$ 114,281
[5] India Inventory	\$ 238,500	0%	\$ -	15%	\$ 35,775	20%	\$ 47,700	50%	\$ 119,250
[6] Estimate CDFTA FF&E Tax	\$ (281,662)	100%	\$ (281,662)	80%	\$ (225,330)	100%	\$ (281,662)	80%	\$ (225,330)
[7] Potential Foreign Severance Estimate	\$ (520,000)	100%	\$ (520,000)	80%	\$ (416,000)	25%	\$ (130,000)	15%	\$ (78,000)
Assets to be Liquidated	\$ 9,315,324		\$ 5,639,478		\$ 5,891,292		\$ 6,407,653		\$ 6,671,342
Less: Chapter 7 Administrative Costs									
[8] CH. 7 Trustee Fee			\$ 192,434		\$ 192,434				
[9] CH. 7 Professional Fees			\$ 300,000		\$ 300,000				
[10] CH 11 Professional Fee Carve-out			\$ 1,651,065		\$ 1,651,065				
[11] US Trustee Fee			\$ 250,000		\$ 250,000				
[12] Other Administrative Claims			\$ 350,000		\$ 350,000				
			\$ 2,743,499		\$ 2,743,499				
Less: Chapter 11 Administrative Costs									
[10] CH 11 Professional Fee Carve-out						\$ 1,651,065		\$ 1,651,065	
[13] Liquidation Trust Settlement Funding						\$ 1,150,000		\$ 1,150,000	
[11] US Trustee Fee						\$ 250,000		\$ 250,000	
[12] Other Administrative Claims						\$ 200,000		\$ 200,000	
						\$ 3,251,065		\$ 3,251,065	
Net Proceeds Available for Distribution			\$ 2,895,979		\$ 3,147,792		\$ 3,156,589		\$ 3,420,277
Unsecured Distribution Reserve						\$ 300,000		\$ 300,000	
Total Distribution to Creditors			\$ 2,895,979		\$ 3,147,792		\$ 3,456,589		\$ 3,720,277
[14] Secured Claims	\$ 19,312,179		\$ 15,538,970		\$ 15,790,783		\$ 15,799,580		\$ 16,063,268
Estimated Secured Recovery %			80%		82%		82%		83%
[15] Priority Claims	\$ 357,009		\$ 357,009		\$ 357,009		\$ 357,009		\$ 357,009
Estimated Priority Recovery %			100%		100%		100%		100%
[16] Unsecured Claims	\$ 5,943,581		\$ -		\$ -		\$ 300,000		\$ 300,000
Estimated Unsecured Recovery %			0%		0%		5%		5%

Footnotes to Liquidation Analysis**1. Cash U.S. Entity**

Cash balance is the actual cash balance as of January 21, 2025 (\$7,455,797) plus \$500,000 reserved for sale price adjustments, minus estimated money received after sale date to be transferred to Biolase MG LLC (\$1,511,602) and (\$150,000) reserved for uncashed pre-sale checks and potential additional invoices.

2. Cash Foreign Entity

Cash foreign entity is the balance as of November 30, 2024 and consists entirely of cash at the India subsidiary. German entity cash is included in the current offer of \$300,000 for all assets of Biolase Europe.

3. German Entity

German entity recovery is based on a current offer of \$300,000.

4. India Accounts Receivable

India Accounts Receivable is based on the latest information as of December 9, 2024.

5. India Inventory

India Inventory is based on the latest information as of December 9, 2024.

6. Estimate CDFTA FF&E Tax

The Current FF&E sales tax due to the 363 sale is calculated based on October 31, 2024 balance sheet and 8.75% tax rate.

7. Potential Foreign Severance Estimate

We are currently analyzing the cost of severance for foreign entities. Given the anticipated sale of the German entity, the liquidation analysis only estimates severance for the India entity.

8. Chapter 7 Trustee Fee

Ch. 7 Trustee Liquidation Fees	Fee (%)	Fee (\$)	Total Trustee Fee
Up to 5,000.00	25%	\$ 5,000	\$ 1,250
5,000.01 - 49,999.99	10%	\$ 45,000	\$ 4,500
50,000.00 - 999,999.99	5%	\$ 950,000	\$ 47,500
1,000,000 and above	3%	\$ 4,639,478	\$ 139,184

9. Chapter 7 Trustee Professional Fees

Chapter 7 professional fees are estimated based on the assumption that the Chapter 7 trustee would retain new counsel.

10. Chapter 11 Professional Fee Carve-Out

The Chapter 11 professional fee carve-out was determined based on the settlement agreement between the Official Committee of Unsecured Creditors (the “Committee”), the senior secured lender, and the Debtors and approved by the Court pursuant to the *Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing and Use Cash Collateral; (II) Granting Adequate Protection; (III) Granting Related Relief* [Docket No. 226]. It includes professional fees through the anticipated Effective Date, which is estimated to occur at the end of February.

11. United States Trustee Fee

The United States Trustee fee is based on 0.8% of the total estimated distribution up to and including the Effective Date.

12. Other Administrative Claims

We have reserved a higher Other Administrative Claims for Chapter 7 trust (\$350,000) vs. Chapter 11 plan (\$200,000) as there are more uncertainties with a new trustee and professionals that will be unfamiliar with the case.

13. Liquidation Trust Settlement Funding

Liquidation Trust Settlement Funding is based on a settlement reached between the Debtors, the senior secured lender, and the Committee. It includes \$300,000 for unsecured creditors, \$300,000 for Liquidating Trust Funding, and \$550,000 for Administrative Contingency.

14. Secured Claims

The recovery amount for secured creditors in both Chapter 7 and Chapter 11 scenarios includes the \$13,000,000 payment by the Debtor to the senior secured lender after the closing of the sale to MegaGen.

15. Priority Claims

Priority claims are estimated based on the Debtors’ Schedules of Assets and Liabilities and filed proofs of claim, but the amount is subject to change. Payment of priority claims in Chapter 7 would require the senior secured lender’s consent.

16. Unsecured Claims

Based on the settlement between the Debtors, the senior secured lender, and the Committee, \$300,000 was reserved for distributions to unsecured creditors. In a Chapter 7 scenario, unsecured creditors will not receive the benefit of the settlement and the \$300,000.

Exhibit B

Form of Liquidation Trust Agreement

LIQUIDATION TRUST AGREEMENT

This Liquidation Trust Agreement, dated as of the date signed below (the "Trust Agreement"), is entered into by and among November 26, Inc. ("November 26" or "Debtor"), and Robert Michaelson, as Liquidation Trustee (the "Liquidation Trustee") of the November 26 Creditors Liquidation Trust (the "Liquidation Trust").

RECITALS

A. On October 1, 2024, the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. [D.I. 1]

B. On October 14, 2024, the United States Trustee ("UST") appointed the Committee ("Committee") of Unsecured Creditors [D.I. 84] (the "Appointment") pursuant to 11 U.S.C. §§ 1102(a)(1) and 1102(b)(1).

C. This Trust Agreement is being executed to establish and provide for the administration of the Liquidation Trust and the liquidation and distribution of Liquidation Trust Assets.

D. The Liquidation Trust is intended to qualify as a liquidating trust, within the meaning of Treasury Regulations Section 301.7701-4(d), to be treated as a "grantor trust" for federal income tax purposes, and to be exempt from the requirements of the Investment Company Act of 1940.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein, the parties hereto agree as follows:

DEFINITIONS.

Other than the terms defined below or elsewhere in this Trust Agreement, capitalized terms shall have the meaning assigned to them in the *Amended Combined Joint Chapter 11 Plan of Liquidation and Disclosure Statement of Biolase, Inc. and Its Debtor Affiliates* [D.I. 338] (as amended, modified, or supplemented from time to time, the "Combined Plan and Disclosure Statement").

"Books and Privileges" means, subject to Section 3(b) of Article I hereof, all books and records of Debtors, including, without limitation, all documents and communications of any kind, whether physical or electronic, rights to direct current or former agents, attorneys, advisors and other professionals of Debtors to deliver such documents or communications (whether written, electronic or oral).

"Creditor Cash" means, on any date, all Cash held by the Liquidation Trust (including any Cash received from Debtors on or about the Effective Date and any permissible investments), except Cash retained by the Liquidation Trust on account of the Liquidation Trust Administrative Reserves and Cash previously deposited into, and then being held in, the Disputed Claims Reserve.

“Disbursing Agent” means the Liquidation Trustee, or its successors, which shall make distributions pursuant to this Trust Agreement.

“Estimated Amount” means, with respect to a Disputed Claim, as of any relevant time, an amount equal to the lesser of (i) the amount of the Disputed Claim amount, (ii) the amount in which the Disputed Claim shall be estimated by the Bankruptcy Court pursuant to section 502 of the Bankruptcy Code for purposes of allowance, which amount, unless otherwise ordered by the Bankruptcy Court, shall constitute and represent the maximum amount in which such Claim may ultimately become an Allowed Claim or (iii) such other amount as may be agreed upon by the holder of such Disputed Claim and the Liquidation Trustee.

“Fiscal Year” means any fiscal year of the Liquidation Trust, as provided in Section 10 of Article I hereof.

“Initial Funding Amount” means a distribution of all Cash on hand, except Cash held in the Professional Fee Escrow Account for the benefit of Professional Fee Claims and the Remaining Professional Fee Escrow Amounts, which shall be paid to the Prepetition Lender, from Debtors to the Liquidation Trust on the Effective Date.

