Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION, ACERUS BIOPHARMA INC., ACERUS LABS INC., AND ACERUS PHARMACEUTICALS USA, LLC

Applicants

APPLICATION RECORD

January 26, 2023

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TO: THE SERVICE LIST

Court File No.

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Applicants

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(as at January 26, 2023)

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Applicants

I N D E X

TAB	DOCUMENT
M.	Report listing all UCC-1 Financing Statements filed re Commercial Property of ABI, dated January 20, 2023
N.	Amended and Restated Serenity Note and Amendment to the Amended and Restated Security Note
O.	Strategic Review Press Release
P.	Cash Flow Statement for the Period from the Date of Filing to April 9, 2023
Q.	EY's Consent to Act as Monitor
R.	Redacted copy of the CRO Engagement Letter, dated January 25, 2023
S.	DIP Facility Agreement
3.	Proposed Initial Order
4.	Blackline of Proposed Initial Order to Commercial List Model Order
5.	Proposed Amended and Restated Initial Order
6.	Blackline of Proposed Amended and Restated Initial Order to Commercial List Model Order

TAB 1

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION, ACERUS BIOPHARMA INC., ACERUS LABS INC., AND ACERUS PHARMACEUTICALS USA, LLC

Applicants

NOTICE OF APPLICATION

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following pages.

THIS APPLICATION will come on for a hearing before a Judge presiding over the Commercial List on **January 26, 2023 at 8:45 a.m.** via Zoom videoconference.

IF YOU WISH TO OPPOSE THIS APPLICATION, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, AN ORDER MAY BE MADE IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. If you wish to oppose this application but are unable to pay legal fees, legal aid may be available to you by contracting a Local Legal Aid office.

Date:

Issued by: ______________________________
Local Registrar

Address of court office:
330 University Avenue, 7th Floor
Toronto, ON M5G 1R7

APPLICATION

1. **THIS APPLICATION IS MADE BY** Acerus Pharmaceuticals Corporation ("**APC**"), Acerus Biopharma Inc. ("**ABI**"), Acerus Labs Inc. ("**ALI**"), and Acerus Pharmaceuticals USA, LLC ("**APL**") (collectively, the "**Applicants**" or the "**Companies**") for an order, substantially in the form attached at Tab 3 of this Application Record (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), *inter alia*:

(a) abridging the time for service of the Application and the materials filed in support thereof, and dispensing with further service thereof;

(b) declaring that the Applicants are parties to which the CCAA applies;

(c) appointing Ernst & Young Inc. ("**EY**" or the "**Proposed Monitor**") as an officer of this Court to monitor the assets, business, and affairs of the Applicants (once appointed in such capacity, the "**Monitor**");

(d) staying, for an initial period of not more than ten (10) days (the "**Stay of Proceedings**"), all proceedings and remedies taken or that might be taken in respect of the Applicants, the Monitor or the directors and officers of the Applicants (the "**Directors and Officers**"), or affecting the Applicants' business or Applicants' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively, the "**Property**"), except with the written consent of the Applicants and the Monitor, or with leave of this Court;

(e) approve the execution by the Applicants of a debtor-in-possession facility loan agreement (the "**DIP Facility Agreement**") entered into on January 25, 2023 with First Generation Capital Inc. ("**FGC**"), pursuant to which FGC (in such capacity, the “**DIP Lender**”) of which the Applicants are permitted to draw up to a maximum amount of $500,000[1] during the initial 10-day stay period (the “**Initial Advance**”), which will be made available to APC and APL during these CCAA proceedings (the “**DIP Facility**”) in order to finance the Companies’ capital requirements and other general corporate purposes, post-filing expenses and costs;

(f) authorizing FAAN Advisors (“**FAAN**”) to act as Chief Restructuring Officer (“**CRO**”) through services to be provided by Naveed Manzoor, pursuant to an engagement letter dated January 25, 2023 (the “**CRO Engagement Letter**”), and authorizing FAAN to exercise and perform the powers, responsibilities and duties set out therein;

(g) sealing the unredacted CRO Engagement Letter;

(h) granting the following priority charges against the Property:

(i) a Court-ordered priority charge in favour of the CRO, the Proposed Monitor, counsel to the Proposed Monitor, and the Applicants’ counsel over all of the Property of the Applicants in order to secure payment of their respective fees and disbursements incurred in connection with the services rendered in respect of the Applicants (the “**Administration Charge**”) in the initial amount of C$150,000;

(ii) a Court-ordered priority charge over the Property in favour of the DIP Lender to secure the Initial Advance under the DIP Facility (the “**DIP Lender’s Charge**”); and

[1] All references to currency are references to United States dollars, unless otherwise indicated.

