

1 Michael L. Charlson (SBN 122125)

mcharlson@velaw.com

2 VINSON & ELKINS L.L.P.

3 555 Mission Street, Suite 2000

San Francisco, CA 94105

4 Tel.: 415.979.6900

Fax: 415.651.8786

5 Grace Ho (SBN 311042)

6 gho@velaw.com

7 VINSON & ELKINS L.L.P.

1001 Fannin Street, Suite 2500

8 Houston, TX 77002

Tel.: 713.758.2092

9 Fax: 713.615.5024

10 Ari Berman (*pro hac vice* application forthcoming)

11 aberman@velaw.com

Sarah Tishler (*pro hac vice* application forthcoming)

12 stishler@velaw.com

VINSON & ELKINS L.L.P.

13 666 Fifth Avenue, 26th Floor

New York, NY 10103

14 Tel.: 212.237.0228

15 Fax: 917.849.5368

16 *Attorneys for Plaintiffs*

*Arcturus Therapeutics Ltd. and*

17 *Arcturus Therapeutics, Inc.*

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

20 **FOR THE COUNTY OF SAN DIEGO, CENTRAL DISTRICT**

22 ARCTURUS THERAPEUTICS LTD.;

23 ARCTURUS THERAPEUTICS, INC.,

24 Plaintiffs,

25 vs.

26 JOSEPH E. PAYNE, an individual,

27 Defendant.

Case No. \_ 37-2018-00015271-CU-BC-CTL

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF FOR BREACHES  
OF CONTRACT, BREACHES OF  
FIDUCIARY DUTIES, AND  
INTERFERENCE WITH  
CONTRACTUAL AND PROSPECTIVE  
BUSINESS ADVANTAGE; JURY TRIAL  
DEMANDED**

1 Plaintiff Arcturus Therapeutics Ltd. and Plaintiff Arcturus Therapeutics, Inc. (collectively,  
2 “Plaintiffs”), by and through their attorneys, for their Complaint in the above-captioned action  
3 allege, on their personal information unless otherwise noted, and state to this Honorable Court as  
4 follows:

5 **PRELIMINARY STATEMENT**

6 1. This is an action to recover damages and obtain injunctive relief against Defendant  
7 Joseph E. Payne, the former President and Chief Executive Officer (“CEO”) of Plaintiffs Arcturus  
8 Therapeutics, Inc. (“ATI”) and Arcturus Therapeutics Ltd. (the “Company”), a former Director of  
9 ATI’s Board of Directors (the “ATI Board”), and a Director of the Company’s Board of Directors  
10 (the “Company Board”) (collectively, the “Boards”). Payne was terminated in late January 2018,  
11 primarily due to his attempted transfer of substantial amounts of Plaintiffs’ intellectual property for  
12 no consideration and for no articulable business reason to the company of his lifelong personal  
13 friend and occasional business partner, Bradley Sorenson. Sorenson is the CEO of Providence  
14 Therapeutics, Inc. – a company with little to no expertise in the highly technical field of cancer  
15 vaccines. Following an ATI Board meeting in September 2017, Payne lied to Sorenson, telling him  
16 that the deal had been approved by the ATI Board (when it had not). After uncovering Payne’s  
17 deception, the Company Board voted to terminate Payne as President and CEO of ATI and the  
18 Company based on his breaches of fiduciary duties to ATI and the Company. It was only after  
19 Payne’s termination that the extent of his misdeeds as President and CEO came to light, as more  
20 fully explained below.

21 2. Despite his continuing fiduciary duties as a Company Director, Payne has charted a  
22 course of interference and sabotage fueled by spite. Since his termination as President and CEO,  
23 Payne has initiated baseless litigation against the Company in Israel, interfered with a consultant’s  
24 contractual arrangements with the Company, and most concerningly, orchestrated a group of  
25 shareholders to vote down one of the most routine, yet essential, resolutions for a public company:  
26 ratification of the appointment of its independent auditor. Without an independent auditor, the  
27 Company faces delisting on the NASDAQ Global Market, as well as possible sanctions by the  
28

Securities and Exchange Commission (“SEC”)—both potentially disastrous consequences for the Company and its shareholders.

3. Accordingly, this is an action for injunctive relief and to recover damages to remedy Payne's breaches of fiduciary duties, interference with Plaintiffs' contracts and business relationships, and breaches of his employment and confidentiality agreements. Payne breached his fiduciary duties owed to Plaintiffs and both companies' shareholders, and the terms of his employment and confidentiality agreements, by, *inter alia*, disclosing to the public Plaintiffs' confidential information, failing to disclose to the Boards all material information relating to Plaintiffs' finances, capital-raising efforts, and contract negotiations with business partners, converting Plaintiffs' property, interfering with Company consultant contracts, misappropriating business opportunities rightfully belonging to ATI and the Company, and waging a scorched-earth, retaliatory campaign against the Company despite his justified termination, causing the Company significant financial and reputational harm.

## PARTIES

4. Plaintiff Arcturus Therapeutics Ltd. is a corporation organized and existing under the laws of Israel, and is and was at all times relevant qualified to do business in California. Its ordinary shares are publicly traded on the NASDAQ Global Market. The Company is working to develop and commercialize RNA technologies to treat various diseases. It is the parent company of Arcturus Therapeutics, Inc. Prior to its acquisition of Arcturus Therapeutics, Inc., the Company's name was Alcobra Ltd. The Company is headquartered in San Diego, California.

5. Plaintiff Arcturus Therapeutics, Inc. is a wholly-owned subsidiary of the Company. ATI is a corporation organized and existing under the laws of the State of Delaware, and is and was at all times relevant qualified to do business in California. ATI's principal place of business is in San Diego, California.

6. Defendant Joseph E. Payne (“Defendant” or “Payne”) is a Director of the Company Board, a former Director of the ATI Board, and the former President and CEO of both ATI and the Company. On information and belief, Payne is a Canadian citizen, and is currently, and at all times relevant to this Complaint was, domiciled in San Diego, California.

1 **JURISDICTION AND VENUE**

2 7. On information and belief, Defendant is an individual who is, and at all times relevant  
3 to this Complaint has been, a resident of the County of San Diego, in the State of California.

4 8. All material events referenced in this Complaint occurred within the boundaries of the  
5 County of San Diego, State of California. Therefore, both jurisdiction and venue properly lie with  
6 this Court.

7 **FACTUAL ALLEGATIONS**

8 **Payne's Position at ATI**

9 9. Prior to ATI being acquired by Alcobra Ltd., Payne served as ATI's President and  
10 CEO.

11 10. As President and CEO of ATI, Payne entered into an executive employment  
12 agreement on March 28, 2013, titled "Amended and Restated Executive Employment Agreement"  
13 (the "Employment Agreement"). The Employment Agreement was most recently amended on  
14 November 15, 2017. A true and correct copy of the Employment Agreement as amended is attached  
15 to this Complaint as Exhibit A.

16 11. Payne also entered into an employee confidentiality agreement with ATI on  
17 September 7, 2017, titled "Employee Confidential Information and Invention Assignment  
18 Agreement" (the "Confidentiality Agreement"). A true and correct copy of the Confidentiality  
19 Agreement is attached to this Complaint as Exhibit B.

20 12. As President and CEO of ATI and later the Company, and while acting as a Director  
21 of both the ATI and Company Boards, Payne was compensated for the work he performed with a  
22 salary, discretionary bonus compensation, benefits, stock grants and options, and other  
23 compensation.

24 **Alcobra Acquires ATI Through A Reverse Triangular Merger**

25 13. On September 12, 2017, the ATI Board held a meeting to discuss a possible reverse  
26 merger of ATI into Alcobra Ltd. ("Alcobra"). Alcobra had been traded on NASDAQ since 2013.

27 14. On September 27, 2017, and pursuant to the Agreement and Plan of Merger and  
28 Reorganization (the "Merger Agreement"), Alcobra and ATI announced a reverse triangular merger,

1 under which ATI became a wholly owned subsidiary of the merged company, Alcobra. Alcobra and  
2 ATI agreed that Alcobra (which would subsequently change its name to become Arcturus  
3 Therapeutics Ltd.) would remain domiciled in Israel, but that its headquarters and operations would  
4 continue to be in San Diego.

5 15. On November 16, 2017, the Company gave notice of completion of the merger, and  
6 the name of the merged company was changed to Arcturus Therapeutics Ltd. At the time of the  
7 merger transaction, Payne was ATI's President and CEO and a Director of the ATI Board.

8 16. In connection with the Merger Agreement, it was agreed that the Company Board  
9 would consist of seven directors, four chosen by ATI and three chosen by the former Alcobra. The  
10 four directors chosen by ATI were Craig Willett, Stuart Collinson (currently the Executive Chairman  
11 of the Company Board), Padmanabh Chivukula ("Chivukula"), and Payne. The three directors  
12 chosen by the former Alcobra were Orli Tori, Daniel Geffken, and David Shapiro.

13 17. As part of the merger transaction, Payne received 1,465,097 ordinary shares of the  
14 Company's stock, 25% of which were subject to repurchase by ATI. He purportedly owns  
15 approximately 13.7% of the Company's ordinary shares, making him the largest shareholder of the  
16 Company.

### 17 **Payne's Extensive Misconduct As President And CEO**

18 18. Throughout his tenure at ATI and the Company, Payne has demonstrated a general  
19 lack of care and ignorance of his responsibilities as President and CEO. This dereliction of his  
20 duties ultimately led to his termination for cause by the Company Board. There are numerous  
21 examples of his misconduct, many of which have come to light by virtue of an investigation  
22 following Payne's termination:

23 19. *Misrepresenting Material Information To The Boards:* On at least two occasions,  
24 Payne represented to a third party that the ATI Board, and later the Company Board, had approved  
25 certain transactions, when in fact neither Board had done so. Payne's actions exposed the Company  
26 and ATI not only to contractual liability but also to lasting and potentially significant reputational  
27 damage.

1           20.     First, in August 2017, the CEO of Providence Therapeutics Inc. (“Providence”),  
2 Bradley Sorenson (a lifelong personal friend of Payne’s, and also the owner of a 5.6% stake in the  
3 Company), sent Payne a proposed Second Amendment to an existing Joint Venture Agreement  
4 between ATI and Providence (the “Second Amendment”). This proposed Second Amendment, far  
5 from being in ATI’s best interests, would have transferred significant amounts of ATI’s valuable  
6 intellectual property rights to Sorenson and Providence for no additional consideration. On  
7 information and belief, the details of this prejudicial Second Amendment were deliberately hidden  
8 from other ATI Board directors, including Collinson and Willett.

9           21.     Rather than presenting this proposed Second Amendment to the ATI Board in the  
10 ordinary course, Payne casually referenced and deliberately downplayed the import of the Second  
11 Amendment at the end of the September 12, 2017 ATI Board meeting. At the time of this meeting,  
12 the ATI Board was focused primarily on the merger transaction with Alcobra, and did not have time  
13 to fully consider an inopportunistically timed proposal to amend a joint venture agreement with a minor  
14 collaboration partner. Accordingly, the ATI Board instructed management to work with the  
15 Company’s counsel to draft language that could be considered at the next meeting, thereby deferring  
16 the issue until they could fully consider a draft Second Amendment in an advanced form.

17           22.     Despite his first-hand knowledge that the ATI Board had deferred the issue, Payne  
18 emailed Sorenson on September 18, 2017, falsely claiming that the ATI Board had approved the  
19 Second Amendment. It was not until the minutes of the September 12 meeting were drafted and the  
20 Company Board was preparing for its December 5, 2017 Board Meeting, that the true extent of  
21 Payne’s fabrication came to light. An assertion to the effect that the Second Amendment had been  
22 approved by the ATI Board was included in the draft minutes that Payne had prepared, and that  
23 assertion was disputed immediately by the remainder of the ATI Board. Specifically, on  
24 November 23, 2017, another ATI Board director, Willett explicitly stated that “[b]y no means was  
25 the approval of the general terms as discussed in the board meeting in September an explicit  
26 approval for management to execute an amendment.” Several Company Board directors rejected  
27 any notion that the ATI Board had approved the terms of the Second Amendment proposed by  
28 Sorenson, citing that the deal was “not market.”

1           23.     Payne’s misrepresentation has spawned a series of events that has harmed the  
2 Company and its shareholders. On December 8, 2017, for example, Collinson spoke with Sorenson  
3 regarding the Second Amendment; during the call, Sorenson threatened to initiate a proxy fight  
4 against the Company if the Second Amendment was not ratified. Sorenson’s tone in his  
5 communications with the Company became increasingly hostile, openly accusing the Company  
6 Board of not acting in good faith. Sorenson continued his campaign to pressure the Company Board  
7 to accept the terms of the Second Amendment well into January 2018, all the while threatening to  
8 replace the Company Board in an attempt to pressure it to approve what would have been a  
9 disastrous deal for the shareholders of the Company.

10           24.     Separately, in September 2017, on information and belief, Payne and Sorenson held  
11 secret negotiations regarding a financing transaction, under which Sorenson would provide \$10  
12 million in financing to ATI in exchange for a convertible note and a seat on the ATI Board,  
13 memorialized in a Letter of Intent that Sorenson emailed to Payne on September 15, 2017. In the  
14 cover email, Sorenson wrote that the Letter of Intent “has been approved by the board of  
15 Providence,” indicating that, on information and belief, Payne and Sorenson had already discussed  
16 its contents at length. Payne never informed the ATI Board of this Letter of Intent, but, on  
17 information and belief, represented to Sorenson that approval was imminent, because Sorenson had  
18 already obtained approval from the Providence board, and because Payne had made the same  
19 representation to Sorenson as to the Second Amendment.