“Liquidation Trust Administrative Reserves” means Cash that is allocated and retained by the Liquidation Trust for the payment of: (i) fees and costs incurred in connection with the protection, preservation, liquidation and distribution of the Liquidation Trust Assets; (ii) the fees and costs incurred in connection with investigating, prosecuting and resolving the Disputed Claims and Retained Causes of Action; and (iii) fees and expenses (including, without limitation, any Taxes imposed on the Liquidation Trust or in respect of the Liquidation Trust Assets and fees of the United States Trustee) of the Liquidation Trustee Parties, and the Disbursing Agent. The Liquidation Trustee will initially fund the Liquidation Trust Administrative Reserves with \$300,000 of the Initial Funding Amount. Subsequently, the Liquidation Trust Administrative Reserves shall be funded by the Liquidation Trust Assets. Any amount remaining in the Liquidation Trust Administrative Reserves when the Liquidation Trust is wound down shall be distributed to Liquidation Trust Beneficiaries or otherwise distributed in accordance with the terms of this Trust Agreement.

“Liquidation Trust Assets” means, from and after the Effective Date, (a) Retained Causes of Action; (b) any other Claims and Causes of Action that are not Purchased Assets under the Sale Order; (c) any other remaining Assets of the Estates, but excluding the Remaining Professional Fee Escrow Amounts (if any); (d) the Interests in the Non-Debtor Affiliates; and (e) the proceeds of each of the foregoing.

“Liquidation Trust Board” shall have the meaning set forth in Section 1 of Article IV of this Trust Agreement.

“Liquidation Trust Beneficial Interest” means a non-transferable and non-assignable beneficial interest in the Liquidation Trust to be issued to each Liquidation Trust Beneficiary, which entitles its holder to receive distributions from the Liquidation Trust as set forth in this Trust Agreement.

“Liquidation Trust Beneficiary” means a holder of an Allowed Claim against any of the Debtors.

“Liquidation Trustee” means, Robert Michaelson, or his successor(s), as appointed in accordance with this Trust Agreement.

“Liquidation Trustee Parties” means the Liquidation Trustee, and the advisors, professionals and other agents of the Liquidation Trust or the Liquidation Trustee appointed or engaged in accordance with the provisions of this Trust Agreement.

“Miscellaneous Account” means a segregated interest-bearing account with a United States FDIC insured financial institution holding Cash that is allocated and retained by the Liquidation Trust on account of (a) conflicting claims subject to a Dispute Resolution and (b) Liquidation Trust Beneficial Interests of such Liquidation Trust Beneficiaries that have not provided the Liquidation Trustee with requisite information required under Sections 3 and 7 of Article II and Section 5 of Article III.

“Pro Rata Share” means, with respect to a Claim in a particular class, as of a particular date, the ratio (expressed as a percentage) of the amount of that particular Claim to the sum of the aggregate amount of all Allowed Claims and Disputed Claims in the same class that are accounted for in the Disputed Claims Reserve.

“Retained Causes of Action” means, collectively, all of the Debtors’ Causes of Action which do not constitute Purchased Assets under the asset purchase agreement between the Debtors and MegaGen Implant Co., Ltd. [D.I. 272], including the Avoidance Actions; *provided, however*, that the Retained Causes of Action shall not include any Prepetition Employee Payments Avoidance Actions.

ARTICLE I.

CREATION OF LIQUIDATION TRUST

1. **Creation of Trust.** The Liquidation Trust shall be deemed to have been created by Debtors and the Liquidation Trustee effective on the Effective Date. The Liquidation Trust shall bear the name “November 26 Creditors Liquidation Trust” and the Liquidation Trustee may, in connection with the exercise of its powers and duties hereunder, either use this name or such variation thereof as the Liquidation Trustee sees fit; provided, however, that in no circumstance shall the Liquidation Trustee be the representative of the Debtors and the Liquidation Trustee shall use his best efforts to conspicuously show that the Liquidation Trustee represents the Liquidation Trust, which should not be confused with the Debtors.

2. **Purpose of Liquidation Trust.**

a. The Liquidation Trust shall be established for the sole purpose of liquidating and distributing the Liquidation Trust Assets in accordance with Treasury Regulations Section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

b. This Trust Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. The Liquidation Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall the Liquidation Trustee or the Liquidation Trust Beneficiaries, for any purpose be, or be deemed to be or be treated in any way whatsoever, liable or responsible hereunder as partners or joint venturers. The relationship of the Liquidation Trust Beneficiaries to the Liquidation Trustee shall be solely that of beneficiaries of a trust and shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Trust Agreement.

c. Under no circumstance shall the Liquidation Trustee be authorized or contend it is authorized to incur liability on behalf of the Debtors' Estates, and any and all liability incurred by the Liquidation Trustee, whether for expenses of prosecution, payment of sanctions, or otherwise shall be the exclusive liability of the Liquidation Trust and not the liability of the Debtors' Estates. For the avoidance of doubt, in no event shall the Liquidation Trust be entitled to additional Cash, assets or other rights from the Debtors beyond the Liquidation Trust Assets and such other rights and payments provided for in the Combined Plan and Disclosure Statement and the Confirmation Order, if any.

3. Transfer of Liquidation Trust Assets.

On the Effective Date, the Debtors shall transfer all of the Liquidation Trust Assets to the Liquidation Trust for the benefit of the Liquidation Trust Beneficiaries and, free and clear of any and all liens, claims, encumbrances and interests (legal, beneficial or otherwise) of all other persons and entities to the maximum extent contemplated by and permissible under section 1141 of the Bankruptcy Code. Such transfers shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use or other similar tax pursuant to section 1146 of the Bankruptcy Code. For the avoidance of doubt, the Liquidation Trust Assets shall be deemed to have vested in the Liquidation Trust on the Effective Date. Other than the Initial Funding Amount in the Combined Plan and Disclosure Statement and this Liquidation Trust Agreement, none of the Debtors shall be obligated to provide any additional funding to the Liquidation Trust.

a. Upon specific request of the Liquidation Trustee and within a reasonable period of time, the Debtors shall deliver or cause to be delivered to the Liquidation Trust any and all Books and Privileges that relate primarily to or that may be reasonably required in connection with the Liquidation Trust Assets whether held by the Debtors, their agents, representatives, including the Debtors' advisors, attorneys, accountants and any other professional hired by the Debtors and provide access to such employees, agents, representatives, including the Debtors' advisors, attorneys, accountants or any other Debtors professionals with knowledge of matters relevant to the Liquidation Trust Assets. Notwithstanding anything herein to the contrary:

i. The Debtors shall be entitled to appropriate confidentiality protections for any and all proprietary data requested by the Liquidation Trustee, as applicable, including but not limited to a protective order.

ii. To the extent, if any, that the Liquidation Trustee requests data consisting of privileged material or attorneys' work product, such data will be produced to the Liquidation

Trustee, as applicable, unless the Debtors reasonably assert that production of such data would impair an applicable privilege.

iii. The Liquidation Trustee shall have no power over the books and records of the Debtors beyond the rights granted herein.

b. The Debtors and the Liquidation Trustee (on behalf of the Liquidation Trust), as successor in interest to the Debtors' Estates, may (i) execute and deliver any instruments, documents, books, and records (including those maintained in electronic format and original documents as may be needed), and (ii) take, or cause to be taken, all such further action in order to evidence, vest, perfect or effectuate the transfer of the Liquidation Trust Assets to the Liquidation Trust and consummate transactions contemplated by and to otherwise carry out the intent of the Liquidation Trust and the Combined Plan and Disclosure Statement.

4. Title to Liquidation Trust Assets. Upon the transfer of the Liquidation Trust Assets, the Liquidation Trust shall succeed to all of the Debtors' right, title and interest in the Liquidation Trust Assets, and the Debtors will have no further rights or interest in or with respect to the Liquidation Trust Assets or the Liquidation Trust.

5. Agents and Professionals; Employees. The Liquidation Trust may employ such counsel (which may be the same counsel employed by the Debtors, Creditors' Committee or any member thereof), advisors (which may be the same advisors formerly employed by the Debtors, the Creditors' Committee or any member thereof) and other professionals (hereinafter, individually referred to as a "Professional" and collectively as "Professionals") selected by the Liquidation Trustee that the Liquidation Trust reasonably requires to perform its responsibilities without further order from the Bankruptcy Court.

a. The Liquidation Trust's Professionals, including its Disbursing Agent, shall be compensated on such basis as agreed to by the Liquidation Trustee and paid upon seven (7) calendar days' notice to the Liquidation Trustee without further motion, application, notice or other order of the Bankruptcy Court. The Liquidation Trust's Disbursing Agent and Professionals shall be compensated from the Liquidation Trust Administrative Reserves.

b. Without limiting the Liquidation Trustee's discretion to agree to alternate arrangements for compensation, the Liquidation Trustee/Disbursing Agent may be paid the greater of: (1) its hourly rate multiplied by the number of hours worked on behalf of the Liquidation Trust or (2) 3% of the total recovery from Retained Causes of Action. Professionals who pursue claims objections may be paid on an hourly basis and Professionals who pursue Retained Causes of Action may be paid either entirely on contingency or on a blended hourly and contingency arrangement.

c. Any Professional seeking compensation of post-Effective Date fees and expenses shall submit to the Liquidation Trustee a billing statement which shall include documentation of the fees and expenses sought. If the Liquidation Trustee fails to object to any such billing statement within seven (7) calendar days from service of such billing statement, the fees and expenses requested thereby shall be deemed allowed and the Professional or the Liquidation Trustee shall thereafter be immediately entitled to the compensation requested thereby and the Liquidation

Trustee shall forthwith pay such compensation to the Professional or to himself if adequate funds are present in the Liquidation Trust Administrative Reserves. If adequate funds are not then present, the Liquidation Trustee shall pay such compensation to the Professional or to himself when adequate funds become available in the Liquidation Trust Administrative Reserves. If an objection to the Professional's or Liquidation Trustee's billing statement is timely served by any such party and no consensual resolution can be reached the Professional or the Liquidation Trustee may ask the Bankruptcy Court to resolve the dispute.