(iii) a Court-ordered priority charge over the Property to indemnify the Directors and Officers in respect of liabilities they may incur as Directors and Officers during these proceedings (the "**Directors' Charge**") in the initial amount of C$200,000; and

(i) authorizing APC to act as foreign representative of the Companies and to seek recognition of these proceedings in the United States under Chapter 15 of the United States Bankruptcy Code, 11 U.S. Code § 1501-1532.

2. If the Initial Order is granted, the Applicants intend to return to Court within ten (10) days (the "**Comeback Hearing**") to seek approval of an Amended and Restated Initial Order ("**ARIO**"), which, among other things, may:

(a) extend the Stay of Proceedings;

(b) increasing the amounts which may be borrowed by the Applicants under the DIP Financing Agreement to $7,000,000, which, together with the other obligations of the Applicants under the DIP Financing Agreement will be secured by the DIP Lenders' Charge;

(c) approve the key employee retention plan (the "**KERP**") and granting a Court-ordered priority charge against the Property for security for payments under the KERP (the "**KERP Charge**");

(d) sealing the unredacted KERP;

(e) authorize APC to incur no further expenses in relation to any filings (including financial statements), disclosures, core or non-core documents, restatements, amendments to existing filings, press releases or any other actions (collectively, the "**Securities Filings**") and declare that none of the directors, officers, employees, and other representatives of the Companies, the CRO, or the Monitor (and its directors, officers, employees and representatives) shall have any personal liability for any failure by the Applicants to make Securities Filings;

(f) grant the following priority charges against the Property, and increasing the charges granted in the Initial Order as follows:

(i) an increase to the Administration Charge to C$300,000;

(ii) an increase to the DIP Lender's Charge to $7,000,000;

(iii) the Directors' Charge which amount shall remain at C$200,000; and

(iv) the KERP Charge in favour of the key employees referenced in the KERP in the maximum amount of C$455,250.

(g) seek such other relief as may be required to advance the Applicants' restructuring.

3. Such further and other relief as Honourable Court deems just.

4. **THE GROUNDS FOR THE APPLICATION ARE**:

Overview

(a) APC is an Ontario corporation which, directly and indirectly through the other Applicants, each of which are wholly-owned subsidiaries of APC (the "**Subsidiaries**"), carries on business as a specialized pharmaceutical company focused on the commercialization and development of prescription health products, with a focus on urology and men's health;

(b) The Subsidiaries are also Ontario corporations, with the exception of APL, which is a Delaware corporation;

(c) APC and each of the Subsidiaries are one corporate group, which are operated and controlled by the management of APC at its head office in Mississauga, Ontario. Each of the Subsidiaries are financially dependent upon APC as APC funds their respective cash flow requirements;

(d) APC's two most valuable assets have been its right, title and interest in the prescription medications Natesto and Noctiva. Working to commercialize Natesto through the COVID-19 pandemic resulted in a net-loss in respect of Natesto.

(e) As of September 30, 2022 the Applicants had negative cash flow for the fiscal year of nearly $18.6 million from operating activities and losses continued to the end of 2022;

(f) The Companies net cash flow deficiency and losses arising from operations have been funded by First Generation Capital Inc., which has funded just under $50 million to APC since April 2021;

(g) Without significantly improving the Companies' liquidity situation and right-sizing its capital structure, APC will likely not be able to produce and sell the Natesto product and will be prevented from producing commercial batches of Noctiva and from launching the product in the market;

(h) To address these issues, since September 2022, APC commenced a strategic review process to explore, review, and evaluate a broad range of strategic alternatives focused on ensuring its financial liquidity, including but not limited to, possible debt or equity financing, asset sale, merger and acquisition, or licensing transactions (the "**Pre-Filing Strategic Process**");