20           25.     *Payne’s Side Business:* On information and belief, Payne operated a lucrative side  
21 business, in which he acted as a vendor selling products, including a substance called ionophore, to  
22 various corporate buyers. Ionophore is a substance that is able to transport certain ions across a lipid  
23 membrane in a cell.

24           26.     On information and belief, Payne abused his authority as President and CEO of ATI  
25 to negotiate more favorable terms in these personal transactions by intimating that the sale was on  
26 behalf of ATI. In actuality, Payne kept this side business secret from the ATI outside directors.

27           27.     On information and belief, Payne involved at least two other ATI employees in this  
28 scheme during working hours, including Chivukula, ATI’s Chief Scientific Officer and Chief

1 Operating Officer. For example, Payne asked another employee and Chivukula to research the  
2 technical aspects of ionophore, which they did, circulating emails labeled 'High Importance' with  
3 academic research papers attached. The remainder of the ATI Board was not aware of this side  
4 business.

5 28. Pursuant to Payne's Employment Agreement, Payne was not permitted to "engage,  
6 directly or indirectly, in any other business activity (whether or not pursued for pecuniary gain) that  
7 might interfere with [Payne's] duties and responsibilities hereunder or create a conflict of interest  
8 with the Company." Exhibit A at 1.(b). On information and belief, Payne devoted substantial time  
9 and energy to his side business during normal business hours over the nearly three years during  
10 which he pursued it. Payne apparently invoiced his customers for at least \$100,000, demonstrating  
11 that he devoted substantial time and energy to his side business, when he should have been focusing  
12 on his responsibilities as President and CEO of ATI.

#### 13 **The Company Board Terminates Payne For Cause**

14 29. On January 25, 2018, the Company Board convened, with Payne in attendance.  
15 Payne was subsequently asked to leave so that the Company Board directors could meet in executive  
16 session, which he did. During the executive session, the remaining Company Board directors voted  
17 to terminate Payne for cause as President and CEO of ATI and the Company.

18 30. After Payne's termination, the Company demanded that Payne return his Company-  
19 issued cell phone, which was paid for by the Company. On January 29, 2017, the Company, through  
20 its outside counsel, emailed Payne and demanded that he return his cell phone under the terms of his  
21 Employment Agreement (specifically Section 4). Having received no response, on March 21, 2018,  
22 the Company once again demanded Payne return the Company-issued cell phone and reminded  
23 Payne of his obligation not to destroy or modify any data potentially relevant to the pending  
24 litigation initiated by Payne against the Company. Payne's attorney responded by email on  
25 March 23, 2018, stating that Payne would return the phone the following week. Payne finally  
26 returned the phone on the evening of March 26, 2018, more than two months after the Company  
27 requested that he step down. To date, however, he has not confirmed that he has not used or  
28 transferred the data on the cell phone. The cell phone is being examined by a forensics expert to



1 determine whether Payne (or someone on Payne's behalf) unlawfully deleted Company property and  
2 evidence; thus far, the forensics expert has informed the Company that the cell phone has been reset  
3 to its factory settings, which may have resulted in the deletion of all information contained on the  
4 cell phone.

5 31. On February 2, 2018, the Company publicly reported Payne's termination.

6 **Chivukula Resigns From The Company**

7 32. In early February 2018, Mark Herbert, the Interim President and CEO of the  
8 Company, met with Chivukula to discuss ending Chivukula's employment with the Company.  
9 Herbert did so with the support of the Company Board (excluding Payne).

10 33. After this meeting, and after a period of reflection and consultation with his own legal  
11 counsel, Chivukula decided to enter into a consensual separation and consulting agreement with the  
12 Company (the "Consulting Agreement").

13 34. The Company wished to continue utilizing Chivukula's expertise as a scientist, his  
14 knowledge of the Company's projects in development, and his connections with the various partners.  
15 Accordingly, the Company proposed that it would engage Chivukula as a consultant for an interim  
16 period of six months, for cash compensation of \$100,000. As an additional term of the Consulting  
17 Agreement, Chivukula entered into a Voting Trust Agreement with the Company (attached to and  
18 incorporated into the Consulting Agreement as an exhibit), under which he deposited his shares in  
19 the Company in trust with Herbert, with the understanding that his shares would be voted as Herbert  
20 determined. True and correct copies of the Consulting Agreement and the Voting Trust Agreement  
21 are attached to this Complaint as Exhibits C and D, respectively.

22 **The Circumstances Of Payne's Campaign Of Retaliation Against The Company Board**

23 35. Beginning in early February 2018, Payne began a campaign to retaliate against the  
24 Company Board out of spite for having been terminated, without regard for how his actions would  
25 harm the Company and its shareholders.

26 36. This campaign began with Payne's baseless attempts to invalidate his termination.  
27 On February 2, 2018, Payne sent a letter to the Company Board alleging procedural flaws in the  
28 Company Board's resolution that led to his dismissal, and demanded that an urgent meeting of the

1 Company Board be convened, during which he would be present, and at which his dismissal  
2 purportedly had to be approved. Payne insisted that his demands be answered by no later than  
3 February 5, 2018.

4 37. At Payne's request, another Company Board meeting was scheduled for February 5,  
5 2018, to discuss Payne's letter and the resolutions that had been adopted at the January 25, 2018  
6 Company Board meeting.

7 38. Prior to the February 5, 2018 meeting, Payne sent another letter in an attempt to cast  
8 doubt on his termination. In that letter, he alleged that the Company Board had been convened  
9 unlawfully and that Collinson, Willett, Geffken, and Shapiro failed to provide documents to the  
10 other Company Board directors which he contended were necessary for convening a Company  
11 Board meeting, such as "an opinion about the personal interest of [Collinson, Willett, Geffken, and  
12 Shapiro]" – claims which were without merit.

13 39. With Payne present, the Company Board held a meeting on February 5, 2018. During  
14 the meeting, it was again explained to Payne that his dismissal had been for cause, against the  
15 backdrop of the Company Board's loss of faith in his abilities as President and CEO, including his  
16 wrongful and manipulative behavior relating to the proposed Second Amendment with Providence  
17 and Sorenson. Despite Payne's objection (and Chivukula's), Payne's for-cause termination was  
18 ratified by a majority of the Company Board.

19 40. On February 7, 2018, the Company replied to Payne's letters, setting forth (again) the  
20 circumstances of Payne's dismissal, and explaining that there had not been any errors in the  
21 procedure of Payne's termination. Payne replied to this letter on February 12, 2018, reiterating his  
22 claims.

23 **Payne Engages In A Campaign To Convince Other Shareholders To**  
24 **Arbitrarily Reject the Company's Independent Auditor**

25 41. Before the merger transaction with ATI, Kost Forer Gabbay & Kasierer, an affiliate  
26 of Ernst & Young ("E&Y") in Israel, served as Alcobra's independent auditing firm. After the  
27 merger transaction, however, the Company decided to switch independent auditors and use Ernst &  
28 Young LLP in the United States ("E&Y USA"), as E&Y USA had long served as ATI's independent

1 auditors. After the merger, the Company's primary business activities were to occur (and have  
2 occurred) in the United States; therefore, the Company's financial statements should be audited by  
3 American auditors.

4 42. Accordingly, the Company Board resolved to call a meeting of the shareholders to  
5 ratify the appointment of a new auditor, and agreed to appoint E&Y USA. Payne initially supported  
6 the proposed appointment of E&Y USA, and on information and belief, voted in favor of the  
7 resolution. The Minutes of the Company Board's December 5, 2017 meeting state, "After full  
8 discussion and upon motion duly made and seconded, the Company Board then approved . . .  
9 changing the Company's audit firm from Ernst & Young Israel to Ernst & Young United States."  
10 Payne was present for and participated in this meeting.

11 43. On February 5, 2018, the Company Board resolved to call a meeting of the  
12 shareholders to ratify the Company Board's appointment of E&Y USA. Despite having already  
13 been terminated as President and CEO, Payne supported this appointment, which was unanimously  
14 ratified by the Company Board.

15 44. However, on February 26, 2018, the shareholder ratification vote related to the  
16 appointment of E&Y USA was defeated, with Payne, acting in his capacity as a shareholder, voting  
17 against the resolution. While there are instances where an individual's interests as a board member  
18 do not align with his interests as a stockholder, this is not one of those instances. The appointment  
19 of an independent auditor is both noncontroversial and vital to the operations of the Company.  
20 Therefore, there can be no explanation for this outcome other than, on information and belief,  
21 Payne's plan to encourage of a majority of the Company's shareholders to vote against ratification  
22 out of personal spite at having been terminated as President and CEO. The failure to appoint an  
23 independent auditor can have severe consequences. If the Company lacks an independent auditor  
24 and is therefore unable to file its annual report with the SEC by the end of April, the Company faces  
25 delisting from the NASDAQ Global Market, and the possibility of SEC sanctions as well.

26 **Payne Initiates A Lawsuit In Israel And Interferes With The Voting Trust Agreement**

27 45. In late February 2018, Payne filed a lawsuit and a motion for a temporary restraining  
28 order in Israeli court, in an attempt to invalidate the Voting Trust Agreement between the Company

1 and Chivukula (the “Israeli Action”). In support of his motion, Payne submitted a sworn affidavit to  
2 the court, which was not filed under seal, not redacted in any way, and included the Company’s  
3 confidential information.

4 46. In violation of his Confidentiality Agreement and in violation of his Employment  
5 Agreement, Payne disclosed confidential Company information in his affidavit, including:

- 6 • legal advice provided to the Company Board by its outside counsel;
- 7 • confidential Company Board communications and discussions; and
- 8 • confidential discussions between ATI and Providence.

9 47. Chivukula has also retained counsel in Israel, and filed a Response to Payne’s motion  
10 along with his own affidavit on March 15, 2018.<sup>1</sup>

11 **Payne Interferes With The Company’s Consulting Agreement With Chivukula**

12 48. As explained above, Chivukula continues to have a valid executory Consulting  
13 Agreement with the Company. The Consulting Agreement has a duration of six months, beginning  
14 February 11, 2018, for which the Company agreed to pay Chivukula \$100,000 in exchange for his  
15 continued role as a Scientific Advisor to the Company. The Company felt this arrangement was  
16 necessary to ensure a smooth transition with the various partners and for the continued development  
17 of products already in the pipeline, with which Chivukula was familiar. On information and belief,  
18 Payne has been communicating with Chivukula in an effort to disrupt or induce Chivukula to breach  
19 the Consulting Agreement, in additions to his efforts at invalidating the Voting Trust Agreement.

20 49. These efforts are evidenced by Chivukula’s contentions, made in his affidavit  
21 submitted in Payne’s Israeli Action, that the Consulting Agreement he entered into with the  
22 Company is invalid.

23 **The Company’s Stock Value Has Declined More Than 50% Since The Close Of The Merger**

24

25

26

---

27 <sup>1</sup> On March 21, 2018, the Company filed a Demand for Arbitration with Judicial Arbitration and  
28 Mediation Services (“JAMS”), pursuant to the mandatory arbitration provision in Chivukula’s  
Consulting Agreement.

50. In the period since the merger closed, the post-merger value of the stock declined nearly 50%, from a high of \$10.30 per share to \$5.75 per share as of March 23, 2018. This represents a market cap loss of more than \$45 million.

## FIRST CAUSE OF ACTION

## Breach of Payne's Confidentiality Agreement

51. Plaintiffs hereby incorporate by reference Paragraphs 1–50, as though fully set forth herein.

52. Payne has breached his Confidentiality Agreement with Plaintiffs by committing numerous acts in violation of the Confidentiality Agreement. Although he was terminated, Payne remains subject to ongoing obligations under the Agreement, such as not divulging confidential information, interfering with Company contracts, or usurping corporate opportunities.

53. Payne's actions, such as intentionally disclosing Company confidential information, not immediately returning his Company-owned cell phone, encouraging Chivukula to breach his Consulting Agreement with the Company, and engaging in private business transactions without first obtaining ATI's express written consent, violated his Confidentiality Agreement.

54. Payne violated the Confidentiality Agreement by intentionally disclosing secret and confidential information regarding Plaintiffs' finances and sources of funding, contractual relationships, and private ATI and Company Board discussions regarding potential business strategies, divulging secret and confidential Company information in the documents he filed in the Israeli Action. Although he could have filed such documents under seal, he chose to instead publicly disclose the Company's confidential information, in violation of his Confidentiality Agreement.

55. Payne also possessed the Company-owned cell phone for over two months after the Company Board terminated him. Despite the Company's repeated demands for Payne to return the cell phone, he did not return the phone until March 26, 2018. On inspection, the cell phone has been reset to its factory settings, which deleted some or all of the information contained on the phone. On information and belief, the cell phone contained the Company's confidential information, which Payne used to disrupt Company business and for other purposes inconsistent with his Confidentiality Agreement.

1           56. On information and belief, Payne has also been violating his Confidentiality  
2 Agreement by soliciting and encouraging Chivukula to breach his validly executed Consulting  
3 Agreement with the Company. Based on statements made in the Israeli Action and on information  
4 and belief, Payne has encouraged, and continues to encourage, Chivukula to participate in his efforts  
5 to disrupt Company operations. Payne's collusion with Chivukula to frivolously challenge the  
6 validity of Chivukula's Consulting Agreement with the Company directly violates Payne's  
7 Confidentiality and Employment Agreements with the Company.