7. Status of Liquidation Trust and Liquidation Trustee. The Liquidation Trust will be the successor-in-interest to the Debtors with respect to any Avoidance Action constituting Liquidation Trust Assets that was or could have been commenced by the Debtor prior to the Effective Date and shall be deemed substituted for the same as the party in any such litigation or objection. The Liquidation Trustee (on behalf of the Liquidation Trust) will be the representative of the Estate as that term is used in Section 1123(b)(3)(B) of the Bankruptcy Code and will have the rights and powers provided in the Bankruptcy Code. All Retained Causes of Action constituting Liquidation Trust Assets are preserved and retained and may be enforced by the Liquidation Trustee on behalf of the Estate pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The Liquidation Trustee shall have sole responsibility for the prosecution and resolution of objections to unsecured claims and shall have the sole ability and authority to enter into settlement of any such claim objection on any terms that the Liquidation Trustee shall deem reasonable.

8. Distribution of Remaining Assets. To the extent that after satisfaction in full of all of the costs and expenses of the administration of the Liquidation Trust, after all Claims have been either Allowed or disallowed, after all Allowed Claims have been paid pursuant to the Combined Plan and Disclosure Statement, the Confirmation Order, and this Trust Agreement, after satisfaction of all other obligations or liabilities of the Liquidation Trust incurred or assumed in accordance with this Trust Agreement, and after the affairs of the Liquidation Trust have been finally wound up and concluded, there shall remain any Liquidation Trust Assets, the Liquidation Trustee shall donate such Liquidation Trust Assets to a charitable organization of the Liquidation Trustee's choice described in section 501(c)(3) of the Tax Code and exempt from U.S. federal income tax under section 501(a) of the Tax Code, as provided in Section 9(b) of Article I. To the extent such remaining Liquidation Trust Assets are not Cash, they shall be returned to the Debtors.

9. Fiscal Year. Except for the first and last years of the Liquidation Trust, the Fiscal Year of the Liquidation Trust shall be the calendar year. For the first and last years of the Liquidation Trust, the Fiscal Year of the Liquidation Trust shall be such portion of the calendar year that the Liquidation Trust is in existence.

10. Costs and Expenses of the Liquidation Trust. On the Effective Date, Debtors shall fund the Liquidation Trust with the Liquidation Trust Assets, consisting of a one-time distribution of the Initial Funding Amount. Except for this agreed upon disbursement, administrative costs shall be solely the liabilities of the Liquidation Trust and not the Debtors or any other entity. Except as otherwise provided in the Combined Plan and Disclosure Statement, Confirmation Order, and this Trust Agreement, the Debtors shall have no liability to the Liquidation Trust Beneficiaries, the Liquidation Trustee, the Liquidation Trustee Parties, the Liquidation Trust Board or any other person or entity for any other expenses or liabilities of the Liquidation Trust.

11. Books and Records

a. The Liquidation Trustee shall maintain in respect of the Liquidation Trust, the Liquidation Trust Assets and the Liquidation Trust Beneficial Interests books and records for the period commencing on the date hereof through the termination of the Liquidation Trust, containing such information and in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof and to comply with applicable provisions of law. Such books and records shall be maintained on a modified cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting requirements of the Liquidation Trust.

b. The Liquidation Trustee is authorized without further application to the Bankruptcy Court or notice to any party, to destroy books and records (whether in electronic or paper format) in accordance with Section 3 of Article IX.

ARTICLE II.
LIQUIDATION TRUST BENEFICIARIES

1. Receipt of Liquidation Trust Beneficial Interests; Incidents of Ownership. On the Effective Date, each holder of an Allowed Claim as of the Effective Date shall receive a Liquidation Trust Beneficial Interest in the Liquidation Trust. The holders of Disputed Claims on the Effective Date that subsequently become Allowed Claims, in whole or in part, shall receive a Liquidation Trust Beneficial Interest in the Liquidation Trust at such time as, and to the extent, such Disputed Claims become Allowed. The Liquidation Trust Beneficiaries shall be the sole beneficiaries of the Liquidation Trust and the Liquidation Trust Assets, and the Liquidation Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized in this Trust Agreement, including, but not limited to, those powers set forth in Section 4 of Article V hereof.

2. Evidence of Liquidation Trust Beneficial Interest. Ownership of a Liquidation Trust Beneficial Interest shall be evidenced by appropriate notation on the books and records maintained for that purpose by the Liquidation Trust or an agent of the Liquidation Trust, but shall otherwise be uncertificated. Such notation shall be conclusive absent manifest error, and the Liquidation Trust and the Liquidation Trustee shall treat each person whose name is recorded on the books and records of the Liquidation Trust as aforesaid as the owner of the Liquidation Trust Beneficial Interest indicated therein for all purposes of this Trust Agreement, notwithstanding notice to the contrary. The notation shall be in such form as the Liquidation Trustee shall determine, but shall be commensurate with the amount of the Allowed Claim of the respective Liquidation Trust Beneficiaries and shall readily permit calculation of the Pro Rata Share of each such Liquidation Trust Beneficiary. A Liquidation Trust Beneficiary shall be deemed the “holder of record” of such beneficiary’s Liquidation Trust Beneficial Interest(s) for purposes of all applicable laws, rules and regulations. The Liquidation Trustee shall, upon the written request of a Liquidation Trust Beneficiary, provide reasonably adequate documentary evidence of such beneficiary’s Liquidation Trust Beneficial Interest. The expense of providing such documentation shall be borne by the requesting Liquidation Trust Beneficiary.

3. Nontransferability of the Liquidation Trust Beneficial Interests. Liquidation Trust Beneficial Interests shall not be transferable or assignable except by will, intestate succession or operation of law; provided, that any transfer or assignment of a Liquidation Trust Beneficial Interest by will, intestate succession or operation of law shall not be effective unless and until such transfer or assignment is recorded on the books and records of the Liquidation Trust maintained for that purpose, as provided in Section 2 of this Article II. Notwithstanding any other provision to the contrary, the Liquidation Trustee may disregard any purported transfer or assignment of Liquidation Trust Beneficial Interests by will, intestate succession or operation of law if necessary information (as reasonably determined by the Liquidation Trustee), including applicable Tax-related information, is not provided by such purported transferee or assignee to the Liquidation Trustee. Until such information is provided, any amounts that would have been distributed to the previous Liquidation Trust Beneficiaries shall be contributed to the Miscellaneous Account pending the Liquidation Trustee's receipt of the requisite information from the transferee; provided that, if the transferee fails to comply with such a request within ninety (90) days, such distribution shall be deemed an undelivered distribution; and provided further that, if the Liquidation Trustee fails to withhold in respect of amounts received or distributable with respect to any such holder-transferee and the Liquidation Trustee is later held liable for the amount of such withholding, such holder-transferee shall reimburse the Liquidation Trustee for such liability.

4. Liquidation Trust Beneficial Interests Not Securities. The Liquidation Trust Beneficial Interests shall not constitute "securities" and shall not be registered pursuant to the Securities Act of 1933, as amended, or any state securities law. However, if it should be determined that the Liquidation Trust Beneficial Interests constitute "securities," the exemption provisions of section 1145 of the Bankruptcy Code shall apply to the Liquidation Trust Beneficial Interests.

5. Rights of Liquidation Trust Beneficiaries. Each Liquidation Trust Beneficiary shall be entitled to participate in the rights and benefits due to a Liquidation Trust Beneficiary hereunder on account of its Liquidation Trust Beneficial Interest. Each Liquidation Trust Beneficiary shall take and hold the same. The interest of a Liquidation Trust Beneficiary is hereby declared and shall be, in all respects, personal property.

6. Interest Beneficial Only. Except as expressly provided hereunder, a Liquidation Trust Beneficiary shall have no title to, right to, possession of, management of or control of the Liquidation Trust or the Liquidation Trust Assets. The ownership of a Liquidation Trust Beneficial Interest in the Liquidation Trust shall not entitle any Liquidation Trust Beneficiary to any title in or to the Liquidation Trust Assets or to any right to call for a partition or division of such assets or to require an accounting, except as specifically provided herein.