(i) Despite the Pre-Filing Strategic Process, APC has been unsuccessful in its efforts to secure an actionable transaction and the Applicants are now insolvent with liabilities well in excess of $5 million and an inability to meet its obligations as they come due;

Stay of Proceedings

(j) The Applicants require a Stay of Proceedings for an initial period of ten days and intends to seek an extension to same at the Comeback Hearing;

(k) The Stay of Proceedings is necessary and in the best interests of the Applicants and its stakeholders as it will allow the Applicants to obtain the necessary funding to continue operations and concurrently explore various restructuring options;

(l) Without the benefit of the Stay of Proceedings and the protections of the CCAA, the Applicants do not have the available liquidity to meet its liabilities and will be forced to cease operations;

Appointment of EY as Monitor

(m) EY has consented to act as the Court-appointed Monitor of the Applicants, subject to Court approval;

(n) EY is a trustee within the meaning of section 2 of the Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3, as amended, and is not subject to any of the restrictions on who may be appointed as Monitor set out in section 11.7(2) of the CCAA;

(o) EY has extensive experience in matters of this nature and is therefore well-suited to this mandate;

Approval of FAAN as CRO

(a) The Applicants seek to have FAAN appointed as CRO;

(b) Several key employees and leaders of APC have recently left, including but not limited to the former Chief Financial Officer in November 2022 and a former director;

(c) The pharmaceutical industry is heavily regulated and complex. Accordingly, the success of the Applicants' restructuring requires leadership with substantial experience and knowledge;

(d) Since 2016, FAAN has been appointed as CRO in several other CCAA proceedings involving significant and complex restructuring and sale transactions;

DIP Facility Agreement and DIP Lender's Charge

(e) The cash flow statement prepared by the Applicants and reviewed by the Proposed Monitor indicates that the Applicants anticipate the need for interim financing to fund these CCAA proceedings, including during the initial ten day Stay of Proceedings given the potential for the Applicants to run out of cash during this time period;

(f) In connection with the commencement of these CCAA proceedings, the Applicants entered into the DIP Facility Agreement with the DIP Lender, pursuant to which the

DIP Lender has agreed to provide the DIP Facility to APC and APL, the Initial Advance of $500,000 and a maximum principal amount of $7,000,000, approval of which will be sought at the Comeback Hearing;

(g) The DIP Facility is conditional upon, among other things, the obtaining of an order of this Court approving the DIP Facility Agreement and other documents to be executed and delivered thereunder, as necessary, granting the DIP Charge over the Applicants' Property, and the appointment of FAAN as CRO;

Administration Charge

(h) The Applicants seek an Administration Charge on their Property in the maximum principal amount of C$150,000 as part of the proposed Initial Order, to secure the fees and disbursements incurred in connection with services rendered to the Applicants in favour of the CRO, the Proposed Monitor, counsel to the Proposed Monitor, and the Applicants' counsel;

(i) The Applicants requires the expertise, knowledge, and continued participation of the proposed beneficiaries of the Administration Charge during these CCAA proceedings in order to complete a successful restructuring;

(j) The Administration Charge is proposed to have first priority over all other charges;

Directors' Charge

(k) The Initial Order seeks a Directors' Charge over the Property to indemnify the directors and officers of the Applicants in respect of liabilities they may incur as directors and officers during the CCAA proceedings, up to a maximum principal amount of C$200,000;

(l) While APC maintains directors' and officers' liability insurance, same may include contractual contingencies and uncertainty associated with possible coverage related issues;

(m) The Directors' Charge is proposed to rank subordinate to the Administration Charge and DIP Lender's Charge;

Chapter 15 Proceeding

(n) Because the Applicants have operations in the United States and has assets in and valuable business and trade relationships with a number of parties in the United States, the Applicants intend to initiate a case in the United States Bankruptcy Court for the District of Delaware under Chapter 15 of the United States Bankruptcy Code;

(o) In the proposed Initial Order, the Applicants are seeking to authorize APC to act as the Foreign Representative in respect of the within proceedings and apply for foreign recognition of these CCAA proceedings;

Other Grounds

(p) The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;

(q) Section 97 and 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended;

(r) Rules 1.04, 2.01, 2.03, 3.02, 14.05 and 16 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

(s) Such further and other grounds as counsel may advise and this Court may permit.

4. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the application:

(a) The Affidavit of Naveed Manzoor, sworn January 25, 2023, and the Exhibits attached thereto;

(b) The Consent of EY to act as Monitor;

(c) The Pre-Filing Report of EY; and

(d) Such further and other documentary evidence as counsel may advise and this Court may permit.

January 26, 2023

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Lawyers for the Applicants,
Acerus Pharmaceuticals Corporation, Acerus Biopharma Inc., Acerus Labs Inc., and Acerus Pharmaceuticals USA, LLC

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Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

NOTICE OF APPLICATION

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Lawyers for the Applicants, Acerus Pharmaceuticals Corporation,
Acerus Biopharma Inc., Acerus Labs Inc., and Acerus Pharmaceuticals USA, LLC

TAB 2

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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Applicants

AFFIDAVIT OF NAVEED Z. MANZOOR
(Sworn January 25, 2023)

I, **NAVEED Z. MANZOOR**, of the Town of Oakville, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS**:

1. I am the current Chief Financial Officer ("**CFO**") of Acerus Pharmaceuticals Corporation ("**APC**" or the "**Company**") and proposed Chief Restricting Officer ("**CRO**"). I was appointed CFO of the Company effective November 20, 2022. Previously, from August 22, 2022 to November 20, 2022, I was the Chief Strategy Officer of APC. As such, I have been responsible for administration of APC's finances and have assisted the Company with pursuing strategic alternatives. Accordingly, I have personal knowledge of the Applicants and the matters set out below. Where I have relied on information from others, I state the source of such information and verily believe it to be true.

2. I swear this affidavit in support of an Application by APC, Acerus Biopharma Inc. ("**ABI**"), Acerus Labs Inc. ("**ALI**"), and Acerus Pharmaceuticals USA, LLC ("**APL**") (collectively, the "**Applicants**" or the "**Companies**") for an Order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), *inter alia*:

a. abridging the time for service of the Application and the materials filed in support thereof, and dispensing with further service thereof;

b. declaring that the Applicants are parties to which the CCAA applies;

c. appointing Ernst & Young Inc. ("**EY**" or the "**Proposed Monitor**") as an officer of this Court to monitor the assets, business, and affairs of the Applicants (once appointed in such capacity, the "**Monitor**");

d. staying, for an initial period of not more than ten (10) days (the "**Stay of Proceedings**"), all proceedings and remedies taken or that might be taken in respect of the Applicants, the Monitor or the Directors and Officers (as defined below), or affecting the Applicants' business or Applicants' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively, the "**Property**"), except with the written consent of the Applicants and the Monitor, or with leave of this Court;

e. approve the execution by the Applicants of a debtor-in-possession facility loan agreement (the "**DIP Facility Agreement**") entered into on January 25, 2023 with First Generation Capital Inc. ("**FGC**"), pursuant to which FGC (in such capacity, the "**DIP Lender**") will provide an initial amount of $500,000 which may be advanced to the Applicants during the initial 10-day stay period, which will be made available to APC and APL during these CCAA proceedings (the "**DIP Facility**") in order to finance the Companies' capital requirements and other general corporate purposes, post-filing expenses and costs;

f. approving the appointment of FAAN Advisors Group Inc. ("**FAAN**") to act as Chief Restructuring Officer ("**CRO**") through services to be provided by Naveed Z. Manzoor, and other employees or agents of FAAN (as applicable) pursuant to an engagement letter dated January 25, 2023 (the "**CRO Engagement Letter**"), and authorizing FAAN to exercise and perform the powers, responsibilities and duties set out therein;

g. sealing the unredacted CRO Engagement Letter;

h. authorizing APC to act as foreign representative of the Companies and to seek recognition of these proceedings in the United States under Chapter 15 of the United States Bankruptcy Code, 11 U.S. Code § 1501-1532; and

i. granting the following priority charges against the Property:

    i. an Administration Charge (as defined below) in favour of the CRO in respect of its monthly work fee, the Monitor, counsel to the Monitor, and counsel to the Applicants in the initial amount of C$150,000;

    ii. grant the DIP Lender's Charge to secure the initial advance under the DIP Facility Agreement; and

    iii. the Directors' Charge (as defined below) in favour of the Directors and Officers in the initial amount of C$200,000.