8           57. On information and belief, Payne breached his Confidentiality Agreement by  
9 engaging in private business transactions for personal gain while holding positions as President and  
10 CEO of ATI and ATI Board Director. Starting in at least 2014, Payne engaged in private business  
11 transactions selling large quantities of chemical products to third-party buyers. On information and  
12 belief, Payne also diverted ATI's resources in developing and pricing these transactions. Payne  
13 failed to bring these transactions to the ATI Board's attention, or seek authorization from ATI or the  
14 ATI Board, the Company, or the Company Board to engage in these transactions. Furthermore, ATI,  
15 the ATI Board, the Company, or the Company Board never granted authorization or ratified such  
16 activity. On information and belief, Payne has continued to engage in such transactions through and  
17 including the present and maintains business relationships with his personal customers.

18           58. Plaintiffs have fully performed their obligations under the Confidentiality Agreement.

19           59. Plaintiffs and Payne recognized the possible harm that could result to the Company  
20 from breaches of the Confidentiality Agreement – harm not merely limited to financial damages, but  
21 including irreparable reputational and other harms that can only possibly be remedied through  
22 equitable relief. Accordingly, Section 9 of the Confidentiality Agreement provides:

23           I agree that it may be impossible to assess the damages caused by my violation  
24 of this Agreement or any of its terms. I agree that any threatened or actual  
25 violation of this Agreement or any of its terms will constitute immediate and  
26 irreparable injury to Company, and Company will have the right to enforce this  
27 Agreement and any of its provisions by injunction, specific performance or  
28 other equitable relief, without bond and without prejudice to any other rights  
and remedies that Company may have for a breach or threatened breach of this  
Agreement.

1           60.     Payne's actions in breach of his Confidentiality Agreement with Plaintiffs have  
2 caused Plaintiffs to suffer, and threatened Plaintiffs to suffer further, financial and irreparable  
3 reputational and other harm. By reasons of Payne's breach of contract, Plaintiffs have also suffered  
4 quantifiable damage in an amount to be proven at trial, but believed to be in excess of \$10,000,000.

5                               **SECOND CAUSE OF ACTION**

6                               **Breach of Payne's Employment Agreement**

7           61.     Plaintiffs hereby incorporate by reference Paragraphs 1–60, as though fully set forth  
8 herein.

9           62.     Payne has similarly breached his Employment Agreement with ATI by committing  
10 numerous acts in violation of the Employment Agreement. Although he was terminated, Payne  
11 remains subject to ongoing obligations under his Employment Agreement, such as returning all  
12 Company property to the Company, not interfering with Company contracts, and not usurping  
13 corporate opportunities.

14          63.     As noted above, Payne failed to immediately return his Company-owned cell phone,  
15 which contains, on information and belief, confidential Company information. Despite Payne's  
16 termination on January 25, 2018 and the Company's request for him to return the phone shortly after  
17 his termination, Payne failed to do so and waited to return the cell phone until March 26, 2018. On  
18 information and belief, the cell phone contained confidential Company information which Payne  
19 used to harm the Company.

20          64.     Payne has also, on information and belief, Payne violated, and continues to violate,  
21 his Employment Agreement by soliciting and encouraging Chivukula to breach his Consulting  
22 Agreement with Plaintiffs.

23          65.     Payne's effort to mobilize shareholders to vote against a clearly qualified independent  
24 auditor also violates the noninterference provision in Payne's Employment Agreement. Payne has  
25 provided no explanation why E&Y USA is unqualified to act as the Company's independent auditor.  
26 On information and belief, Payne has motivated other shareholders to vote against E&Y USA to  
27 serve as independent auditors by, among other actions, withholding material information from  
28 shareholders in an effort to gain their support for his position. He even went so far as to brag that he



1 can mobilize a majority of the shareholders to defeat any resolution, even if that resolution is not in  
2 the best interest of the Company.

3 66. If no independent auditor is appointed by the end of April, the Company risks  
4 delisting by NASDAQ and possible sanctions by the SEC.

5 67. ATI has fully performed their obligations under the Employment Agreement.

6 68. Plaintiffs and Payne recognized the possible harm that could result to ATI from  
7 breaches of the Employment Agreement—harm not merely limited to financial damages, but  
8 including irreparable reputational and other harms that can only possibly be remedied through  
9 equitable relief. Accordingly, Section 13 of the Employment Agreement provides:

10 [Payne] agrees that any breach of Section 5 [Non-Disclosure of Third-Party  
11 Information] or 6 [Nonsolicitation; Non-Interference] of this Agreement  
12 would cause substantial and irreparable harm to the Company for which  
13 money damages would be an inadequate remedy. Accordingly, the Company  
14 shall in any such event be entitled to obtain injunctive and other forms of  
15 equitable relief to prevent such breach and to recover from Executive the  
16 Company's costs (including without limitation reasonable attorneys' fees)  
17 incurred in connection with enforcing the relevant provisions referenced  
18 above of this Agreement, in addition to any other rights or remedies available  
19 at law, in equity or by statute.

20 69. Payne's actions in breach of his Employment Agreement with Plaintiffs have caused  
21 Plaintiffs to suffer, and threatened Plaintiffs to suffer further, financial and irreparable reputational  
22 and other harm. By reasons of Payne's breach of contract, Plaintiffs have also suffered quantifiable  
23 damage in an amount to be proven at trial, but believed to be in excess of \$10,000,000.

### 24 **THIRD CAUSE OF ACTION**

#### 25 **Breach of Fiduciary Duties**

26 70. Plaintiffs hereby incorporate by reference Paragraphs 1–69, as though fully set forth  
27 herein.

28 71. Payne owed, and continues to owe, duties to ATI and the Company as the former  
President and CEO of ATI and the Company, as a former Director of the ATI Board, and as a  
current Director of the Company Board. These duties include the duty of loyalty and the duty to act  
in good faith in the best interests of the Company.



72. Payne has breached his fiduciary duties to the Company by committing, and continuing to commit, numerous acts contrary to the interests of the Company and its shareholders. Among other things, Payne has divulged the Company's confidential information, interfered with Company contracts, usurped corporate opportunities, and failed to disclose to the Boards material information relating to negotiations regarding financing and service agreements, all as alleged above. In violation of his fiduciary duty of loyalty, Payne has acted and continues to act to advance his personal interests to the detriment of those of the Company and its stockholders.

73. Payne's actions in breach of his Confidentiality Agreement with ATI also constitute a breach of his fiduciary duties and have caused Plaintiffs to suffer, and threatened Plaintiffs to suffer further, financial and irreparable reputational harm. By reasons of Payne's breach of fiduciary duties, Plaintiffs have also suffered quantifiable damage in an amount to be proven at trial, but believed to be in excess of \$10,000,000, including the disgorgement of any benefit he has realized from his breaches of the duty of loyalty, including without limitation, any benefits from his usurpation of any corporate opportunity, from his conducting his side business under the guise of the Company, or from misappropriating and divulging other confidential company information.

#### FOURTH CAUSE OF ACTION

## Interference With Contractual Relations

74. Plaintiffs hereby incorporate by reference Paragraphs 1–73, as though fully set forth herein.

75. Through the Consulting Agreement and Voting Trust Agreement, the Company contracted with Chivukula to provide consulting services to the Company on specified terms (including the placement of his shares of Company stock into a voting trust), and Payne was aware of this contract.

76. Payne has acted, and continues to act, to disrupt the Company's relationship with Chivukula by, among other things, encouraging Chivukula to breach his Consulting Agreement and his Voting Trust Agreement with the Company. Payne's actions have resulted in substantial disruption to the Company's relationship with Chivukula such that the Company has been unable to realize on the benefit of the Consulting Agreement. Furthermore, Payne's actions, including his

1 ongoing actions, have deprived the Company of the benefit of its Consulting Agreement with  
2 Chivukula.

3 77. Payne owes fiduciary duties to the Company by virtue of serving as a Director of the  
4 Company Board.

5 78. Payne's interference has caused Plaintiffs to suffer, and threatened Plaintiffs to suffer  
6 further, financial and irreparable reputational harm. By reasons of Payne's interference, Plaintiffs  
7 have also suffered quantifiable damage in an amount to be proven at trial, but believed to be in  
8 excess of \$100,000.

### 9 **FIFTH CAUSE OF ACTION**

#### 10 **Interference With Prospective Business Advantage**

11 79. Plaintiffs hereby incorporate by reference Paragraphs 1–78, as though fully set forth  
12 herein.

13 80. The Company has an economic relationship with E&Y USA which is intended to  
14 benefit the Company.

15 81. Payne is aware of this relationship.

16 82. On information and belief, Payne has acted to disrupt the Company's relationship  
17 with E&Y by, among other actions, encouraging Company shareholders to vote against the  
18 ratification of the appointment of E&Y USA as the Company's independent auditors, despite the fact  
19 that Payne himself voted as a director in favor of the appointment of E&Y USA. As a result of these  
20 efforts, the shareholders voted against E&Y USA being appointed the Company's independent  
21 auditors. Despite E&Y USA's being qualified to serve as the Company's independent auditors,  
22 Payne has offered no reason for opposing E&Y USA's appointment, and, on information and belief,  
23 has opposed their appointment in order to pressure the Company Board directors to reappoint him as  
24 President and CEO and to cause the Company's stock to be delisted on NASDAQ.

25 83. Payne owes fiduciary duties to the Company by virtue of serving as a Director of the  
26 Company Board.

1 84. Payne's interference with E&Y has caused Plaintiffs to suffer, and threatened  
2 Plaintiffs to suffer further, financial and irreparable reputational harm. By reasons of Payne's  
3 interference, Plaintiffs have suffered damage in an amount to be proven at trial.

4 **REQUEST FOR RELIEF**

5 WHEREFORE, Plaintiffs request judgment against Payne as follows:

6 1. An order: (a) enjoining Payne from divulging or using any confidential Company  
7 information in his possession; (b) directing Payne to return immediately any confidential information  
8 in his possession; (c) enjoining Payne from any encouraging Chivukula or any other employee,  
9 contractor, or consultant from breaching their contract with the Company; (d) enjoining Payne from  
10 taking actions to collude with shareholders or anyone else to cause the Company financial harm; and  
11 (e) enjoining Payne from engaging in any future business transactions for personal financial gain  
12 arising from or relating to his service to the Company as a director or officer without first seeking  
13 authorization from the Company.

14 2. Any other injunctive relief necessary to effectuate the terms of the Confidentiality and  
15 Employment Agreements;

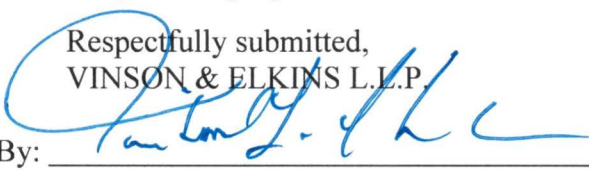
16 3. Compensatory damages in an amount to be proven at trial but that exceeds  
17 \$10,000,000;

18 4. The return of any salary or bonus compensation, benefits, and any other  
19 compensation Payne received during the period in which he was in breach;

20 5. Attorneys' fees, expenses, and interest to the degree permissible by law and as the  
21 Court may award; and

22 6. Such other relief the Court deems just and proper.

23 Dated: March 27, 2018

24 Respectfully submitted,  
25 VINSON & ELKINS L.L.P.  
26 By:   
27 Michael L. Charlson

28 *Attorneys for Plaintiffs*  
*Arcturus Therapeutics Ltd. and*  
*Arcturus Therapeutics, Inc.*

**JURY DEMAND**

Plaintiffs hereby demand a trial by jury for each and every claim for which they have a right to jury trial.

Dated: March 27, 2018

Respectfully submitted,  
VINSON & ELKINS L.L.P.

By: 

Michael L. Charlson

*Attorneys for Plaintiffs  
Arcturus Therapeutics Ltd. and  
Arcturus Therapeutics, Inc.*

# EXHIBIT A

## AMENDED AND RESTATED EXECUTIVE EMPLOYMENT AGREEMENT

**THIS AMENDED AND RESTATED EXECUTIVE EMPLOYMENT AGREEMENT** (this "Agreement"), is executed and entered into as of November 15, 2017 by and between Arcturus Therapeutics, Inc., a Delaware corporation (the "Company"), and Joseph E. Payne, an individual resident of the State of California ("Executive"). This Agreement is effective as of the Effective Date (as such term is defined below).

**WHEREAS**, the Company and Executive are parties to that certain Executive Employment Agreement dated March 28, 2013 (the "Prior Agreement");

**WHEREAS**, the Company has entered into that certain Agreement and Plan of Merger and Reorganization dated September 27, 2017 (the "Merger Agreement") whereby Alcobra Ltd., an Israeli company ("Parent") will acquire the Company by means of a merger of Aleph MergerSub, Inc., a Delaware corporation and a wholly-owned subsidiary of Parent, with and into the Company, with the Company continuing as the surviving corporation of such merger as a wholly-owned subsidiary of Parent (the "Merger"); and

**WHEREAS**, this Agreement will supersede and replace the Prior Agreement contingent upon and effective as of the closing of the Merger (the "Effective Date").