7. Conflicting Claims. If any conflicting claims or demands are made or asserted with respect to a Liquidation Trust Beneficial Interest, the Liquidation Trustee shall be entitled, at its sole election, to refuse to comply with any such conflicting claims or demands. In so refusing, the Liquidation Trustee may elect to make no payment or distribution with respect to the Liquidation Trust Beneficial Interest at issue, or any part thereof, until such conflict is resolved in accordance with this Section 7, and the Liquidation Trustee shall refer such conflicting claims or demands to the Bankruptcy Court, which shall have exclusive jurisdiction over resolution of such conflicting claims or demands or its refusal to make a payment or distribution with respect to the Liquidation

Trust Beneficial Interest at issue. The Liquidation Trustee shall not be or become liable to any party for its refusal to comply with any of such conflicting claims or demands. The Liquidation Trustee shall be entitled to refuse to act until either (a) the rights of the adverse claimants have been adjudicated by a Final Order of the Bankruptcy Court (or such other court of proper jurisdiction) or (b) all differences have been resolved by a written agreement among all of such parties and the Liquidation Trustee, which agreement shall include a complete release of the Liquidation Trust and the Liquidation Trustee (the occurrence of either (a) or (b) being referred to as a “Dispute Resolution” in this Section 7). Until a Dispute Resolution is reached with respect to such conflicting claims or demands, the Liquidation Trustee shall hold in the Miscellaneous Account any payments or distributions from the Liquidation Trust to be made with respect to the Liquidation Trust Beneficial Interest at issue. Promptly after a Dispute Resolution is reached, the Liquidation Trustee shall transfer the payments and distributions, if any, held in the Miscellaneous Account, together with any interest and income generated thereon, in accordance with the terms of such Dispute Resolution.

8. Liability to Third Persons. No Liquidation Trust Beneficiary shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Liquidation Trust Assets or the affairs of the Liquidation Trustee.

ARTICLE III.

DISTRIBUTIONS OF LIQUIDATION TRUST ASSETS

1. Distributions. All distributions to be made under this Trust Agreement to Beneficiaries shall be made in accordance with the Combined Plan and Disclosure Statement (the “Distributions”), the relevant provisions of which are incorporated herein by this reference.

a. Future Cash collected from the resolution of Disputed Claims and/or Avoidance Actions that is not otherwise allocated under this Liquidation Trust Agreement shall be distributed by the Liquidation Trustee, in its reasonable business judgment, first to pay for administrative expenses of the Liquidation Trust. Any remainder shall be distributed to holders of Liquidation Trust Beneficial Interests in accordance with the Combined Plan and Disclosure Statement.

b. From and after the Effective Date, and until such time as all Disputed Claims have been compromised and settled or determined by Final Order of the Bankruptcy Court, the Liquidation Trustee shall retain for the benefit of each holder of a Disputed Claim, Liquidation Trust Beneficial Interests (and the Cash attributable thereto), in an amount equal to the Estimated Amount. Any Cash retained and held for the benefit of a holder of a Disputed Claim shall be treated as a payment and reduction on account of such Disputed Claim for purposes of computing any additional amounts to be paid in Cash in the event the Disputed Claim ultimately becomes an Allowed Claim. The Disputed Claims Reserve shall be either (x) held by the Liquidation Trustee, in an interest-bearing account with a United States FDIC insured financial institution or (y) invested in interest-bearing obligations issued by the United States Government, or by an agency of the United States Government and guaranteed by the United States Government, and having (in either case) a maturity of not more than thirty (30) days, for the benefit of such holders pending

determination of their entitlement thereto. No payments or distributions shall be made with respect to all or any portion of any Disputed Claim pending the entire resolution thereof by Final Order.

c. At such time as a Disputed Claim becomes, in whole or in part, an Allowed Claim, the Liquidation Trustee shall distribute to the holder thereof the distributions, if any, to which such holder is then entitled under this trust, together with any interest that has accrued on the amount of Cash, but only to the extent that such interest is attributable to the amount of the Allowed Claim. Such distribution, if any, shall be made as soon as practicable after an order or judgment of the Bankruptcy Court is entered allowing such Disputed Claim becomes a Final Order but in no event more than sixty (60) days thereafter (net of any expenses, including any taxes imposed on or with respect to the Disputed Claims Reserve relating to such Claim).

2. Minimum Cash Distributions. The Disbursing Agent shall not be required to make any Distribution (other than the final) of Cash less than \$100 to any holder of an Allowed Claim; provided, however, that if any distribution is not made pursuant to this Section 2, such distribution shall be added to any subsequent distribution to be made on behalf of the holder's Allowed Claim. The Disbursing Agent shall not be required to make any final distribution of Cash less than \$50 to any holder of an Allowed Claim. If either (a) all Allowed Claims (other than those whose distributions are deemed undeliverable under Section 4 of this Article III) have been paid in full or (b) the amount of any final distribution to any holder of Allowed Claims would be \$50 or less, then no further distribution shall be made by the Disbursing Agent and any surplus Cash remaining in the Liquidation Trust shall be donated and distributed to an organization, selected by the Liquidation Trustee, described in section 501(c)(3) of the Tax Code and exempt from U.S. federal income tax under section 501 (a) of the Tax Code that is unrelated to the Debtors, the Liquidation Trustee or any member of the Liquidation Trust Board. The Liquidation Trustee shall file a notice with the Bankruptcy Court of the amount and recipient of any such donation.

3. Delivery of Distributions. Subject to Bankruptcy Rule 9010, and except as provided in this Section 3, all distributions to any holder of an Allowed Claim shall be made at the address of such holder (a) as set forth on the Schedules filed with the Bankruptcy Court, or (b) on the books and records of the Debtors or its agents, as applicable, unless the Debtors or the Liquidation Trustee has been notified in writing of a change of address, including, without limitation, by the filing of a proof of Claim by such holder that contains an address for such holder different than the address of such holder as set forth on the Schedules.

4. Undeliverable and Unclaimed Distributions. In the event that any distribution to any holder of an Allowed Claim is returned as undeliverable, the Disbursing Agent shall use commercially reasonable efforts to determine the current address of each holder, but no distribution to such holder shall be made unless and until the Disbursing Agent has taken reasonable steps to determine the then current address of such holder; provided, however, that all distributions made pursuant to this Trust Agreement that are unclaimed for a period of ninety (90) days after distribution thereof shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and revested in the Liquidation Trust and any entitlement of any holder of any Claims to such distributions shall be extinguished and forever barred. The Liquidation Trustee shall have no further obligation to make any distribution to the holder of such Claim on account of such Claim, and any entitlement of any holder of such Claim to any such distributions shall be extinguished and forever barred; provided, however, that the holder of such Claim may receive future distributions

on account of such Claim in the Liquidation Trustee's reasonable discretion by contacting the Liquidation Trustee at some point prior to the final distribution from the Liquidation Trust. For the avoidance of doubt, the Disbursing Agent shall not be required to retain an outside investigator to determine the current address of any holders of an Allowed Claim whose distribution is returned as undeliverable.

5. Withholding and Reporting Requirements. The Liquidation Trustee may, but is not directed to, withhold and pay to the appropriate Tax Authority all amounts required to be withheld pursuant to the Tax Code or any provision of any foreign, state or local tax law with respect to any payment or distribution to the Liquidation Trust Beneficiaries. All such amounts withheld and paid to the appropriate Tax Authority (or placed in escrow pending resolution of the need to withhold) shall be treated as amounts distributed to such holders for all purposes of this Trust Agreement. The Liquidation Trustee shall be authorized to collect such tax information from the Liquidation Trust Beneficiaries (including social security numbers or other tax identification numbers) as it in its sole discretion deems necessary to effectuate this Trust Agreement. To receive distributions under this trust, all Liquidation Trust Beneficiaries shall be required to identify themselves to the Liquidation Trustee and provide tax information and the specifics of their holdings, to the extent the Liquidation Trustee deems appropriate (including completing the appropriate Form W-8 or Form W-9, as applicable to each holder). The Liquidation Trustee may refuse to make a distribution to any Liquidation Trust Beneficiary that fails to furnish such information in a timely fashion, until such information is delivered; provided, however, that, upon the delivery of such information by a Liquidation Trust Beneficiary, the Liquidation Trustee shall make such distribution to which the Liquidation Trust Beneficiary is entitled, without interest; and provided further that, if the holder fails to comply with such a request within ninety (90) days, such distribution shall be deemed an undeliverable distribution hereunder; and provided further that, if the Liquidation Trustee fails to withhold in respect of amounts received or distributable with respect to any such holder and the Liquidation Trustee is later held liable for the amount of such withholding, such holder shall reimburse the Liquidation Trustee for such liability. Notwithstanding the foregoing, each holder of an Allowed Claim that receives a distribution under the trust shall have the sole and exclusive responsibility for any taxes imposed by any governmental unit, including income, withholding and other taxes, on account of such distribution.

ARTICLE IV.

LIQUIDATION TRUST BOARD

1. Membership.

a. There shall be a Liquidation Trust Board comprised of: Ultradent Products, Inc.; Vantron Technology, Inc.; and Axian Technology, Inc. The parties agree that no member of the Liquidation Trust Board shall be entitled to receive any proprietary information concerning the Debtors and such information shall be viewed solely by the Liquidation Trustee. Except as set forth herein to the contrary, no member of the Liquidation Trust Board nor any professional engaged by the Liquidation Trust Board or any member thereof shall be entitled to any compensation whatsoever for service on the Liquidation Trust Board or services rendered to the Liquidation Trust Board or any member thereof.

2. Authority.

a. The sole responsibility of the Liquidation Trust Board shall be to select a successor Liquidation Trustee in the event of the death, incapacity, or resignation of the Liquidation Trustee named in this Trust Agreement.

b. In all circumstances, the Liquidation Trustee and the Liquidation Trust Board shall comply with all applicable laws and shall otherwise act in their business judgment in the best interests of all Liquidation Trust Beneficiaries and in furtherance of the purpose of this Liquidation Trust.