3. If the Initial Order is granted, the Applicants intend to return to Court within ten (10) days (the "**Comeback Hearing**") to seek approval of an Amended and Restated Initial Order ("**ARIO**"), which, among other things, may:

a. extend the Stay of Proceedings;

b. increasing the amounts which may be borrowed by the Applicants under the DIP Financing Agreement to $7,000,000, which, together with the other obligations of the

Applicants under the DIP Financing Agreement will be secured by the DIP Lenders' Charge;

c. approve the key employee retention plan (the "**KERP**") and granting a Court-ordered priority charge against the Property for security for payments under the KERP (the "**KERP Charge**");

d. seal the unredacted KERP;

e. authorize APC to incur no further expenses in relation to the Securities Filings (as defined below) and declare that none of the directors, officers, employees, and other representatives of the Companies, the CRO, or the Monitor (and its directors, officers, employees and representatives) shall have any personal liability for any failure by the Applicants to make Securities Filings;

f. granting the following priority charges (collectively, the "**Charges**") against the Property:

    i. an Administration Charge in favour of the CRO, the Monitor, counsel to the Monitor, and counsel to the Applicants in the increased amount of C$300,000;

    ii. grant the DIP Lender's Charge in favour of the DIP Lender;

    iii. the Directors' Charge in favour of the Directors and Officers which amount shall remain at C$200,000; and

    iv. the KERP Charge in favour of the key employees referenced in the KERP up to the maximum amount of C$455,250.

g. seek such other relief as may be required to advance the Applicants' restructuring.

4. All references to currency in this affidavit are references to United States dollars, unless otherwise indicated.

I. OVERVIEW

5. APC is a pharmaceutical company whose head office is located in Mississauga, Ontario. Directly and through its subsidiaries ABI, ALI, and APL (the "**Subsidiaries**"), APC holds intellectual property rights over pharmaceutical products, and various methods of treatment and manufacturing, and carries on a business researching, trialling, and bringing said products to market for distribution. APC's primary market is the United States, but APC also does business in Canada, has partners located internationally and continues to explore business opportunities globally through licensing and partnerships.

6. APC's two most valuable assets have been its right, title and interest in the prescription medications Natesto and Noctiva. Currently, APC is seeking to recommence manufacturing of Noctiva for sales in the United States, as well as possible regulatory approvals internationally, but these steps are lengthy and costly, and the Companies have not had sufficient revenue to finance the restart of the manufacture of the drug. In addition, in order to continue selling Natesto, the Companies are required to complete clinical trials as well as pay various fees to third parties, which has been challenging in light of the Companies' financial performance. The Companies' net cash flow deficiency and losses arising from operations have been funded by FGC, which has funded just under $50 million to APC since April 2021. Without significantly improving the Companies' liquidity situation and right-sizing its capital structure, APC will likely not be able to produce and sell the Natesto product and will be prevented from producing commercial batches of Noctiva and from launching the product in the market.

7. To address these issues, as further described in this affidavit, since September 2022, APC commenced a formal strategic review process to explore, review, and evaluate a broad range of

strategic alternatives focused on ensuring its financial liquidity, including but not limited to, possible debt or equity financing, asset sale, merger and acquisition, or licensing transactions (the "**Pre-Filing Strategic Process**"). As part of these initiatives, APC established a committee of independent directors to supervise the Pre-Filing Strategic Process and engaged EY, together with an affiliated firm, Ernst & Young Orenda Corporate Finance Inc. ("**EYO**") to act as financial advisor in respect of the Pre-Filing Strategic Process. FAAN was also engaged to assist in this regard.

8. Despite the Pre-Filing Strategic Process, APC has been unsuccessful in its efforts to secure an actionable transaction and is now insolvent. Without the protection of the CCAA and the relief available thereunder, the Companies will be forced to shut-down operations, which would be extremely detrimental to the Companies' employees, suppliers, and customers. CCAA protection will provide the Companies with additional time to maintain its operations while consulting with its stakeholders regarding a potential restructuring or conducting a court-supervised sales process.