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### 1. POSITION AND RESPONSIBILITIES

(a) **Position.** Executive shall be employed by the Company to render services to the Company in the position of President and Chief Executive Officer. Executive shall report directly to the Parent's Board of Directors (the "Board"). Executive shall perform such duties and responsibilities as are normally related to such position, in accordance with industry standards, and any additional duties now or hereafter assigned to Executive by the Board. Executive shall abide by the Company's rules, regulations and practices, as adopted or modified from time to time in the Company's sole discretion.

(b) **Other Activities.** Except with the prior written consent of the Company, Executive shall not, during the term of this Agreement: (i) accept any other employment; or (ii) engage, directly or indirectly, in any other business activity (whether or not pursued for pecuniary gain) that might interfere with Executive's duties and responsibilities hereunder or create a conflict of interest with the Company. Executive may serve as a member of the board of directors of any company that does not compete directly with the Company. Notwithstanding the foregoing, Executive may also devote reasonable time and attention to civic, charitable or social organizations so long as such activities do not interfere with the performance of his duties to the Company.

(c) **No Conflict.** Executive represents and warrants that Executive's execution of this Agreement, Executive's employment with the Company and the performance of Executive's proposed duties under this Agreement shall not violate any obligations Executive may have to



any prior or other employer, or any other person or entity, including, without limitation, any obligations with respect to proprietary or confidential information of any prior employer, or any other person or entity.

## **2. COMPENSATION AND BENEFITS**

**(a) Compensation Policy Limits.** Any compensation payable to Executive under this Agreement is subject to any applicable limits as approved by the shareholders of the Company from time to time and/or as set forth in the Arcturus Therapeutics Ltd. Amended and Restated Compensation Policy for Company Office Holders as amended from time to time (the "Compensation Policy") and any other limitations imposed by applicable law, including, without limitation, the requirement that until the next shareholder meeting following the closing of the Merger, the compensation payable to Executive shall not exceed the compensation of the preceding CEO of the Company (the "Compensation Limits"). To the extent Executive would otherwise be entitled to receive compensation or benefits from the Company that would exceed any Compensation Limits, Executive's compensation will automatically be reduced so that the Compensation Limits are not exceeded.

**(b) Base Salary.** In consideration of the services to be rendered under this Agreement, the Company shall pay to Executive an initial salary at the rate of Three Hundred Eighty-Four Thousand Dollars (\$384,000) per year, as adjusted from time to time as described below (the "Base Salary"). The Base Salary shall be paid in accordance with the Company's standard bi-weekly payroll practices. The Base Salary will be reviewed and adjusted from time to time by the Compensation Committee of the Board (the "Compensation Committee").

**(c) Bonus.** Executive shall be eligible to receive an annual bonus based on a percentage of Executive's Base Salary, or other increased percentage as may be determined by the Company's Board of Director's (or a committee thereof) from time to time (the "Bonus"). Any such Bonus shall be subject to Executive's achievement of corporate financial metrics or other goals and objectives to be established from time to time by the Company's Board of Directors (or a committee thereof).

**(d) Benefits.** Executive shall continue to be eligible to participate in any and all medical, dental, vision, retirement, life insurance, 401(k) plan and other benefits (the "Benefits") established by the Company that are made generally available by the Company to executive officers of the Company, as such plans may be amended from time to time in the Company's sole discretion.

**(e) Vacation.** Executive shall receive five (5) weeks of paid vacation time per calendar year, which amount shall increase in accordance with the Company's vacation policy for employees of the Company generally. Executive may take such accrued vacation at such times as are mutually convenient to Executive and the Company. In addition, Executive shall be entitled to all holidays provided under the Company's regular holiday schedule.

**(f) Business Expenses.** The Company will reimburse Executive for reasonable and necessary expenses appropriately incurred by Executive in performing his duties and obligations

to the Company in accordance with, and subject to, such policies and procedures regarding executive officer expenses generally as the Company may from time to time have in effect.

### **3. AT-WILL EMPLOYMENT**

(a) **At-Will Employment.** The employment of Executive shall be “at-will” at all times. The Company may terminate Executive’s employment with the Company at any time, without any advance notice, for any reason or no reason at all, notwithstanding anything to the contrary contained in or arising from any statements, policies or practices of the Company relating to the employment, discipline or termination of its employees. Upon and after the date of such termination, all obligations of the Company shall cease, except as set forth in this Section 3. Executive may terminate employment with the Company at any time for any reason or no reason at all, upon two weeks advance written notice. During such notice period, Executive shall continue to diligently perform all of Executive’s duties hereunder. The Company shall have the option, in its sole discretion, to make Executive’s termination effective at any time prior to the end of such notice period as long as the Company pays Executive all compensation (including all accrued Base Salary (at the annual rate then in effect), vacation and any other amounts owed to Executive at the time of termination) accrued to which Executive is entitled up through the last day of the two-week notice period. Any such amounts shall be paid on the effective date of termination.

(b) **Payments Upon Termination.** In the event of any termination of Executive’s employment for any reason: (i) any accrued vacation pay and any other amounts owed to Executive at the time of termination shall be paid on the effective date of Executive’s termination, and (ii) all reimbursable expenses incurred up to and including the date of termination shall be submitted for payment within thirty (30) days of termination and contain all documentation required pursuant to Company policy. All restricted shares and other equity awards shall cease to vest on the date of termination..

### **4. TERMINATION OBLIGATIONS**

(a) **Return of Property.** Executive agrees that all property (including, without limitation, all equipment, tangible proprietary information, documents, records, notes, contracts and computer-generated materials) furnished to or created or prepared by Executive incident to Executive’s employment belongs to the Company and shall be promptly returned to the Company upon termination of Executive’s employment.

(b) **Cooperation.** Following any termination of his employment, Executive shall perform any and all acts requested by the Company to ensure the orderly and efficient transition of Executive’s duties. Such acts may include, but are not limited to: (i) participating in meetings or telephone conferences; (ii) reviewing, preparing or executing documents; and (iii) providing assistance in connection with any litigation, investigation or audit involving the Company, or any of its affiliates, directors, officers, employees, agents, attorneys, representatives, stockholders, insurers, divisions, successors and/or assigns and any related holding, parent or subsidiary corporations.



## **5. NON-DISCLOSURE OF THIRD-PARTY INFORMATION**

Executive represents, warrants and covenants that Executive shall not disclose to the Company, or use, or induce the Company to use, any proprietary information or trade secrets of others at any time, including but not limited to, any proprietary information or trade secrets of any current or former employer, if any; and Executive acknowledges and agrees that any violation of this provision shall be grounds for Executive's immediate termination and could subject Executive to substantial civil liabilities and criminal penalties. Executive further specifically and expressly acknowledges that no officer or other employee or representative of the Company has requested or instructed Executive to disclose or use any such third-party proprietary information or trade secrets.

## **6. NONSOLICITATION; NON-INTERFERENCE**

Executive acknowledges and agrees that the Company's relationships with its employees, consultants, and service providers are valuable business assets. Accordingly, Executive agrees that, during his employment with the Company and for a period of one-year thereafter he will not (for himself or for any third party) divert or attempt to divert from the Company any employee, consultant, or service provider, through solicitation or otherwise, or otherwise interfere with the Company's business or the Company's relationships with its employees, consultants, and service providers.

## **7. AMENDMENTS; WAIVERS; REMEDIES**

This Agreement may not be amended or waived except by a writing signed by Executive and by a duly authorized officer of the Company. Failure to exercise any right under this Agreement shall not constitute a waiver of such right. Any waiver of any breach of this Agreement shall not operate as a waiver of any subsequent breaches. All rights or remedies specified for a party herein shall be cumulative and in addition to all other rights and remedies of the party hereunder or under applicable law.

## **8. ASSIGNMENT; BINDING EFFECT**

(a) **Assignment.** The performance of Executive is personal hereunder, and Executive agrees that Executive shall have no right to assign and shall not assign or purport to assign any rights or obligations under this Agreement. This Agreement may be assigned or transferred by the Company and nothing in this Agreement shall prevent the consolidation, merger or sale of the Company or a sale of any or all or substantially all of its assets.

(b) **Binding Effect.** Subject to the foregoing restriction on assignment by Executive, this Agreement shall inure to the benefit of and be binding upon each of the parties; the affiliates, officers, directors, agents, legal representatives, successors and assigns of the Company; and the heirs, devisees, spouses, legal representatives and successors of Executive.

## **9. NOTICES**

All notices or other communications required or permitted hereunder shall be made in writing and shall be deemed to have been duly given if delivered: (a) by hand; (b) by a nationally

recognized overnight courier service; or (c) by United States first class registered or certified mail, return receipt requested, to the principal address of the other party, as set forth below on the signature page of this Agreement. The date of notice shall be deemed to be the earlier of (i) actual receipt of notice by any permitted means, or (ii) five (5) business days following dispatch by overnight delivery service or the United States mail. Executive shall be obligated to notify the Company in writing of any change in Executive's address. Notice of change of address shall be effective only when provided in accordance with this Section 9.

## **10. SEVERABILITY**

If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, such provision shall be enforced to the fullest extent permitted by law, and the remainder of this Agreement shall remain in full force and effect. In the event that the time period or scope of any provision is declared by a court or arbitrator of competent jurisdiction to exceed the maximum time period or scope that such court or arbitrator deems enforceable, then such court or arbitrator shall reduce the time period or scope to the maximum time period or scope permitted by law.

## **11. TAXES**

(a) **Withholding.** All amounts paid under this Agreement (including, without limitation, the Base Salary) shall be paid less all applicable state and federal tax withholdings and any other withholdings required by any applicable jurisdiction.

(b) **Section 280G.** If any payment or benefit Executive would receive pursuant to a change of control, whether from the Company or otherwise, ("Payment") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Code, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the "Excise Tax"), then such Payment shall be reduced to an amount that results in no portion of the Payment being subject to the Excise Tax. If a reduction in payments or benefits constituting "parachute payments" is necessary, such reduction shall occur in the following order, as applied first with respect to Payments which are not deferred compensation subject to the requirements of Section 409A of the Code: reduction of cash payments; cancellation of accelerated vesting of stock awards; reduction of other employee benefits. In the event that acceleration of vesting of stock award compensation is to be reduced, such acceleration of vesting shall be cancelled in the reverse order of the date of grant.

## **12. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the internal laws of the State of California, without regard to conflicts of law principles.

## **13. EQUITABLE RELIEF**

Executive agrees that any breach of Section 5 or 6 of this Agreement would cause substantial and irreparable harm to the Company for which money damages would be an inadequate remedy. Accordingly, the Company shall in any such event be entitled to obtain injunctive and other forms of equitable relief to prevent such breach and to recover from

Executive the Company's costs (including without limitation reasonable attorneys' fees) incurred in connection with enforcing the relevant provisions referenced above of this Agreement, in addition to any other rights or remedies available at law, in equity or by statute.

#### **14. INTERPRETATION**

This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. Sections and section headings contained in this Agreement are for reference purposes only, and shall not affect in any manner the meaning or interpretation of this Agreement. Whenever the context requires, references to the singular shall include the plural and the plural the singular.

#### **15. ATTORNEY'S FEES**

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements, in addition to any other relief to which the party may be entitled.

#### **16. OBLIGATIONS SURVIVE TERMINATION OF EMPLOYMENT**

The parties agree that any and all of the Company's or Executive's obligations under this Agreement shall survive the termination of this Agreement.

#### **17. COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed an original of this Agreement, but all of which together shall constitute one and the same instrument.

#### **18. AUTHORITY**

Each party represents and warrants that such party has the right, power and authority to enter into and execute this Agreement and to perform and discharge all of the obligations hereunder; and that this Agreement constitutes the valid and legally binding agreement and obligation of such party and is enforceable in accordance with its terms.

#### **19. ENTIRE AGREEMENT**

This Agreement is intended to be the final, complete and exclusive statement of the terms of Executive's employment by the Company which as of the Effective Date supersedes and may not be contradicted by evidence of any prior or contemporaneous statements or agreements (including but not limited to the Prior Agreement). Notwithstanding the foregoing, this Agreement shall not supersede or otherwise affect any agreements previously executed by Executive relating to the Company's proprietary information or intellectual property rights. To the extent that the plans, practices, policies or procedures of the Company, now or in the future, apply to Executive and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control. Any subsequent change in Executive's duties, position or compensation shall not affect the validity or scope of this Agreement.

## 20. INDEMNIFICATION

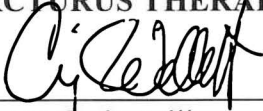
The Company shall indemnify Executive to the fullest extent permitted by applicable law and the Company's Bylaws with respect to Executive's service to the Company and Executive shall at all times be covered under a director's and officer's liability policy(ies) paid for by the Company. If not yet executed, Executive shall become party to the form of Indemnification Agreement currently in existence with the Company.

## 21. EXECUTIVE ACKNOWLEDGEMENT

Executive acknowledges that Executive has had the opportunity to consult legal counsel concerning this Agreement, that Executive has read and understands this Agreement, that Executive is fully aware of its legal effect and that Executive has entered into this Agreement freely based on Executive's own judgment and not on any representations or promises other than those contained in this Agreement.