3. Liability to Third Persons. The members of the Liquidation Trust Board shall not be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Liquidation Trust Assets or the affairs of the Liquidation Trust, and all persons claiming against members of the Liquidation Trust Board, or otherwise asserting claims of any nature in connection with affairs of the Liquidation Trust, shall look solely to the Liquidation Trust Assets for satisfaction of any such claims, except where any Liquidation Trust Board party is found pursuant to a Final Order to have acted with gross negligence, fraud or reckless or willful misconduct. The fact, in and of itself, that a member of the Liquidation Trust Board receives a distribution of Liquidation Trust Assets shall not constitute a violation of the Board member's duties under this Liquidation Trust Agreement, federal law, or state law, including without limitation the Delaware Trust Code.

4. Nonliability of Liquidation Trust Board for Acts of Others. Nothing contained in this Trust shall be deemed to be an assumption by the members of the Liquidation Trust Board of any of the liabilities, obligations or duties of the Debtors or shall be deemed to be or contain a covenant or agreement by the members of the Liquidation Trust Board to assume or accept any such liability, obligation or duty.

ARTICLE V.
THE LIQUIDATION TRUSTEE

1. Appointment and Acceptance of Liquidation Trustee. The Liquidation Trustee is hereby appointed a trustee of the Liquidation Trust under the Trust Act and, as necessary or applicable, shall be deemed appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The Liquidation Trustee hereby accepts such appointment, including the trusteeship of the Liquidation Trust created by this Trust Agreement, and the grant, assignment, transfer, conveyance and delivery to the Liquidation Trustee, on behalf, and for the benefit, of the Liquidation Trust Beneficiaries, by the Debtors of all of its respective right, title and interest in the Liquidation Trust Assets, upon and subject to the terms and conditions set forth herein. The Liquidation Trustee may resign and shall be subject to removal and replacement in accordance with Article VI.

2. Fiduciary Duty and Standard of Care.

a. The Liquidation Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purpose of the Liquidation Trust, the Combined Plan

and Disclosure Statement, and in accordance with applicable law. The Liquidation Trustee shall have the authority to bind the Liquidation Trust within the limitations set forth herein, but shall for all purposes hereunder be acting in the capacity as Liquidation Trustee, and not individually.

b. The Liquidation Trustee shall exercise such rights and powers vested in it by this trust agreement and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of its own affairs, in accordance with the applicable law. No provision of this Trust Agreement shall be construed to relieve the Liquidation Trustee from liability for its own gross negligence, fraud or reckless or willful misconduct, except that the Liquidation Trustee shall not be liable for any action taken in good faith in reliance upon the advice of professionals retained by the Liquidation Trustee in accordance with this Trust Agreement.

3. Bond. The Liquidation Trustee, as applicable, shall not be required to give any bond or surety or other security for the performance of their respective duties unless otherwise ordered by the Bankruptcy Court. Provided, however, the Liquidation Trustee may obtain a bond in his sole discretion which may be paid with Cash from the Liquidation Trust.

4. Powers of the Liquidation Trustee.

a. As more specifically provided below, the Liquidation Trustee shall have the responsibility for administering the Liquidation Trust, maintaining the Liquidation Trust Administrative Reserve and the Disputed Claims Reserve, objecting to, settling or otherwise resolving the Disputed Claims, liquidating the Liquidation Trust Assets and making distributions under this Trust Agreement.

b. The Liquidation Trustee shall have only such rights, powers and privileges expressly set forth in this Trust Agreement, the Combined Plan and Disclosure Statement, the Confirmation Order, and as otherwise provided by applicable law or as incidental to the powers conferred on the Liquidation Trustee herein and therein. Subject to the other provisions herein, the Liquidation Trustee shall be expressly authorized and required to undertake the following actions, in the Liquidation Trustee's good faith judgment, in the best interests of the Liquidation Trust Beneficiaries and to maximize net recoveries therefor:

i. to make all Distributions to the Liquidation Trust Beneficiaries on account of Allowed Claims as provided for in the Combined Plan and Disclosure Statement, the Confirmation Order, and this Trust Agreement;

ii. to dispose of the Liquidation Trust Assets, including the Retained Causes Action included therein;

iii. to hold the Liquidation Trust Assets for the benefit of the Liquidation Trust Beneficiaries, whether such beneficiaries' Claims are Allowed on or after the Effective Date;

iv. to establish and maintain the Liquidation Trust Administrative Reserve;

v. to administer the Disputed Claims Reserve, including the issuance of Liquidation Trust Beneficial Interests and distribution of Cash to holders of Disputed Claims

that become Allowed Claims after the Effective Date;

vi. the exclusive right to settle or otherwise resolve Disputed Claims inaccordance with the terms of this Trust Agreement, the Combined Plan and Disclosure Statement and the Confirmation Order;

vii. in the Liquidation Trustee’s reasonable business judgment to investigate, prosecute, settle, liquidate, dispose of, and/or abandon the Liquidation Trust Assets, including the Retained Causes of Action;

viii. to monitor and enforce the implementation of this Trust Agreement insofar as relating to the Liquidation Trust Assets;

ix. to file all tax and regulatory forms, returns, reports and other documents and financial information required with respect to the Liquidation Trust;

ix. in the Liquidation Trustee’s reasonable business judgment, to reconcile, object to, and resolve the Disputed Claims or other Claims against the Liquidation Trust;

x. to hold, manage, and distribute Cash or non-Cash Liquidation Trust Assets obtained through the exercise of its power and authority;

xi. to maintain and dispose of the books and records transferred to the Liquidation Trustee in a manner deemed appropriate by the Liquidation Trustee, as provided in Section 12 of Article I and Section 3 of Article IX—subject to the Debtors' ability to request and receive the return of their records;

xii. to enter into and exercise rights under contracts that are necessary or desirable to the administration of the Liquidation Trust and execute any documents or pleadings related to the liquidation of the Liquidation Trust Assets or other matters related to the Liquidation Trust;

xiii. to establish and maintain bank accounts and terminate such accounts;

xiv. to obtain and maintain insurance coverage with respect to the liabilities and obligations of the Liquidation Trustee in accordance with the Trust Agreement;

xv. to take all actions necessary and appropriate to minimize any adverse tax consequences to the Liquidation Trust Beneficiaries; provided, that such actions do not result in an adverse tax consequence to the Liquidation Trust and are consistent with and are not contrary to the treatment of the Liquidation Trust as a “grantor trust” for United States federal income tax purposes;

xvi. to bring suits or defend itself against such suits, if any, as the Liquidation Trustee determines in connection with any matter solely to the extent arising from the rights, powers or obligations granted to the Liquidation Trust or Liquidation Trustee under this Trust Agreement;

xvii. to take such other and further actions as are not inconsistent with this Trust Agreement; and

xviii. to take such other and further actions in furtherance of the purposes of the Combined Plan and Disclosure Statement in respect of the Debtors and their Estates as are not inconsistent with this Trust Agreement.

5. Investment of Liquidation Trust Assets. The Liquidation Trustee may invest Liquidation Trust Assets (including any earnings thereon or proceeds therefrom) in any manner permitted to be made by a Liquidation Trust within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable Internal Revenue Service guidelines, rulings, or other controlling authorities.

6. Limitations on Actions of Liquidation Trustee. No part of the Liquidation Trust Assets shall be used or disposed of by the Liquidation Trustee in furtherance of any trade or business. The Liquidation Trustee shall, on behalf of the Liquidation Trust, hold the Liquidation Trust out as a trust in the process of liquidation and not as an investment company. The Liquidation Trustee shall not engage in any investments or activities inconsistent with the treatment of the Liquidation Trust as a liquidating trust within the meaning of Treasury Regulations Section 301.7701-4(d). The Liquidation Trustee shall be restricted to the liquidation of the Liquidation Trust Assets on behalf, and for the benefit, of the Liquidation Trust Beneficiaries; the distribution and application of Liquidation Trust Assets for the purposes set forth in this Trust Agreement; and the conservation and protection of the Liquidation Trust Assets and the administration thereof in accordance with the Combined Plan and Disclosure Statement.

7. Settlement of Disputed Claims. The Liquidation Trustee shall have the authority, subject to and in accordance with the terms of the Combined Plan and Disclosure Statement and Confirmation Order, to settle all Claims that are Disputed Claims without further Bankruptcy Court order. If the Liquidation Trustee and the holder of a Disputed Claim are unable to reach a settlement on such Disputed Claim, such Disputed Claim shall be submitted to the Bankruptcy Court for resolution. If it is determined that the Bankruptcy Court does not have jurisdiction to resolve any Claim that is a Disputed Claim, then such Disputed Claim shall be submitted to the United States District Court for the District of Delaware for resolution.

8. Establishment of Reserves.

a. Disputed Claims Reserves. On the Effective Date, the Liquidation Trustee shall establish the Disputed Claims Reserve, which shall be maintained in an interest-bearing account with a United States FDIC insured financial institution. On the Effective Date and from time to time thereafter, the Liquidation Trustee shall deposit a Pro Rata Share of Available Cash to be retained by the Liquidation Trust in respect of the Pro Rata Share of the Estimated Amount of Disputed Claims. For the avoidance of doubt, Cash held in the Disputed Claims Reserve may be held in a single account with the unreserved Cash portion of the Liquidation Trust Assets; provided, however, that the Liquidation Trustee reserves the appropriate amounts for the Disputed Claims Reserve (as provided in this Trust Agreement) within such account. Cash in the Disputed Claims Reserve shall be distributed in accordance with Section 2 of Article III.

b. Liquidation Trust Administrative Reserves. The Liquidation Trustee shall have the authority to establish, fund, and maintain the Liquidation Trust Administrative Reserves in amounts necessary to satisfy the obligations for which the Liquidation Trust Administrative Reserves are maintained. The Liquidation Trust Administrative Reserves shall be maintained in an interest-bearing account with a United States FDIC insured financial institution.