9. Each of the boards of directors of the Canadian Applicants has authorized this CCAA application.

II. THE APPLICANTS

A. Corporate Structure

10. APC was incorporated under the Ontario Business Corporations Act ("**OBCA**") on July 15, 2009 and operates out of its registered head office at 205-7025 Langer Drive, Mississauga, Ontario. FGC holds approximately 89.3% of outstanding shares in APC. Copies of APC's corporate profile report dated January 11, 2023 and the Management's Discussion & Analysis of

Acerus Pharmaceuticals Corporation dated November 14, 2022 (the "**MD&A**") are attached hereto as **Exhibit "A"** and **Exhibit "B"** , respectively.

11. APC is a publicly traded company whose shares are traded on the Toronto Stock Exchange (the "**TSX**") under the ticker "*ASP*" and the OTCQB Exchange in the United States under the ticker "*ASPCF*".

12. APC holds the intellectual property rights relating to two pharmaceutical products, Lidbree and Avanafil.

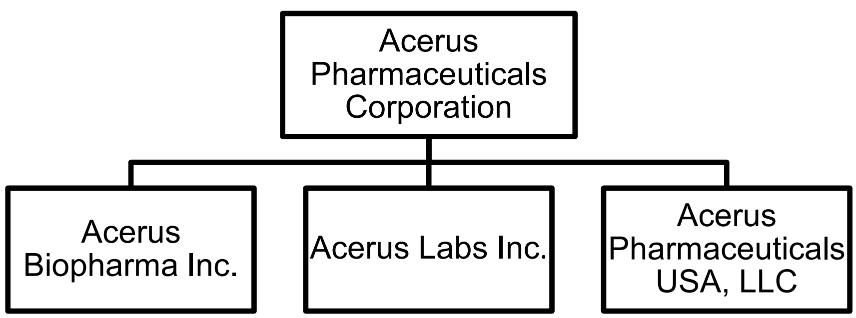
13. ABI is a wholly owned subsidiary of APC. ABI was continued under the OBCA on November 8, 2017 (formerly incorporated under the laws of Barbados), with a registered head office at 2486 Dunwin Drive,[1] Mississauga, Ontario. ABI holds the intellectual property rights relating to Natesto, and two further pharmaceutical products, Tefina and TriVair. ABI is the owner or licensee, as applicable, of the intellectual property required for the conduct of such businesses. A copy of ABI's corporate profile report dated January 11, 2023 is attached hereto as **Exhibit "C"**.

14. ALI is a wholly owned subsidiary of APC. ALI was formed under the OBCA on June 19, 2017, with a registered head office at 2486 Dunwin Drive, Mississauga, Ontario. ALI is the principal operating entity of the business of the Company relating to certain early-stage research and developments projects, including research projects related to the intranasal delivery of various botanical and synthetic cannabinoids formulations, and is the owner of the intellectual property required for the conduct of such businesses. A copy of ALI's corporate profile report dated January 11, 2023 is attached hereto as **Exhibit "D"**.

[1] This address is no longer active.

15. APL is a wholly owned subsidiary of APC. APL is formed under the laws of the State of Delaware. On March 7, 2022, APC, Lazarus Merger Sub, Inc., APL (formerly "**Serenity Pharmaceuticals LLC**"), and securityholders of Serenity Pharmaceuticals LLC entered into a plan and merger agreement dated February 25, 2022 (the "**Serenity Acquisition Agreement**"). Pursuant to the Serenity Acquisition Agreement, APL was acquired by APC, making APL a wholly owned subsidiary of APC. APL owns the intellectual property rights to Noctiva.

16. APC and each of the Subsidiaries are one corporate group, which are operated and controlled by the management of APC at its head office in Mississauga, Ontario. Each of the Subsidiaries are financially dependent upon APC as APC funds their respective cash flow requirements. Below is a corporate chart showing the structure of the Applicants.



B. Business and Operations of the Companies

i. Overview

17. The Applicants carry on business as a specialized pharmaceutical company focused on the commercialization and development of prescription health products, with a focus on urology and men's health.