**IN WITNESS WHEREOF**, the parties hereby execute this Agreement on the day and year first written above.

**ARCTURUS THERAPEUTICS, INC.**

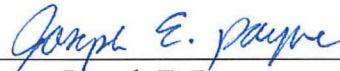


Name: Craig Willett

Title: Director of the Board

Address for notices:  
10628 Science Center Drive #200  
San Diego, CA 92121

**EXECUTIVE:**



Name: Joseph E. Payne

Address for notices:  
15907 Atkins Place  
San Diego, CA 92127

# **EXHIBIT B**

## EMPLOYEE CONFIDENTIAL INFORMATION AND INVENTION ASSIGNMENT AGREEMENT

In consideration of my employment or continued employment by Arcturus Therapeutics, Inc., its direct and indirect subsidiaries, parents, affiliates, predecessors, successors and assigns (together **“Company”**), and the compensation and benefits provided to me now and during my employment with Company, I hereby enter into this Employee Confidential Information and Invention Assignment Agreement (the **“Agreement”**), which will be deemed effective as of the first day of my employment with the Company:

### 1. CONFIDENTIAL INFORMATION PROTECTIONS.

#### 1.1 Recognition of Company's Rights;

**Nondisclosure.** I understand and acknowledge that my employment by Company creates a relationship of confidence and trust with respect to Company's Confidential Information (as defined below) and that Company has a protectable interest therein. At all times during and after my employment, I will hold in confidence and will not disclose, use, lecture upon, or publish any of Company's Confidential Information, except as such disclosure, use or publication may be required in connection with my work for Company, or unless an officer of Company expressly authorizes such disclosure. I will obtain Company's written approval before publishing or submitting for publication any material (written, oral, or otherwise) that discloses and/or incorporates any Confidential Information. I hereby assign to Company any rights I may have or acquire in such Confidential Information and recognize that all Confidential Information shall be the sole and exclusive property of Company and its assigns. I will take all reasonable precautions to prevent the inadvertent accidental disclosure of Confidential Information. Notwithstanding the foregoing, pursuant to 18 U.S.C. Section 1833(b), I shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (1) is made in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (2) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

**1.2 Confidential Information.** The term **“Confidential Information”** shall mean any and all confidential knowledge, data or information of Company. By way of illustration but not limitation, **“Confidential Information”** includes (a) trade secrets, inventions, mask works, ideas, processes, formulas, software in source or object code versions, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques and any other proprietary technology and all Intellectual Property Rights therein (collectively, **“Inventions”**);

(b) information regarding research, development, new products, marketing and selling, business plans, budgets and unpublished financial statements, licenses, prices and costs, margins, discounts, credit terms, pricing and billing policies, quoting procedures, methods of obtaining business, forecasts, future plans and potential strategies, financial projections and business strategies, operational plans, financing and capital-raising plans, activities and agreements, internal services and operational manuals, methods of conducting Company business, suppliers and supplier information, and purchasing; (c) information regarding customers and potential customers of Company, including customer lists, names, representatives, their needs or desires with respect to the types of products or services offered by Company, proposals, bids, contracts and their contents and parties, the type and quantity of products and services provided or sought to be provided to customers and potential customers of Company and other non-public information relating to customers and potential customers; (d) information regarding any of Company's business partners and their services, including names; representatives, proposals, bids, contracts and their contents and parties, the type and quantity of products and services received by Company, and other non-public information relating to business partners; (e) information regarding personnel, employee lists, compensation, and employee skills; and (f) any other non-public information which a competitor of Company could use to the competitive disadvantage of Company. Notwithstanding the foregoing, it is understood that, at all such times, I am free to use information which is generally known in the trade or industry through no breach of this Agreement or other act or omission by me. Further, notwithstanding the foregoing or anything to the contrary in this Agreement or any other agreement between the Company and me, nothing in this Agreement shall limit my right to discuss my employment or report possible violations of law or regulation with any federal government agency or similar state or local agency or to discuss the terms and conditions of my employment with others to the extent expressly permitted by Section 7 of the National Labor Relations Act.

**1.3 Third Party Information.** I understand, in addition, that Company has received and in the future will receive from third parties their confidential and/or proprietary knowledge, data or information (“**Third Party Information**”) subject to a duty on Company’s part to maintain the confidentiality of such information and to use it only for certain limited purposes. During my employment and thereafter, I will hold Third Party Information in confidence and will not disclose to anyone (other than Company personnel who need to know such information in connection with their work for Company) or use, except in connection with my work for Company, Third Party Information unless expressly authorized by an officer of Company in writing.

**1.4 No Improper Use of Information of Prior Employers and Others.** During my employment by Company, I will not improperly use or disclose confidential information or trade secrets, if any, of any former employer or any other person to whom I have an obligation of confidentiality, and I will not bring onto the premises of Company any unpublished documents or any property belonging to any former employer or any other person to whom I have an obligation of confidentiality unless consented to in writing by that former employer or person.

## **2. ASSIGNMENTS OF INVENTIONS.**

**2.1 Definitions.** As used in this Agreement, the term “**Intellectual Property Rights**” means all trade secrets, Copyrights, trademarks, mask work rights, patents and other intellectual property rights recognized by the laws of any jurisdiction or country; the term “**Copyright**” means the exclusive legal right to reproduce, perform, display, distribute and make derivative works of a work of authorship (as a literary, musical, or artistic work) recognized by the laws of any jurisdiction or country; and the term “**Moral Rights**” means all paternity, integrity, disclosure, withdrawal, special and any other similar rights recognized by the laws of any jurisdiction or country.

**2.2 Excluded Inventions and Other Inventions.** Attached hereto as **Attachment 1** is a list describing all existing Inventions, if any, that may relate to Company’s business or actual or demonstrably anticipated research or development and that were made by me or acquired by me prior to the commencement of my employment with, and which are not to be assigned to, Company (“**Excluded Inventions**”). If no such list is attached, I represent and agree that it is because I have no rights in any existing Inventions that may relate to Company’s business or actual or demonstrably anticipated research or development. For purposes of this Agreement, “**Other**

**Inventions**” means Inventions in which I have or may have an interest, as of the commencement of my employment, other than Company Inventions (defined below) and Excluded Inventions. I acknowledge and agree that if I use any Excluded Inventions or any Other Inventions in the scope of my employment, or if I include any Excluded Inventions or Other Inventions in any product or service of Company, or if my rights in any Excluded Inventions or Other Inventions may block or interfere with, or may otherwise be required for, the exercise by Company of any rights assigned to Company under this Agreement, I will immediately so notify Company in writing. Unless Company and I agree otherwise in writing as to particular Excluded Inventions or Other Inventions, I hereby grant to Company, in such circumstances (whether or not I give Company notice as required above), a non-exclusive, perpetual, transferable, fully-paid and royalty-free, irrevocable and worldwide license, with rights to sublicense through multiple levels of sublicensees, to reproduce, make derivative works of, distribute, publicly perform, and publicly display in any form or medium, whether now known or later developed, make, have made, use, sell, import, offer for sale, and exercise any and all present or future rights in, such Excluded Inventions and Other Inventions. To the extent that any third parties have rights in any such Other Inventions, I hereby represent and warrant that such third party or parties have validly and irrevocably granted to me the right to grant the license stated above.

**2.3 Assignment of Company Inventions.** Inventions assigned to Company, or to a third party as directed by Company pursuant to Section 2.6, are referred to in this Agreement as “**Company Inventions.**” Subject to Section 2.4 (Unassigned or Nonassignable Inventions) and except for Excluded Inventions set forth in **Attachment 1** and Other Inventions, I hereby assign to Company all my right, title, and interest in and to any and all Inventions (and all Intellectual Property Rights with respect thereto) made, conceived, reduced to practice, or learned by me, either alone or with others, during the period of my employment by Company. To the extent required by applicable Copyright laws, I agree to assign in the future (when any copyrightable Inventions are first fixed in a tangible medium of expression) my Copyright rights in and to such Inventions. Any assignment of Company Inventions (and all Intellectual Property Rights with respect thereto) hereunder includes an assignment of all Moral Rights. To the extent such Moral Rights cannot be assigned to Company and to the extent the following is allowed by the laws in any country where Moral Rights exist, I hereby unconditionally and irrevocably waive the enforcement of such Moral Rights, and all claims and causes of action of any kind against Company or related



to Company's customers, with respect to such rights. I further acknowledge and agree that neither my successors-in-interest nor legal heirs retain any Moral Rights in any Company Inventions (and any Intellectual Property Rights with respect thereto).

**2.4 Unassigned or Nonassignable Inventions.** I recognize that this Agreement will not be deemed to require assignment of any Invention that is covered under California Labor Code section 2870(a) (the "**Specific Inventions Law**"), as detailed on **Attachment 2**.

**2.5 Obligation to Keep Company Informed.** During the period of my employment and for one (1) year after termination of my employment, I will promptly and fully disclose to Company in writing all Inventions authored, conceived, or reduced to practice by me, either alone or jointly with others. In addition, I will promptly disclose to Company all patent applications filed by me or on my behalf within one (1) year after termination of employment. At the time of each such disclosure, I will advise Company in writing of any Inventions that I believe fully qualify for protection under the provisions of the Specific Inventions Law; and I will at that time provide to Company in writing all evidence necessary to substantiate that belief. Company will keep in confidence and will not use for any purpose or disclose to third parties without my consent any confidential information disclosed in writing to Company pursuant to this Agreement relating to Inventions that qualify fully for protection under the Specific Inventions Law. I will preserve the confidentiality of any Invention that does not fully qualify for protection under the Specific Inventions Law.

**2.6 Government or Third Party.** I agree that, as directed by Company, I will assign to a third party, including without limitation the United States, all my right, title, and interest in and to any particular Company Invention.

**2.7 Ownership of Work Product.** I agree that Company will exclusively own all work product that is made by me (solely or jointly with others) within the scope of my employment, and I hereby irrevocably and unconditionally assign to Company all right, title, and interest worldwide in and to such work product. I acknowledge that all original works of authorship which are made by me (solely or jointly with others) within the scope of my employment and which are protectable by Copyright are "works made for hire," pursuant to United States Copyright Act (17 U.S.C., Section 101). I understand and agree that I have no right to publish on, submit for publishing, or use for any publication any work product protected by this Section, except as necessary to perform services for Company.

**2.8 Enforcement of Intellectual Property Rights and Assistance.** I will assist Company in every proper way to obtain, and from time to time enforce, United States and foreign Intellectual Property Rights and Moral Rights relating to Company Inventions in any and all countries. To that end I will execute, verify and deliver such documents and perform such other acts (including appearances as a witness) as Company may reasonably request for use in applying for, obtaining, perfecting, evidencing, sustaining and enforcing such Intellectual Property Rights and the assignment thereof. In addition, I will execute, verify and deliver assignments of such Intellectual Property Rights to Company or its designee, including the United States or any third party designated by Company. My obligation to assist Company with respect to Intellectual Property Rights relating to such Company Inventions in any and all countries will continue beyond the termination of my employment, but Company will compensate me at a reasonable rate after my termination for the time actually spent by me at Company's request on such assistance. In the event Company is unable for any reason, after reasonable effort, to secure my signature on any document needed in connection with the actions specified in this paragraph, I hereby irrevocably designate and appoint Company and its duly authorized officers and agents as my agent and attorney in fact, which appointment is coupled with an interest, to act for and in my behalf to execute, verify and file any such documents and to do all other lawfully permitted acts to further the purposes of the preceding paragraph with the same legal force and effect as if executed by me. I hereby waive and quitclaim to Company any and all claims, of any nature whatsoever, which I now or may hereafter have for infringement of any Intellectual Property Rights assigned under this Agreement to Company.

**2.9 Incorporation of Software Code.** I agree that I will not incorporate into any Company software or otherwise deliver to Company any software code licensed under the GNU General Public License or Lesser General Public License or any other license that, by its terms, requires or conditions the use or distribution of such code on the disclosure, licensing, or distribution of any source code owned or licensed by Company **except** in strict compliance with Company's policies regarding the use of such software.

**3. RECORDS.** I agree to keep and maintain adequate and current records (in the form of notes, sketches, drawings and in any other form that is required by Company) of all Confidential Information developed by me and all Company Inventions made by me during the period of my employment at Company, which records



will be available to and remain the sole property of Company at all times.

**4. DUTY OF LOYALTY DURING EMPLOYMENT.** I agree that during the period of my employment by Company I will not, without Company's express written consent, directly or indirectly (a) engage in any other employment or (b) engage in any other activities that are competitive with, or would otherwise conflict with, my employment by Company.

**5. NO SOLICITATION OF EMPLOYEES, CONSULTANTS, OR CONTRACTORS.** I agree that during the period of my employment and for the one (1) year period after the date my employment ends for any reason, including but not limited to voluntary termination by me or involuntary termination by Company, I will not, as an officer, director, employee, consultant, owner, partner, or in any other capacity, either directly or through others, except on behalf of Company, solicit, induce, encourage, or participate in soliciting, inducing or encouraging any employee, consultant, or independent contractor of Company to terminate his, her or its relationship with Company, even if I did not initiate the discussion or seek out the contact.

**6. REASONABLENESS OF RESTRICTIONS.** I agree that I have read this entire Agreement and understand it. I agree that this Agreement does not prevent me from earning a living or pursuing my career. I agree that the restrictions contained in this Agreement are reasonable, proper, and necessitated by Company's legitimate business interests. I represent and agree that I am entering into this Agreement freely and with knowledge of its contents with the intent to be bound by the Agreement and the restrictions contained in it.

**7. NO CONFLICTING AGREEMENT OR OBLIGATION.** I represent that my employment by Company does not and will not breach any agreement with any former employer or third party, including any noncompete agreement or any agreement to keep in confidence or refrain from using information acquired by me prior to my employment by Company. I further represent that I have not entered into, and will not enter into, any agreement, either written or oral, in conflict with my obligations under this Agreement.