9. Reporting Requirements.

a. The Liquidation Trustee shall make available to the Liquidation Trust Beneficiaries on a quarterly basis, upon request and by such means as the Liquidation Trustee may select, such information regarding the affairs of the Liquidation Trust during the most recent quarter, as the Liquidation Trustee shall deem appropriate.

b. The Liquidation Trustee shall file a notice with the Bankruptcy Court and provide notice to each party entitled to receive a Liquidation Trust Beneficial Interest when the Liquidation Trust has been fully administered.

10. No Further Approvals Required. In performance of its duties hereunder, the Liquidation Trustee shall have the rights and powers of a debtor in possession under section 1107 of the Bankruptcy Code, and such other rights, powers, and duties necessary, appropriate, advisable or convenient to effectuate the provisions of this Trust Agreement. On and after the Effective Date, the Liquidation Trustee shall not be required to obtain any approvals from the Bankruptcy Court, any court or governmental body and/or provide any notices under any applicable laws to implement the terms of this Trust Agreement, including, without limitation, the sale, transfer, disposal or contribution of any Liquidation Trust Assets retained by the Liquidation Trust; the prosecution, settlement or abandonment of any Retained Cause of Action that is a Liquidation Trust Asset; and the negotiation, resolution or settlement of any Disputed Claims, in each case, other than as expressly required under this Trust Agreement.

11. Reliance by Liquidation Trustee. The Liquidation Trustee may rely, and shall be protected in acting, upon any resolution, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed by the Liquidation Trustee to be genuine and to have been signed or presented by the proper party or parties.

12. Liability to Third Persons. The Liquidation Trustee Parties shall not be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Liquidation Trust Assets or the affairs of the Liquidation Trust, and all persons claiming against the Liquidation Trustee Parties, or otherwise asserting claims of any nature in connection with affairs of the Liquidation Trust, shall look solely to the Liquidation Trust Assets for satisfaction of any such claims, except where a Liquidation Trustee Party is found pursuant to a Final Order to have acted with gross negligence, fraud or reckless or willful misconduct.

13. Nonliability of Liquidation Trustee for Acts of Others. Nothing contained herein shall be deemed to be an assumption by the Liquidation Trustee of any of the liabilities, obligations or duties of the Debtors and shall not be deemed to be or contain a covenant or agreement by the Liquidation Trustee to assume or accept any such liability, obligation or duty.

14. Compensation and Expenses. The Liquidation Trustee shall be entitled to compensation of \$10,000.00 per month, and shall be reimbursed for its out-of-pocket expenses incident to the performance of its duties under this Trust Agreement. The fees and expenses of the Liquidation Trustee shall be satisfied out of the Liquidation Trust Assets. The Liquidation Trustee shall be compensated under the terms provided herein without further motion, application, notice or other order of the Bankruptcy Court; provided however, that the Liquidation Trustee provide information regarding compensation as part of the quarterly reports as provided in Section 9(a) above.

15. Reliance on Professionals. The Liquidation Trustee shall be entitled to rely, in good faith, on the advice of its retained advisors and professionals regardless of whether such advice is provided in writing. Notwithstanding the foregoing, the Liquidation Trustee shall not be under any obligation to consult with its retained professionals, and its determination not to do so shall not result in the imposition of liability on the Liquidation Trustee, unless such determination is based on gross negligence, fraud or reckless or willful misconduct.

ARTICLE VI.

SUCCESSOR LIQUIDATION TRUSTEES

1. Resignation. The Liquidation Trustee may resign at any time upon not less than sixty (60) days' written notice to the Liquidation Trust Board; provided, that the Liquidation Trust Board may waive such notice requirement; and provided, further that such resignation shall not be effective until such time as a successor Liquidation Trustee has been appointed.

2. Effect of Resignation.

a. The resignation, death, incompetency, bankruptcy or insolvency of the Liquidation Trustee shall not operate to terminate the Liquidation Trust or to revoke any existing agency created pursuant to the terms of this Trust Agreement, or invalidate any action theretofore taken by the Liquidation Trustee. All fees and expenses incurred by the Liquidation Trustee prior to the resignation or incompetency of the Liquidation Trustee shall be paid in accordance with the Combined Plan and Disclosure Statement and the Liquidation Trust Administrative Reserve, unless such fees and expenses are disputed by the successor Liquidation Trustee, in which case the Bankruptcy Court shall resolve the dispute, and any disputed fees and expenses of the predecessor Liquidation Trustee that are subsequently allowed by the Bankruptcy Court shall be paid.

b. In the event of the resignation of the Liquidation Trustee, such Liquidation Trustee shall (i) promptly execute and deliver such documents, instruments and other writings as may be reasonably requested by the successor Liquidation Trustee or directed by the Bankruptcy Court to effect the termination of such Liquidation Trustee's capacity under this Trust Agreement; (ii) promptly deliver to the successor Liquidation Trustee all documents, instruments, records and other writings related to the Liquidation Trust as may be in the possession of such Liquidation Trustee; and (iii) otherwise assist and cooperate in effecting the assumption of its obligations and functions by such successor Liquidation Trustee.

3. Replacement. In the event that the Liquidation Trustee resigns, or in the event of the death of the Liquidation Trustee or other occurrence rendering the Liquidation Trustee incapacitated or unavailable for an extended period of thirty (30) or more consecutive days, a successor Liquidation Trustee shall be designated by consent of the Liquidation Trust Board. Notice of the appointment of a successor Liquidation Trustee shall be filed with the Bankruptcy Court promptly following such appointment.

4. Successor Liquidation Trustee. Any successor Liquidation Trustee appointed hereunder shall execute an instrument accepting its appointment and shall deliver one counterpart thereof to the Bankruptcy Court for filing and, in the case of the Liquidation Trustee's resignation, to the resigning Liquidation Trustee. Thereupon, such successor Liquidation Trustee shall, without any further act, become vested with all the liabilities, duties, powers, rights, title, discretion and privileges of its predecessor in the Liquidation Trust with like effect as if originally named Liquidation Trustee and shall be deemed appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The resigning or removed Liquidation Trustee shall duly assign, transfer and deliver to such successor Liquidation Trustee all property and money held by such resigning or removed Liquidation Trustee hereunder and shall, as directed by the Bankruptcy Court or reasonably requested by such successor Liquidation Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor Liquidation Trustee upon the trusts herein expressed all the liabilities, duties, powers, rights, title, discretion and privileges of such resigning or removed Liquidation Trustee.

5. Reliance Upon Representations of Predecessor Liquidation Trustee. Any successor Liquidation Trustee may accept and rely upon any accounting made by or on behalf of any predecessor Liquidation Trustee hereunder, and any statement or representation made as to the assets comprising the Liquidation Trust Assets or as to any other fact bearing upon the prior administration of the Liquidation Trust, so long as it has a good-faith basis to do so. The Liquidation Trustee shall not be liable for having accepted and relied in good faith upon any such accounting, statement or representation if it is later proved to be incomplete, inaccurate or untrue. Any successor Liquidation Trustee shall not be liable for any act or omission of any predecessor Liquidation Trustee, nor have a duty to enforce any claims against any predecessor Liquidation Trustee on account of any such act or omission.

ARTICLE VII.

TAX MATTERS

1. Tax Treatment.

a. For all U.S. federal income tax purposes, all parties (including, without limitation, the Debtors, Liquidation Trustee and the Liquidation Trust Beneficiaries) shall treat the transfer of the Liquidation Trust Assets to the Liquidation Trust as:

i. a transfer of the Liquidation Trust Assets (subject to any obligations relating to those assets) directly to Liquidation Trust Beneficiaries and, to the extent the Liquidation Trust Assets are allocable to Disputed Claims (based on such Claims' Pro Rata Share of such Liquidation Trust Assets) to the Disputed Claims Reserve, followed by

ii. the transfer by such Liquidation Trust Beneficiaries to the Liquidation Trust of the Liquidation Trust Assets (other than the Liquidation Trust Assets allocable to the Disputed Claims Reserve) in exchange for the Liquidation Trust Beneficial Interests.

b. Accordingly, those holders of Allowed Claims receiving Liquidation Trust Beneficial Interests shall be treated for U.S. federal income tax purposes as the grantors and owners of their respective share of the Liquidation Trust Assets (other than such Liquidation Trust Assets as are allocable to the Disputed Claims Reserve). The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

2. Tax Reporting.

a. The Liquidation Trustee shall file Tax Returns (including U.S. federal returns) for the Liquidation Trust treating the Liquidation Trust (other than with respect to the Liquidation Trust Assets allocable to the Disputed Claims Reserve) as a grantor trust pursuant to Treasury Regulations section 1.671-4(a) and in accordance with this Article VII. The Liquidation Trustee shall also annually send (or otherwise make available) to each holder of a Liquidation Trust Beneficial Interest a statement setting forth the holder's share of items of income, gain, loss, deduction or credit and will instruct all such holders to report such items on their U.S. federal income tax returns or to forward the appropriate information to their respective beneficial holders with instructions to report such items on their U.S. federal income tax returns. The Liquidation Trustee shall also file (or cause to be filed) any other statements, returns or disclosures relating to the Liquidation Trust as required by any governmental unit.

b. As soon as practicable following the Effective Date, the Liquidation Trustee will in good faith value Liquidation Trust Assets, and shall make all such values available from time to time, to the extent relevant, and such values shall be used consistently by all parties to the Liquidation Trust (including, without limitation, the Liquidation Trustee, the Debtors and Liquidation Trust Beneficiaries) for all United States federal income tax purposes.

c. Allocations of the Liquidation Trust's Tax Items shall be in accordance with each holder's pro-rata share of the Liquidation Trust determined in good faith by the Liquidation Trustee.

d. Subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary (including the receipt by the Liquidation Trustee of a private letter ruling if the Liquidation Trustee so requests one, or the receipt of an adverse determination by the Internal Revenue Service upon audit if not contested by the Liquidation Trustee), the Liquidation Trustee shall (A) timely elect to treat any Liquidation Trust Assets allocable to the Disputed Claims Reserve as a "disputed ownership fund" governed by Treasury Regulation section 1.468B-9, and (B) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties (including the Debtors, Liquidation Trustee and the Liquidation Trust Beneficiaries) shall report for U.S. federal, state and local income tax purposes consistently with the foregoing.

e. The Liquidation Trustee may request an expedited determination of Taxes of the Liquidation Trust, including the Disputed Claims Reserve.

3. Tax Payment. The Liquidation Trustee shall be responsible for the payment, out of the Liquidation Trust Assets, of any taxes imposed on the Liquidation Trust or its assets, including the Disputed Claims Reserve. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserve is insufficient to pay any portion of such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims (including any income that may arise upon the distribution of the assets of the Disputed Claims Reserve), such taxes shall be (a) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims or (b) to the extent such Disputed Claims subsequently have been resolved, deducted from any amounts distributable by the Liquidation Trustee as a result of the resolutions of such Disputed Claims.

ARTICLE VIII. **EXCULPATION**

1. Definitions. As used in this section, the term “Trust Indemnified Parties” shall refer to the Liquidation Trustee, the members of the Liquidation Trust Board, and their respective advisors, agents, employees, affiliates, successors, assigns, consultants, lawyers, or member of any committee established under this Trust Agreement, as well as any other representatives of the Trust engaged in the execution, administration, or enforcement of the Trust Agreement (collectively, the “Trust Indemnified Parties”).

2. Exculpation.

a. No Trust Indemnified Party shall be liable to the Trust Agreement, its Beneficiaries, or any other Person for any losses, damages, claims, liabilities, obligations, penalties, or costs arising from the creation, operation, administration, enforcement, or termination of the Trust, or the performance of any duties or the exercise of any powers under this Trust Agreement, the Combined Plan and Disclosure Statement, or the Confirmation Order, except for losses resulting from such Trust Indemnified Party’s willful misconduct, bad faith, or fraud, as finally determined by a court of competent jurisdiction.

b. To the fullest extent permitted by applicable law: (i) The Trust Indemnified Parties shall not be liable for any action or omission taken in good faith and in a manner reasonably believed to be within the scope of their authority, whether or not such action or omission is ultimately determined to be improper by any party, including decisions made with or without advice from counsel, accountants, appraisers, or other professionals retained by the Trust. (ii) The trust Indemnified Parties may rely, without independent investigation or liability, on any document or instrument reasonably believed to be genuine, accurate, and properly authorized.

c. In no event shall any Trust Indemnified Party be liable for punitive, exemplary, consequential, special, or indirect damages, including lost profits, even if advised of the possibility of such damages. Any claims or liabilities asserted against a Trust Indemnified Party shall be satisfied solely from the Trust Assets. No Trust Indemnified Party shall bear personal financial liability for any obligations arising from the administration of the Trust.

d. Any action taken or omitted by a Trust Indemnified Party that has been

approved by the Bankruptcy Court or any other court of competent jurisdiction shall conclusively be deemed not to constitute willful misconduct, bad faith, or fraud.

e. To the extent permissible under applicable law, any fiduciary duties or liabilities of the Trust Indemnified Parties arising under statute, law, or equity are eliminated and replaced by the express duties set forth in this Trust Agreement. Notwithstanding the foregoing, the duties of care and loyalty are preserved but are expressly limited and subject to the terms, limitations, and protections provided in this Trust Agreement.

f. The provisions of this Article shall survive the termination of the Trust Agreement and the resignation, removal, or replacement of any Trustee or other Trust Indemnified Party.

ARTICLE IX.

DURATION OF LIQUIDATION TRUST

1. Duration. The Liquidation Trustee and the Liquidation Trust shall be discharged or dissolved, as the case may be, upon the earlier to occur of (i) all of the Liquidation Trust Assets have been distributed pursuant to the Trust Agreement and the Combined Plan and Disclosure Statement, (ii) the Liquidation Trustee determines that the administration of any remaining Liquidation Trust Assets is not likely to yield sufficient additional Liquidation Trust proceeds to justify further pursuit, and (iii) all distributions required to be made by the Liquidation Trustee under the Trust Agreement and the Combined Plan and Disclosure Statement have been made; provided that the debtors and their non-debtor subsidiaries must have been resolved prior to the discharge or dissolution of the Liquidation Trust. If at any time the Liquidation Trustee determines, in reliance upon professionals as the Liquidation Trustee may retain, that the expense of administering the Liquidation Trust so as to make a final distribution to its beneficiaries is likely to exceed the value of the assets remaining in the Liquidation Trust, the Liquidation Trustee may apply to the Bankruptcy Court for authority to (i) reserve any amount necessary to dissolve the Liquidation Trust, (ii) donate any balance to a charitable organization (A) described in section 501(c)(3) of the IRC, (B) exempt from United States federal income tax under section 501(a) of the IRC, (C) not a “private foundation”, as defined in section 509(a) of the IRC, and (D) that is unrelated to the Debtors, the Liquidation Trust, and any insider of the Liquidation Trustee, and (iii) dissolve the Liquidation Trust.

2. Post-Termination. After the termination of the Liquidation Trust and solely for the purpose of liquidating and winding up the affairs of the Liquidation Trust, the Liquidation Trustee shall continue to act as such until its duties have been fully performed. Upon distribution of all the Liquidation Trust Assets, the Liquidation Trustee shall retain all books and records pertaining to the Debtors or the Liquidation Trust that have been delivered to or created by the Liquidation Trustee, subject to the provisions of Section 3 of this Article IX.

3. Destruction of Books and Records. At the Liquidation Trustee’s discretion, all books and records pertaining to the Debtors or the Liquidation Trust that have been delivered to or created by the Liquidation Trustee may be destroyed at any time following the date that is six (6) years after the final distribution of Liquidation Trust Assets (unless such records and documents are necessary to fulfill the Liquidation Trustee’s remaining obligations) subject to the terms of

any joint prosecution and common interests agreement(s) to which the Liquidation Trustee may be a party; provided, however, that the Liquidation Trustee shall obtain a Final Order of the Bankruptcy Court before disposing of any books and records that are reasonably likely to pertain to pending litigation of which the Liquidation Trustee is aware and in which the Debtors or their current or former officers or directors are a party.

4. Discharge. Except as otherwise specifically provided herein, upon the final distribution of Liquidation Trust Assets, the Liquidation Trustee shall be deemed discharged and have no further duties or obligations hereunder, the Liquidation Trust Beneficial Interests shall be cancelled and the Liquidation Trust will be deemed to have been dissolved. In the event that there are Liquidation Trust Assets at the termination of the Liquidation Trust, the Liquidation Trustee shall donate such Liquidation Trust Assets to a charitable organization of the Liquidation Trustee's choice described in section 501(c)(3) of the Tax Code and exempt from U.S. federal income tax under section 501 (a) of the Tax Code, as provided in Section 9(b) of Article I.

ARTICLE X.

MISCELLANEOUS PROVISIONS

1. Governing Law. This Trust Agreement shall be governed by and construed in accordance with the laws of the State of Delaware (without reference to conflicts of law).

2. Jurisdiction. Subject to the proviso below, the parties agree that the Bankruptcy Court shall have exclusive jurisdiction over the Liquidation Trust and the Liquidation Trustee, including, without limitation, the administration and activities of the Liquidation Trust and the Liquidation Trustee, provided, however, that notwithstanding the foregoing or anything to the contrary set forth herein, the Liquidation Trustee shall have power and authority to bring any action in any court of competent jurisdiction to prosecute any Retained Cause of Action constituting Liquidation Trust Assets or Disputed Claim or claim objection in accordance with the Combined Plan and Disclosure Statement.

3. Severability. In the event that any provision of this Trust Agreement or the application thereof to any person or circumstances shall be determined by a final, non-appealable judgment or order to be invalid or unenforceable to any extent, the remainder of this Trust Agreement or the application of such provision to persons or circumstances or in jurisdictions other than those as to or in which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Trust Agreement shall be valid and enforceable to the fullest extent permitted by law.

4. Notices. Any notice or other communication required or permitted to be made under this Trust Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally or by telex, facsimile or other telegraphic means, sent by nationally recognized overnight delivery service, or mailed by first-class mail:

(i) if to the Liquidation Trustee, to:

Robert Michaelson

- (ii) **if to a member of the Liquidation Trust Board, to each of the following:**
- (iii) **if to any Liquidation Trust Beneficiary, to the last known address of such Liquidation Trust Beneficiary according to the Liquidation Trustee's records.**
- (iv) **if to Debtors, to:**

November 26, Inc.