**8. RETURN OF COMPANY PROPERTY.** Subject to the nondisclosure requirements of Section 1.1 above, upon termination of my employment or upon Company's request at any other time, I will deliver to Company any and all of Company's property and equipment and any and all drawings, notes, memoranda, specifications, devices, formulas and documents, together with all copies thereof, and any other material containing or disclosing

any Company Inventions, Third Party Information or Confidential Information of Company. I agree that I will not copy, delete, or alter any information contained upon my Company computer or Company equipment before I return it to Company. In addition, if I have used any personal computer, server, or e-mail system to receive, store, review, prepare or transmit any Company information, including but not limited to, Confidential Information, I agree to provide Company with a computer-useable copy of all such Confidential Information and then permanently delete and expunge such Confidential Information from those systems; and I agree to provide Company access to my system as reasonably requested to verify that the necessary copying and/or deletion is completed. I further agree that any property situated on Company's premises and owned by Company, including disks and other storage media, filing cabinets or other work areas, is subject to inspection by Company's personnel at any time with or without notice.

#### **9. LEGAL AND EQUITABLE REMEDIES.**

**9.1** I agree that it may be impossible to assess the damages caused by my violation of this Agreement or any of its terms. I agree that any threatened or actual violation of this Agreement or any of its terms will constitute immediate and irreparable injury to Company, and Company will have the right to enforce this Agreement and any of its provisions by injunction, specific performance or other equitable relief, without bond and without prejudice to any other rights and remedies that Company may have for a breach or threatened breach of this Agreement.

**9.2** In the event Company enforces this Agreement through a court or arbitration order, I agree that the restrictions of Sections 5 will remain in effect for a period of one (1) year from the effective date of the order enforcing the Agreement.

**10. NOTICES.** Any notices required or permitted under this Agreement will be given to Company at its headquarters location at the time notice is given, and to me at my address as listed on Company payroll, or at such other address as Company or I may designate by written notice to the other. Notice will be effective upon receipt or refusal of delivery. If delivered by certified or registered mail, notice will be considered to have been given five (5) business days after it was mailed, as evidenced by the postmark. If delivered by courier or express mail service, notice will be considered to have been given on the delivery date reflected by the courier or express mail service receipt.

**11. NOTIFICATION OF NEW EMPLOYER.** If I leave the employ of Company, I consent to the notification of my

new employer of my rights and obligations under this Agreement, by Company providing a copy of this Agreement or otherwise.

## **12. GENERAL PROVISIONS.**

**12.1 Governing Law.** This Agreement will be governed by and construed according to the laws of the State of California as such laws are applied to agreements entered into and to be performed entirely within California between California residents.

**12.2 Severability.** In case any one or more of the provisions, subsections, or sentences contained in this Agreement will, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect the other provisions of this Agreement, and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement. If moreover, any one or more of the provisions contained in this Agreement will for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, it will be construed by limiting and reducing it, so as to be enforceable to the extent compatible with the applicable law as it will then appear.

**12.3 Successors and Assigns.** This Agreement is for my benefit and the benefit of Company, its successors, assigns, parent corporations, direct and indirect subsidiaries, affiliates, and purchasers, and will be binding upon my heirs, executors, administrators and other legal representatives.

**12.4 Survival.** This Agreement shall survive the termination of my employment, regardless of the reason, and the assignment of this Agreement by Company to any successor in interest or other assignee.

**12.5 Employment At-Will.** I agree and understand that nothing in this Agreement will change my at-will employment status or confer any right with respect to continuation of employment by Company, nor will it interfere in any way with my right or Company's right to terminate my employment at any time, with or without cause or advance notice.

**12.6 Waiver.** No waiver by Company of any breach of this Agreement will be a waiver of any preceding or succeeding breach. No waiver by Company of any right under this Agreement will be construed as a waiver of

any other right. Company will not be required to give notice to enforce strict adherence to all terms of this Agreement.

**12.7 Export.** I agree not to export, reexport, or transfer, directly or indirectly, any U.S. technical data acquired from Company or any products utilizing such data, in violation of the United States export laws or regulations.

**12.8 Entire Agreement.** The obligations pursuant to Sections 1 and 2 of this Agreement will apply to any time during which I was previously engaged, or am in the future engaged, by Company as a consultant (except Subsection 2.4) if no other agreement governs nondisclosure and assignment of inventions during such period. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter of this Agreement and supersedes and merges all prior discussions between us. No modification of or amendment to this Agreement, will be effective unless in writing and signed by the party to be charged. Any subsequent change or changes in my duties, salary or compensation will not affect the validity or scope of this Agreement.

**12.9 Effect.** I agree and acknowledge that the intent of the parties is to apply the terms and conditions of this Agreement as if I had entered into this Agreement as of the first day of my employment with Company. To the extent that any assignments, licenses, or other commitments under this Agreement are not effective as of the first day of my employment with Company, I hereby: (a) make such assignments, licenses, and other commitments as of the day I have signed this Agreement, (b) represent and warrant that as of the date of this Agreement, I have the full right, power, and authority to assign to Company all rights I may have ever acquired, retained, or held in Company's Confidential Information and Company Inventions, (c) irrevocably assign to Company all my right, title and interest in and to any Company Confidential Information and Company Inventions, and (d) waive and release Company and all of its licensees with respect to, any and all claims I may have with respect to past infringement of any Intellectual Property Rights in Company Inventions.

This Agreement shall be effective as of the first day of my employment with Company.

**EMPLOYEE:**

**I HAVE READ, UNDERSTAND, AND ACCEPT THIS AGREEMENT.**

Joseph E. Payne  
(Signature)

Printed name: JOSEPH E. PAYNE

Date: September 7, 2017

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**COMPANY:**

**ACCEPTED AND AGREED:**

PAO CHIVUKULA  
(Signature)

Printed name: PAO CHIVUKULA

Title: CSO, COO

Date: September 7, 2017

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

# EXHIBIT C

February 11, 2018

VIA HAND DELIVERY

Padmanabh Chivukula, Ph.D.

**Re: Resignation Agreement**

Dear Pad:

This letter sets forth our agreement (the "**Agreement**") regarding your resignation as an employee, officer, and director of Arcturus Therapeutics, Inc. (the "**Company**") and your resignation from the Board of Directors of Arcturus Therapeutics, Ltd. ("**Parent**") and as an officer of Parent. This Agreement will become effective upon the date it is signed by both you and the Company (the "**Effective Date**"), and, except to the extent specified herein, shall then supersede all prior agreements between you and the Company other than the surviving provisions of the Employment Agreement entered into between you and the Company on November 27, 2017 (the "**Employment Agreement**") that are specified herein.

**1. Separation from the Company.** You resign effective as of 11:00 p.m., Pacific Standard Time, on February 11, 2018 (the "**Separation Date**") as an officer, employee, and director of the Company. Provided that this Agreement becomes effective and that you satisfy the requirements of this Agreement, the Company will provide you with the benefits identified in Sections 4 and 10, and 11 hereof.

**2. Resignation as a Director and Officer of Parent.** You resign effective as of the Separation Date as a member of the Board of Directors of Parent and as an officer of Parent, and you agree not to stand for election as a member of the Board of Directors of Parent (or any successor entity to Parent) at the <sup>2018 PC-MH</sup>2019 annual meeting of shareholders of Parent (or any successor entity to Parent) or any subsequent shareholder meeting at which members of the Board of Directors of the Parent (or any successor entity to Parent) are elected.

**3. Accrued Salary and Vacation.** On the Separation Date, the Company shall pay you all accrued salary and all accrued and unused vacation, if any, earned through the Separation Date, subject to standard payroll deductions and withholdings. You are entitled to these payments by law.

**4. Common Stock Purchase Agreement and Voting Trust.** In exchange for the consideration provided by you in this Agreement, including all promises and covenants made by you herein, and your agreement to the Voting Trust referenced in this Section 4, the Company waives its right pursuant to that certain Common Stock Purchase Agreement entered into between you and the Company as of March 4, 2013 as amended by that certain Amendment to Common Stock Purchase Agreement dated September 27, 2017 (collectively, the "**Stock Purchase**

PC  
2/12/2018  
MH  
2/12/2018

*Agreement*") to repurchase any "*Unvested Shares*" (as defined in the Stock Purchase Agreement) purchased by you pursuant to the Stock Purchase Agreement. You hereby agree to the terms of and to comply with the Voting Trust Agreement attached hereto as Exhibit A and incorporated by reference into this Agreement (the "*Voting Trust*").

**5. Non-disparagement.** For a period of four years following the Separation Date, (i) you agree not to disparage the Company and Parent or its or their officers, directors, employees, shareholders and agents in any manner likely to be harmful to its or their business, business reputation or personal reputation and (ii) the Company agrees to instruct its officers and directors not to disparage you during any such officer or director's term of service with the Company. Notwithstanding the foregoing, it shall not be a violation of this Section 5 for an applicable party to respond truthfully to any question or inquiry when so required by legal process.

**6. Expense Reimbursement.** You agree that, no later than thirty (30) days following the Separation Date, you will submit your final documented employee expense reimbursement statement reflecting all business expenses you incurred through the Separation Date, if any, for which you seek reimbursement and the Company agrees to reimburse all reasonable and appropriate expenses pursuant to its policies and practices.

**7. Return of Company Property.** You hereby represent that you will, not later than the Separation Date, perform a good faith search for, and return to the Company, all Company documents (and all copies thereof) and other Company property in your possession or control, including, but not limited to, Company files, correspondence, memoranda, notes, notebooks, drawings, books and records, plans, forecasts, reports, proposals, studies, agreements, financial information, personnel information, sales and marketing information, research and development information, systems information, specifications, computer-recorded information, tangible property and equipment, computers, laptops, mobile phones, credit cards, entry cards, identification badges and keys, and any materials of any kind that contain or embody any proprietary or confidential information of the Company (and all reproductions thereof in whole or in part) ("*Company Property*").

**8. Cooperation and Assistance.** You agree that you will not voluntarily provide assistance, information, encouragement, or advice, directly or indirectly (including through agents or attorneys), to any non-governmental person or entity in connection with any claim or assertion by or against the Company or its officers, directors or affiliates, nor shall you induce or encourage any person or entity to do so. The foregoing sentence shall not prohibit you from testifying truthfully under subpoena or from communicating with Government Agencies (as defined in Section 9 below). You warrant that you have not previously provided assistance, information, encouragement, or advice, directly or indirectly, to any non-governmental person or entity in connection with any claim by or against the Company. You agree to provide (voluntarily and without legal compulsion) prompt cooperation and accurate and complete information to the Company in the event of litigation involving the Company or its officers or directors and to respect and preserve all privileges held by or available to the Company. For a period of twenty-four (24) months following the Separation Date you shall not solicit or encourage, directly or indirectly, on your own behalf or on behalf of any person or entity, any employee or service-provider of the Company to terminate, restrict, suspend, or reduce his, her, or its relationship with or level of service to the Company.

**9. Release.** In exchange for the consideration provided to you by this Agreement that you are not otherwise entitled to receive, you hereby generally and completely release the Company and its directors, officers, employees, shareholders, members, partners, agents, attorneys, predecessors, successors, parent and subsidiary entities, including but not limited to Parent, insurers, affiliates, and assigns from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to your signing this Agreement. This general release includes, but is not limited to: (1) all claims arising out of or in any way related to your employment with the Company or the termination of that employment; (2) all claims related to your compensation or benefits from the Company, including, but not limited to, salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership interests in the Company; (3) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (4) all tort claims, including, but not limited to, claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (5) all federal, state, and local statutory claims, including, but not limited to, claims for discrimination, harassment, retaliation, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), and the federal Americans with Disabilities Act of 1990, the California Fair Employment and Housing Act, the California Unruh Act, (the "**Released Claims**"). The Released Claims do not include: (1) any rights which cannot be waived as a matter of law; (2) any claims arising from breach of this Agreement by the Company; (3) any rights or claims for indemnification you may have pursuant to any written indemnification agreement with the Company to which you are a party, the Company's bylaws, or applicable law; (4) any rights or claims to benefits under Company benefit plans or programs to which you have a vested or non-forfeitable right at the time of your separation; or (6) any rights or claims to insurance coverage under insurance policies maintained by the Company for directors, executives, and/or officers (the "**Excluded Claims**"). Nothing in this Agreement prevents you from filing a charge or complaint with the Equal Employment Opportunity Commission, the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission or any other federal, state or local governmental agency or commission (collectively, the "**Government Agencies**"). You understand this Agreement does not limit your ability to communicate with any Government Agencies or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including providing documents or other information, without notice to the Company. While this Agreement does not limit your right to receive an award for information provided to the Securities and Exchange Commission, you understand and agree that, to the maximum extent permitted by law, you are otherwise waiving any and all rights you may have to individual relief based on any Released Claims.

**10. Payments to You.** In exchange for the consideration provided by you in this Agreement, and provided that you comply in full with the terms of this Agreement, the Company shall pay to you the sum of three hundred thirty-five thousand dollars (\$335,000), less required deductions, within twenty-one (21) days of the Effective Date.

**11. Scientific Advisor Services.** Provided that this Agreement becomes effective and that you comply in all respects with the terms of the Agreement, you shall be engaged as a key scientific advisor to the Company for a period of six months following the Separation Date. In this capacity you shall perform such services as requested by the Company consistent with your prior role of Chief Scientific Officer and a key developer of the Company's technology. In no event shall you be required to provide more than sixteen (16) hours of services per month. In



consideration of your performance of such services, and provided that you comply in full with the terms of this Agreement, the Company shall pay you the sum of one hundred thousand dollars (\$100,000), less required deductions, no later than August 31, 2018.

**12. Other Compensation or Benefits.** You acknowledge that, except as expressly provided in this Agreement, you will not receive any additional compensation, severance or benefits after the Separation Date.

**13. Disputes.** Any dispute or controversy between you and the Company arising out of or relating to this Agreement or the breach of this Agreement shall be settled by binding arbitration conducted by and before a single arbitrator in San Diego, California administered by JAMS in accordance with its Employment Arbitration Rules (the "**JAMS Rules**") then in effect and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Both you and the Company hereby waive the right to a trial by jury or judge, or by administrative proceeding, for any covered claim or dispute. To the extent the JAMS Rules conflict with any provision or aspect of this Agreement, this Agreement shall control. The arbitrator shall have the authority to award any remedy or relief that a court of competent jurisdiction could order or grant, including, without limitation, the issuance of an injunction. However, either party may, without inconsistency with this arbitration provision, apply to any court having jurisdiction over such dispute or controversy and seek interim provisional, injunctive or other equitable relief until the arbitration award is rendered or the controversy is otherwise resolved. Except as necessary in court proceedings to enforce this arbitration provision or an award rendered hereunder, or to obtain interim relief, neither a party nor an arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written consent of the Company and you. This Agreement is made under the provisions of the Federal Arbitration Act (9 U.S.C., Sections 1-14) ("**FAA**") and will be construed and governed accordingly. It is the parties' intention that both the procedural and the substantive provisions of the FAA shall apply. Questions of arbitrability (that is whether an issue is subject to arbitration under this agreement) shall be decided by the arbitrator. Likewise, procedural questions which grow out of the dispute and bear on the final disposition are also matters for the arbitrator. However, where a party already has initiated a judicial proceeding, a court may decide procedural questions that grow out of the dispute and bear on the final disposition of the matter. Each party shall bear its or his costs and expenses in any arbitration hereunder and one-half of the arbitrator's fees and costs; provided, however, that the arbitrator shall have the discretion to award the prevailing party reimbursement of its or his reasonable attorney's fees and costs, unless such award is prohibited by applicable law. Notwithstanding the foregoing, you and the Company shall each have the right to resolve any dispute or cause of action involving trade secrets, proprietary information, intellectual property (including, without limitation, inventions assignment rights, and rights under patent, trademark, or copyright law), or breach of sections 5,7,or 8 of this Agreement by court action instead of arbitration.

**14. Equitable Relief.** You agree that any breach of Sections 5, 7 or 8 of this Agreement would cause substantial and irreparable harm to the Company for which money damages would be an inadequate remedy. Accordingly, the Company shall in any such event be entitled to obtain injunctive and other forms of equitable relief to prevent such breach and to recover from you the Company's costs (including without limitation reasonable attorneys' fees) incurred in connection with enforcing the relevant provisions referenced above of this Agreement, in addition to any other rights or remedies available at law, in equity or by statute.



**15. Surviving Provisions of the Employment Agreement.** The following provisions of the Employment Agreement shall survive, and shall continue to apply following the Separation Date: sections 2(f), 3(b), 4, 5, and 13.

**16. Miscellaneous.** This Agreement, together with any exhibits, your Employee Confidential Information and Inventions Agreement with the Company and the surviving provisions of the Employment Agreement, constitutes the complete, final and exclusive embodiment of the entire agreement between you and the Company with regard to this subject matter. It is entered into without reliance on any promise or representation, written or oral, other than those expressly contained herein, and it supersedes any other such promises, warranties or representations. This Agreement may not be modified or amended except in a writing signed by both you and a duly authorized officer of the Company. This Agreement will bind the heirs, personal representatives, successors and assigns of both you and the Company, and inure to the benefit of both you and the Company, their heirs, successors and assigns. The failure to enforce any breach of this Agreement shall not be deemed to be a waiver of any other or subsequent breach. For purposes of construing this Agreement, any ambiguities shall not be construed against either party as the drafter. If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, this determination will not affect any other provision of this Agreement and the provision in question will be modified so as to be rendered enforceable in a manner consistent with the intent of the parties insofar as possible. This Agreement will be deemed to have been entered into and will be construed and enforced in accordance with the laws of the State of California as applied to contracts made and to be performed entirely within California. This Agreement may be executed in counterparts or with facsimile signatures, which shall be deemed equivalent to originals.

If this Agreement is acceptable to you, please sign below and return one original to me.

Sincerely,

ARCTURUS THERAPEUTICS, INC.

By: 

Name: Mark Herbert

Title: Interim President

**AGREED AND ACCEPTED:**

\_\_\_\_\_  
Padmanabh Chivukula, Ph.D.

\_\_\_\_\_, 2018  
Date

**15. Surviving Provisions of the Employment Agreement.** The following provisions of the Employment Agreement shall survive, and shall continue to apply following the Separation Date: sections 2(f), 3(b), 4, 5, and 13.

**16. Miscellaneous.** This Agreement, together with any exhibits, your Employee Confidential Information and Inventions Agreement with the Company and the surviving provisions of the Employment Agreement, constitutes the complete, final and exclusive embodiment of the entire agreement between you and the Company with regard to this subject matter. It is entered into without reliance on any promise or representation, written or oral, other than those expressly contained herein, and it supersedes any other such promises, warranties or representations. This Agreement may not be modified or amended except in a writing signed by both you and a duly authorized officer of the Company. This Agreement will bind the heirs, personal representatives, successors and assigns of both you and the Company, and inure to the benefit of both you and the Company, their heirs, successors and assigns. The failure to enforce any breach of this Agreement shall not be deemed to be a waiver of any other or subsequent breach. For purposes of construing this Agreement, any ambiguities shall not be construed against either party as the drafter. If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, this determination will not affect any other provision of this Agreement and the provision in question will be modified so as to be rendered enforceable in a manner consistent with the intent of the parties insofar as possible. This Agreement will be deemed to have been entered into and will be construed and enforced in accordance with the laws of the State of California as applied to contracts made and to be performed entirely within California. This Agreement may be executed in counterparts or with facsimile signatures, which shall be deemed equivalent to originals.

If this Agreement is acceptable to you, please sign below and return one original to me.

Sincerely,


**ARCTURUS THERAPEUTICS, INC.**

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

Name: Mark Herbert

Title: Interim President

**AGREED AND ACCEPTED:**

  
Padmanabh Chivukula, Ph.D.

2/11, 2018  
Date

# **EXHIBIT D**

## VOTING TRUST AGREEMENT

**THIS VOTING TRUST AGREEMENT** (this “*Agreement*”) is made and entered into effective for all purposes and in all respects as of February 11, 2018 by and among (i) Arcturus Therapeutics Ltd., an Israeli company, or its successors and assigns (the “*Company*”), (ii) Padmanabh Chivukula (the “*Shareholder*”), and (iii) the then-acting Principal Executive Officer (defined below) of the Company (the “*Trustee*”), who shall initially be Mark Herbert.

**WHEREAS**, Shareholder is the legal and beneficial owner of 732,548 ordinary shares of the Company (in each case inclusive without limitation of all shares held beneficially or of record by the Shareholder’s spouse) (collectively and inclusive of the definition below, the “*Shares*”) as of the date hereof;

**WHEREAS**, the Shareholder desires to transfer and assign to Trustee, and Trustee desires to accept such transfer and assignment of, the right to vote or otherwise act for the Shareholder in connection with all of his rights and responsibilities as a shareholder of the Company in respect of the Shares as set forth herein; and

**WHEREAS**, the parties hereto desire to set forth in writing their understandings and agreements.

**NOW, THEREFORE**, in consideration of the foregoing, of the mutual promises hereinafter set forth and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending legally and equitably to be bound, hereby agree as follows:

**1. Creation of Voting Trust.** The Shareholder hereby transfers and assigns to Trustee, and Trustee hereby accepts the transfer and assignment of, the right to vote or otherwise act for the Shareholder in connection with all of his rights and responsibilities as a shareholder of the Company in respect of the Shares; and, in order to effectuate such transfer and assignment, the Shareholder hereby transfers to Trustee the certificates evidencing his Shares (or competent evidence thereof in the case of book-entry shares) which certificate(s) (or competent evidence thereof) shall bear a legend that said Shares are subject to the terms and provisions of this Agreement (or equivalent thereof in the case of book-entry shares). Any other shares of the Company’s share capital legally or beneficially owned by the Shareholder as of the effective date of this Agreement, and any and all other shares of the Company’s share capital that may be issued to Shareholder after the effective date of this Agreement upon exercise of options or other rights of the Shareholder to acquire the Company’s share capital existing as of the effective date of this Agreement, shall also be subject to the terms of this Agreement and upon receiving such shares, the Shareholder shall immediately deliver or cause to be delivered all such shares to the Trustee (or competent evidence thereof in the case of book-entry shares). The term “*Shares*” as used in this Agreement shall include the Shares as first defined above as well as all such other shares issued or issuable upon exercise of options or other rights to acquire the Company’s share capital by the Shareholder existing as of the effective date of this Agreement. Trustee shall hold such certificates of the Shareholder, or competent evidence thereof in the case of book-entry Shares, as trustee, subject to the terms and conditions of this Agreement.

## **2. Restriction on Transfer.**

(a) **Applicable Law; Preexisting Agreements.** The Shareholder may sell, transfer, hypothecate, pledge or otherwise transfer the Shareholder's Shares in each case subject to (i) the provisions of this Agreement; (ii) the requirements of applicable securities laws and regulations; (iii) any restrictions on transfer contained in the Articles of Association or Certificate of Incorporation of the Company, as applicable, or other restrictions set forth in the organizational documents of the Company, as may be amended or restated from time to time (including policies and charters the Company applicable to the Shares as may be approved by the Board of Directors of the Company from time to time (the "**Board**")), and (iv) the applicable provisions of any other applicable agreement binding upon the Company and the Shareholder, all of which applicable agreements, laws and organizational documents are incorporated herein by reference.

(b) **Transferees.** Subject to Section 2(c), any transferee, other than the Company, of the Shares shall become a party to this Agreement and be subject to all the obligations of the Shareholder herein, by executing a counterpart signature page hereto, and any purported transfer, other than to the Company, of the Shares to a person or entity that has not become a party hereto shall be null and void. Any transferee, other than the Company, of the Shareholder's Shares that are subject to this Agreement shall have all the rights and shall be subject to all obligations and limitations of the transferor Shareholder set forth in this Agreement.

(c) **Exempted Transferees.** Notwithstanding the foregoing or anything to the contrary herein, the provisions of Section 2(b) shall not apply to the sale by the Shareholder of up to 25,000 Shares per month in open market transactions, provided that the Shareholder shall deliver prior written notice to the Company of such sale(s); provided, however, that the exempted sales pursuant to this Section 2(c) shall not exceed 250,000 Shares in any 12 month period.

## **3. Trustee.**

(a) **Rights and Powers of Trustee.** So long as a Trustee shall be deemed to hold the Shares in trust in accordance with the terms hereof, the Trustee shall possess, and in the Trustee's discretion shall be entitled to exercise in person or by nominees, agents, attorneys-in-fact, or proxies, all rights and powers to vote, assent, or consent with respect to the Shares, and to take part in and consent to any corporate or shareholder action of any kind whatsoever, as well as with respect to any other securities with voting rights received in respect of the Shares by way of a stock dividend. The rights of the Trustee herein to vote, assent or consent shall include, without limitation, the right to vote at any election of the directors and in favor of or in opposition to any resolution for a proposed dissolution and liquidation, merger, or consolidation of the Company, or a sale of all or substantially all of its assets, or the issuance or creation of additional classes of its securities, or any action which may properly be presented at any shareholders' meeting or which requires the consent of the shareholders of the Company. The Shareholder shall not have any voting rights in respect of the Shares as long as this Agreement and the voting trust created hereby is in effect with respect to such Shares. Shareholder shall remain the beneficial owner of the Shares, subject to the Trustee's rights and interests hereunder.

For clarity, Trustee shall have no authority to sell, pledge, hypothecate or otherwise dispose of the Shares or any interest therein. In the event dividends are declared on the Shares, such funds shall be the exclusive property of Shareholder, and if received by the Trustee shall be remitted to Shareholder. Trustee hereby accepts his or her appointment as Trustee pursuant to the terms and conditions of this Agreement, and agrees to administer the voting trust created hereby in accordance with the terms and conditions of this Agreement, until his or her earlier resignation, removal, death or incapacitation as set forth herein.

(b) **Liability of Trustee.** The Trustee, including any successor Trustee, shall not be liable by reason of any matter or thing in any way arising out of or in relation to this Agreement, except for such loss or damage as the Shareholder may suffer by reason of the Trustee's gross negligence or willful misconduct. In no event shall the Trustee be liable for incidental, punitive or consequential damages. The Trustee shall not be required to give any bond or other security for the discharge of his or her duties. The Trustee is hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case the Trustee obeys or complies with any such order, judgment or decree, it shall not be liable to the Shareholder or to any other person, firm or corporation by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

(c) **Expenses.** The Company shall pay all reasonable expenses of the Trustee, including attorney fees, and shall discharge all liabilities incurred by the Trustee in connection with the exercise of his or her powers and the performance of his or her duties under this Agreement. Any action or omission undertaken by a Trustee in good faith in accordance with the advice of legal counsel and the Board shall be binding and conclusive on the Shareholder.