5. Headings. The headings contained in this Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Trust Agreement or of any term or provision hereof.

6. Combined Plan and Disclosure Statement. Nothing contained herein shall modify the terms of the Combined Plan and Disclosure Statement or the Confirmation Order. The principal purpose of this Trust Agreement is to aid in the implementation of the Combined Plan and Disclosure Statement and, therefore, this Trust Agreement incorporates and is subject to the provisions of the Combined Plan and Disclosure Statement and the Confirmation Order. In the event that any provision of this Trust Agreement is found to be inconsistent with a provision of the Combined Plan and Disclosure Statement and/or the Confirmation Order, the provisions of the Combined Plan and Disclosure Statement and/or the Confirmation Order shall control.

7. Cooperation. The Debtors shall turn over or otherwise make available to the Liquidation Trustee at no cost to the Liquidation Trust or the Liquidation Trustee, all books and records reasonable required by the Liquidation Trustee to carry out his its duties hereunder, and shall agree to otherwise reasonably cooperate with the Liquidation Trustee in carrying out its duties hereunder.

8. Confidentiality. The Liquidation Trustee Parties and the Liquidation Trust Board and its members, and their respective officers, directors, partners, managers, members and employees (the "Confidential Parties"), shall hold strictly confidential and not use for personal gain any material, non-public information of which they have become aware in their capacity as a Confidential Party of or pertaining to the Debtors, the Liquidation Trust, the Liquidation Trust Beneficiaries or the Liquidation Trust Assets; provided, however, that such information may be disclosed if—

a. it is now or in the future becomes generally available to the public other than as a result of a disclosure by the Confidential Parties; or

b. such disclosure is required of the Confidential Parties pursuant to legal process, including subpoena or other court order or other applicable laws or regulations; or

c. the Liquidation Trustee determines that such disclosure is in the interests of the Liquidation Trust or the Liquidation Trust Beneficiaries.

9. Entire Trust Agreement. This Trust Agreement and the Exhibits and Annexes attached hereto, if any, contain the entire agreement between the parties and supersede all prior and contemporaneous agreements or understandings between the parties with respect to the subject matter hereof.

10. Named Party. In pursuing any Retained Cause of Action, objecting to any Disputed Claim, or in disposing of any Liquidation Trust Assets, or otherwise administering the Liquidation Trust or any Liquidation Trust Assets, including, without limitation, the execution of documents, such as releases, and agreements, the Liquidation Trustee may pursue such matters and/or execute any such documents in the name of “Liquidation Trust” and/or in his own name as Liquidation Trustee or in such other names or such representative capacities as necessary or appropriate in the Liquidation Trustee’s discretion.

11. Amendment.

a. Subject to section 6 of Article 10 hereof, this Trust Agreement and its Exhibits may not amended, modified, or supplemented without the prior written consent of the Liquidation Trustee. Debtors' prior written consent shall not be required to modify this Trust Agreement or its Exhibits except to the extent that such modification materially impacts the Debtors.

b. No amendments to this Trust Agreement shall be inconsistent with the purpose and intention of the Liquidation Trust to liquidate in an orderly manner the Liquidation Trust Assets (which will maximize the value of such assets) in accordance with Treasury Regulations Section 301.7701-4(d) or, in the alternative, as allowed under Delaware law applicable to limited liability companies or limited liability partnerships. In the event that the Liquidation Trust shall fail or cease to qualify as a liquidating trust in accordance with Treasury Regulations Section 301.7701-4(d), this Trust Agreement may be amended by the Liquidation Trustee to the extent necessary for the Liquidation Trustee to take such action as it shall deem appropriate to have the Liquidation Trust classified as a partnership for federal tax purposes under Treasury Regulations Section 301.7701-3 (but not a publicly traded partnership under section 7704 of the Tax Code), including, if necessary, creating or converting it into a Delaware limited liability partnership or limited liability company that is so classified.

12. Meanings of Other Terms. Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, if appropriate; words importing the singular number shall include the plural number and vice versa; and words importing persons shall include firms, associations, corporations and other entities. All references herein to Articles, Sections and other subdivisions, unless referring specifically to the Bankruptcy Code; the Bankruptcy Rules; or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Trust Agreement, and the word “herein” and words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section or subdivision of this Trust Agreement. The term “including” shall mean “including, without limitation.”

13. Counterparts. This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed original, but such counterparts shall together constitute one and the same instrument. A facsimile or portable document file (PDF) signature of any party shall be considered to have the same binding legal effect as an original signature.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement or caused this Trust Agreement to be duly executed by their respective officers, representatives or agents, effective as of the date first above written.

Liquidation Trustee

By:

Name: Robert Michaelson, solely in his
capacity as Liquidation Trustee

November 26, Inc.

By: _____

Name:

Title: CEO

Exhibit C

Identification of Liquidation Trustee

Pursuant to the Liquidation Trust Agreement, Robert Michaelson has been selected to serve as the Liquidation Trustee of the Liquidation Trust.

Exhibit D

Schedule of Retained Causes of Action

Non-Exclusive Schedule of Retained Causes of Action

Article VII.H of the *Amended Combined Joint Chapter 11 Plan of Liquidation and Disclosure Statement of Biolase, Inc. and Its Debtor Affiliates* (the “Amended Plan”)¹ provides as follows:

Causes of Action and the Liquidation Trustee’s rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. **No Person or Entity may rely on the absence of a specific reference in the Combined Plan and Disclosure Statement or the Plan Supplement to any such Cause of Action against it as any indication that the Debtors or the Liquidation Trustee, as applicable, will not pursue any and all available Retained Causes of Action against it. The Debtors or the Liquidation Trustee, as applicable, expressly reserve all rights to prosecute any and all Retained Causes of Action against any Person or Entity, except as otherwise expressly provided in the Plan, including Article XIV of the Plan.** The Liquidation Trustee expressly reserves all Retained Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Retained Causes of Action as a consequence of the Confirmation or Consummation of the Plan. In addition to the Retained Causes of Action identified herein, there may be additional Retained Causes of Action based on state or federal law, or otherwise, that currently exist or may arise, that are not set forth herein, because the facts that form the basis of such Retained Causes of Action are not fully or currently known by the Debtors (the “Unknown Retained Causes of Action”). For the avoidance of doubt, the intent of the Amended Plan is to transfer all of the Retained Causes of Action, including any Unknown Retained Causes of Action, to the Liquidation Trust, as provided for in the Amended Plan and as set forth herein. The failure to list any Retained Causes of Action, including any Unknown Retained Causes of Action, herein is not in any way intended to waive such claims or limit the rights of the Liquidation Trustee to pursue such claims.

The Liquidation Trustee reserves and shall retain such Retained Causes of Action notwithstanding the rejection or repudiation of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Retained Causes of Action that a Debtor may hold against any Person or Entity shall vest in the Liquidation Trust. The Liquidation Trustee shall retain and may exclusively enforce any and all such Retained Causes of Action. The Liquidation Trustee shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Retained Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.

¹ Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Amended Plan.

Without limiting the Amended Plan, unless otherwise released by the Amended Plan or assigned or transferred to the Purchaser pursuant to the Sale Order, any and all Retained Causes of Action, including but not limited to, the following are expressly reserved:

- claims, defenses, cross-claims, indemnification, third-party claims and counterclaims related to litigation and possible litigation relating to any conduct that constitutes fraud, gross negligence, corporate waste, or willful misconduct by any party against any Debtor or Affiliate;
- claims related to or arising out of breaches of fiduciary duties owed to any Debtor or Affiliate;
- claims related to insurance contracts and insurance policies to which the Debtor is a party or pursuant to which the Debtor or any of its Related Parties has any rights whatsoever;
- claims for malpractice, professional negligence, or similar theories of liability against any professional of the Debtors, other than the professionals retained in these Chapter 11 Cases, subject in all respects to the Amended Plan, including, without limitation, Article XIV.C. and XIV.D. thereof;
- claims related to tax obligations and refunds, including, without limitation, claims against or related to all Entities that owe or that may in the future owe money related to tax refunds to the Debtor;
- claims, defenses, cross-claims, indemnification, third-party claims, and counterclaims related to litigation and possible litigation, whether based in tort, contract, equity, or otherwise, including any personal injury claims and wrongful death actions, as well as all claims against or related to all Entities that are party to or that may in the future become party to arbitration, or any other type of adversarial dispute resolution proceeding, whether formal or informal, or judicial or nonjudicial;
- claims related to contracts and leases against vendors, suppliers of goods or services, governmental and commercial payors, providers, or any other parties;
- claims related to accounts receivable and accounts payable;
- claims related to postings of funds held in trust, a security deposit, adequate assurance payment, or any other type of deposit, prepayment, or collateral;
- claims related to liens regardless of whether such lien is specifically identified herein;
- related party claims;
- claims, defenses, appeals, cross-claims, and counterclaims related to any claims or actions asserted by any Governmental Unit;
- claims related to vendor obligations and any entities or Persons who assert or may assert that the Debtors owe money to them;
- claims related to customers, entities, or Persons that owe or may in the future owe money to the Debtors for any reason;

- claims related to avoidance actions, preferences, turnover of property of the Debtors, or other claims pursuant to chapter 5 of the Bankruptcy Code, including, for the avoidance of doubt, the Avoidance Actions; and
- all other Causes of Action that do not constitute Purchased Assets and are not released in the Amended Plan *provided, however*, that the Retained Causes of Action shall not include any Prepetition Employee Payments Avoidance Actions.