(d) **Resignation; Successor Trustee.** The Trustee shall remain Trustee for so long as Trustee is the acting "*Principal Executive Officer*" of the Company, as such term is used in Item 402 of Regulation S-K or any successor provision thereof, and may only resign or shall cease to perform his or her duties hereunder as Trustee upon resignation from, or termination by the Company of, his or her position as Principal Executive Officer of the Company, subject to the removal of a Trustee pursuant to Section 3(e). Upon such resignation or termination, the Company shall nominate a successor Trustee who shall be the successive Principal Executive Officer of the Company, who shall have all rights, powers and obligations of Trustee as set forth in this Agreement, and all rights, powers and obligations of the resigning Trustee hereunder shall immediately terminate upon such resignation and/or termination, evidenced by the execution and delivery of a counterpart signature page to this Agreement by the successor Trustee as "Trustee" hereunder. The fact that a Trustee has resigned such Trustee's position as a Trustee shall not act, or be construed to act, as a release of any Shares from the terms and provisions of this Agreement or the voting trust created hereby.

(e) **Removal.** In case of the Trustee cannot perform his or her duties, obligations, covenants or agreements under this Agreement, the Board shall in good faith select, nominate, and appoint an interim Trustee as quickly as is reasonably possible, who shall be an "executive officer" of the Company, as defined in as defined in Rule 3b-7 of the Exchange Act or any successor provision thereof, and who shall serve in such capacity and in accordance with the terms of this Agreement, until a successor Trustee is nominated and appointed by the

Company and duly executes a counterpart signature page to this Agreement as “Trustee” hereunder.

**4. Standstill.** From the date hereof until termination of this Agreement, without the prior written consent of the Company, Shareholder shall not directly or indirectly:

(a) (A) nominate, give notice of an intent to nominate, or recommend for nomination a person for election at any shareholder meeting at which members of the Board are to be elected; (B) initiate, encourage or participate in any solicitation of proxies in respect of any election contest with respect to the Company’s directors; (C) submit any shareholder proposal for consideration at, or bring any other business before, any shareholder meeting of the Company; (D) initiate, encourage or participate in any solicitation of proxies in respect of any shareholder proposal for consideration at, or bring any other business before, any shareholder meeting of the Company; (E) initiate, encourage or participate in any “withhold” or similar campaign with respect to any shareholder meeting or any solicitation of written consents of shareholders; or (F) request, or initiate, encourage or participate in any request to call, a special meeting of the Company’s shareholders;

(b) acquire, offer or propose to acquire, or agree to acquire, directly or indirectly, whether by purchase, tender or exchange offer, through the acquisition of control of another person, by joining a partnership, limited partnership, syndicate or other group (including any group of persons that would be treated as a single “person” under Section 13(d) of the Exchange Act), through swap or hedging transactions or otherwise, any voting securities of the Company or any voting rights decoupled from the underlying voting securities of the Company;

(c) form, join or in any way participate in any group with respect to any voting securities of the Company in connection with any election or removal contest with respect to the Company’s directors or any shareholder proposal or other business brought before any shareholder meeting of the Company;

(d) other than as expressly set forth herein with regards to the Shares, deposit any Company voting securities in any voting trust or subject any Company voting securities to any arrangement or agreement with respect to the voting thereof;

(e) seek, alone or in concert with others, to amend any provision of the Company’s articles of association or certificate of incorporation, as applicable, or other organizational documents;

(f) demand an inspection of the Company’s books and records;

(g) (A) make any offer or proposal (with or without conditions) with respect to any merger, acquisition, recapitalization, restructuring, disposition or other business combination involving the Shareholder and the Company, (B) solicit any officer or director of the Company or any other person who is not a party to this Agreement (a “**Third Party**”) to make an offer or proposal (with or without conditions) with respect to any merger, acquisition, recapitalization, restructuring, disposition or other business combination involving the Company, or publicly encourage, initiate or support any Third Party in making such an offer or proposal, or (C) publicly comment on any Third Party proposal regarding any merger, acquisition,



recapitalization, restructuring, disposition, or other business combination with respect to the Company by such Third Party prior to such proposal becoming public;

(h) publicly disparage or criticize (or make any other public statement or communication that might reasonably be construed to be derogatory or critical of, or negative toward) the Company, its business or any current or former directors, officers or employees of the Company, or make any other public announcement or public statement regarding the Company, its business or any current or former director, officer or employee of the Company; *provided* that this provision shall not apply to compelled testimony, either by legal process, subpoena or otherwise, or to communications that are required by an applicable legal obligation and are subject to contractual provisions providing for confidential disclosure;

(i) encourage, pursue, or assist any Third Party to threaten, initiate or pursue, any lawsuit, claim or proceeding before any court against the Company or its Representatives, or otherwise make any claims for losses, damages, or costs against the Company or its Representatives, excluding, however, any such actions initiated solely to remedy a breach of this Agreement or a breach by Company of the Resignation Agreement entered into on or about February 11, 2018; or

(j) enter into any negotiations, agreements or understandings with any Third Party with respect to the foregoing, or encourage or seek to persuade any Third Party to take any action with respect to any of the foregoing, or otherwise take or cause any action materially inconsistent with any of the foregoing.

**5. Dissolution.** In the event of the dissolution or total or partial liquidation of the Company, whether voluntary or involuntary, Shareholder shall receive the money, securities, rights or property to which the Shareholder is entitled (including any certificates deposited with the Trustee hereunder), and Trustee and the Company, as applicable, shall distribute such money, securities, rights or property directly to the Shareholder. Notwithstanding anything to the contrary herein, any transaction or series of transactions that are effected solely in connection with a reincorporation, redomestication, reorganization or recapitalization of the Company and its subsidiaries (as now or hereafter may exist or cease to exist) shall not result be deemed a dissolution or total or partial liquidation of the Company for purposes of this Section 5.

## **6. Termination of Agreement.**

(a) This Agreement and the voting trust created hereby shall terminate with respect to the Shareholder's Shares upon the earliest to occur of (i) the effectiveness of a consolidation or merger of the Company with or into any other corporation or other entity, or any other corporate reorganization, in which the holders of the Company's outstanding voting shares immediately before such consolidation, merger or reorganization do not, immediately after such consolidation, merger or reorganization, retain shares representing a majority of the voting power of the surviving entity of such consolidation, merger or reorganization, (ii) a sale, lease or other disposition of all or substantially all of the assets of the Company, (iii) the date specified in a written notice of termination from Trustee to the Shareholder, (iv) the date that is three (3) years from the date of this Agreement or (v) the date upon which the number of shares legally and/or beneficially owned (not taking into account the existence of this Agreement) by the Shareholder

is less than 1.75% of the total outstanding shares of the Company. Notwithstanding anything to the contrary herein, any transaction or series of transactions that are effected solely in connection with a reincorporation, redomestication, reorganization or recapitalization of the Company and its subsidiaries (as now or hereafter may exist or cease to exist) shall not result in a termination of this Agreement or the voting trust created hereby.

(b) Upon termination of this Agreement with respect to the Shareholder's Shares, the voting trust created pursuant to Section 1 hereof shall cease to have any effect with respect to such Shares, and the parties hereto shall have no further rights or obligations under this Agreement with respect to such Shares, except that Trustee shall, within sixty (60) days after the termination of this Agreement with respect to such Shares, return the Shareholder's certificate(s) evidencing such Shares (or other evidence thereof in the case of book-entry shares if returnable) and any other property distributable under the terms hereof with respect to such Shares.

**7. Trustee's Compensation.** Trustee shall serve as trustee without compensation; *provided however*, that such service as Trustee shall not affect the right of the Trustee to compensation from the Company for services performed by him or her in any other capacity (e.g., as an officer, director, employee or otherwise).

**8. Notice to Shareholder.** Any notice required hereunder to be given to the Shareholder shall be deemed effectively given: (a) upon personal delivery to the Shareholder, (b) when sent by confirmed electronic mail or facsimile, if sent during normal business hours of the Company, if not, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. For purposes of such notice, the address for the Shareholder shall be that which appears on the books of the Company at the time such notice is deemed to have been given. Any notice to be given to the Trustee shall be deemed effectively given: (a) upon personal delivery to the Trustee, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the Company, if not, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. For purposes of such notice, the address for the Trustee shall be that of the Company at the time such notice is deemed to have been given.

**9. Modification; Waiver.** No amendment or modification of this Agreement shall be effective unless in writing and signed by each of the parties hereto. Neither the failure nor any delay by a party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

**10. Benefit and Burden.** Except as otherwise provided in this Agreement, this Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their legatees, distributees, estates, executors or administrators, personal and legal representatives, successors and assigns. For the avoidance of doubt, this Agreement may be assigned by the Company in connection with any transaction or series of transactions that are effected solely in

connection with a reincorporation, redomestication, reorganization or recapitalization of the Company and its subsidiaries (as now or hereafter may exist or cease to exist).

**11. Severability.** The invalidity of any particular provision of this Agreement shall not affect the validity of the remainder hereof, and in the event any provision in this Agreement is found by a court of competent jurisdiction to be invalidated, this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted. If any one or more of the provisions of this Agreement shall, for any reason, be held to be unenforceable as to duration, scope, activity or subject, such provision shall be construed by limiting and reducing it so as to make such provision enforceable to the extent compatible with the then existing applicable law. Without limiting the generality of the foregoing, it is the express intent of the parties to cause the Shares to be voted by the Trustee as provided herein. Accordingly, in the event that this Agreement is rescinded or otherwise terminated other than pursuant to its terms for any reason, the parties agree promptly to negotiate a successor voting agreement to accomplish this objective and to otherwise replicate the provisions hereof to the extent possible.

**12. Applicable Law; Venue.** This Agreement, and any disputes arising out of or related to this Agreement (whether for breach of contract, tortious conduct or otherwise), shall be governed by and construed and enforced in accordance with the laws of the State of Delaware without reference to the conflict of laws principles thereof that would result in the application of the law of another jurisdiction. Each party hereto irrevocably agrees that any legal action or proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder brought by the other party hereto or its successors or assigns, shall be brought and determined exclusively in the Superior Court of the State of California, County of San Diego. Each party hereto hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action relating to this Agreement in any court other than the aforesaid courts. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT.

**13. Counterparts.** This Agreement may be executed in any number of separate counterparts, each of which shall be deemed to be an original, and all of which taken together shall be deemed to constitute one and the same instrument. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in “portable document format” (“pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, shall have the same effect as physical delivery of the paper document bearing the original signature.

**14. Remedies; Attorney Fees.** Each of the parties hereto acknowledge that a breach or default by any party hereto of the terms and provisions hereof shall cause the non-defaulting party to suffer such damage as cannot be adequately remedied by an award of monetary damages; and, in this regard, the parties hereto agree that, upon a breach or default of any of the terms or provisions hereof, the non-defaulting party shall be entitled to seek equitable remedies for such default including, without limitation, specific performance. In the event any action or proceeding is brought as a result of any alleged breach, default or dispute under the terms or

provisions hereof or for the purpose of enforcing or interpreting any of the terms or provisions hereof, the prevailing party in any such action or proceeding shall be entitled to recover from the other, in addition to such other relief as the prevailing party may be entitled, the prevailing party's reasonable attorney's fees and legal costs incurred in that action or proceeding.

**15. Shareholder Acknowledgement.** Shareholder acknowledges that Shareholder has read and understands this Agreement, that Shareholder is fully aware of its legal effect and that Shareholder has entered into this Agreement freely based on Shareholder's own judgment and not on any representations or promises other than those contained in this Agreement.

**16. Entire Agreement.** This Agreement constitutes the final, complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, representations and understandings of the parties with respect to such subject matter other than as expressly set forth herein.

**IN WITNESS WHEREOF,** the Company, Shareholders and Trustee have executed this Agreement as of the date first set forth above.

**COMPANY:**

**SHAREHOLDER:**

**ARCTURUS THERAPEUTICS LTD.**

**PADMANABH CHIVUKULA**

By: Mark Herbert

\_\_\_\_\_

Name: Mark Herbert

Its: Interim President

Acknowledged and agreed:

**TRUSTEE:**

\_\_\_\_\_  
Spouse of Shareholder

Mark Herbert  
Mark Herbert, Interim President

provisions hereof or for the purpose of enforcing or interpreting any of the terms or provisions hereof, the prevailing party in any such action or proceeding shall be entitled to recover from the other, in addition to such other relief as the prevailing party may be entitled, the prevailing party's reasonable attorney's fees and legal costs incurred in that action or proceeding.

**15. Shareholder Acknowledgement.** Shareholder acknowledges that Shareholder has read and understands this Agreement, that Shareholder is fully aware of its legal effect and that Shareholder has entered into this Agreement freely based on Shareholder's own judgment and not on any representations or promises other than those contained in this Agreement.

**16. Entire Agreement.** This Agreement constitutes the final, complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, representations and understandings of the parties with respect to such subject matter other than as expressly set forth herein.

**IN WITNESS WHEREOF,** the Company, Shareholders and Trustee have executed this Agreement as of the date first set forth above.

**COMPANY:**

**ARCTURUS THERAPEUTICS LTD.**

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

Name: Mark Herbert

Its: Interim President

**TRUSTEE:**

\_\_\_\_\_  
Mark Herbert, Interim President

**SHAREHOLDER:**

**PADMANABH CHIVUKULA**



Acknowledged and agreed:



Spouse of Shareholder