18. As set out below, the Companies' primary products are (a) Natesto, which is currently the sole source of revenue for the Companies; and (b) Noctiva, which is currently not in distribution.

19. Each of the Companies' pharmaceutical product portfolios are briefly described:

a. ***Natesto*** is a patented prescription treatment in the form of a nasal gel for testosterone replacement therapy in males diagnosed with hypogonadism. All intellectual property rights and interests in Natesto are owned by ABI, including the intellectual property protection in respect of Natesto in the United States through to 2034. Natesto has received regulatory approval and is currently being distributed in Canada, the United States, South Korea, and Taiwan. Natesto is manufactured in Germany.

b. ***Noctiva*** is a patented prescription treatment for nocturnal polyuria that has received regulatory approval in the United States. Noctiva is currently not in distribution. All intellectual property rights and interests in Noctiva are owned by APL, including the intellectual property in respect of Noctiva across the world expected to expire beginning in 2023 and ending in 2030. These intellectual property rights include the patent rights registered with the Canadian Intellectual Property Office.

c. ***Avanafil*** is used for the treatment of erectile dysfunction. Avanafil has received regulatory approval in the United States and the European Union. However, APC has the exclusive right to license and distribute Avanafil in Canada only. Accordingly, APC is not currently distributing Avanafil. Subject to the availability of funds and other considerations, APC will be required to resubmit a New Drug Submission to Health Canada.

d. ***Lidbree*** is a topical anaesthesia for moderate acute pain. Lidbree has received regulatory approval in the European Union. However, APC only has the exclusive right to license and distribute Lidbree in Canada. There are currently no plans to seek regulatory approval and bring this product to market in Canada.

e. ***Tefina*** is a nasal, low-dose gel formulation of testosterone to treat female sexual dysfunction. Tefina is still in development and has not received regulatory approval from any country. Intellectual property rights and interests in Tefina are owned by ABI. There are currently no plans to seek regulatory approval and bring this product to market.

f. ***TriVair*** is a disposable single-unit dose dry powder inhalation technology platform. TriVair is still in development and has not received regulatory approval from any country. Intellectual property rights and interests in TriVair are owned by ABI. Pursuant to an intellectual property rights and development agreement, the TriVair technology is currently licensed to a third party who has the primary responsibility for developing this technology. ABI is entitled to certain milestone payments and royalty payments in respect of the agreement, the quantum and timing of which are highly uncertain at this stage.

20. As set out above, the Applicants primary products are (a) Natesto, which is currently being sold in the United States, Canada, and certain Asian countries; and (b) Noctiva, which is not currently in distribution.

ii. Natesto

21. Natesto has received approval from:

a. the United States Food and Drug Administration (the "**FDA**") for sale in the United States since May 2014 and was first sold in July 2016;

b. Health Canada for sale in Canada since January 2016 and was first sold in October 2016;

c. South Korea's Ministry of Food and Drug Safety for sale in South Korea since June 2018; and

d. Taiwan's Food and Drug Administration for sale in Taiwan since2020.

22. While Natesto has only received regulatory approval and is being distributed in the countries listed above, APC has entered into license, development, promotion, and supply agreements for Natesto in several additional countries.

23. While ABI owns the intellectual property rights to Natesto, commercial activities in respect of Natesto are carried out by APC on behalf of ABI.

24. For the nine months ended September 30, 2022, APC generated net revenues of approximately $2,121,000 from sales of Natesto in the United States, $45,000 in Canada, and $134,000 from the rest of the world.

25. Previously, APC had an agreement with Aytu Bioscience Inc. ("**Aytu**") whereby Aytu was licensed to commercialize Natesto in the United States. However, on April 1, 2021, APC bought back all remaining rights for Natesto from Aytu (the "**Aytu Buyback Agreement**"). Pursuant to the Aytu Buyback Agreement, APC agreed to a termination fee of US$7.5 million paid over 30 monthly installments beginning April 15, 2021. APC also repurchased Aytu's entire unsold inventory as at March 31, 2021. As described below, $2.25 million in arrears is currently owing to Aytu pursuant to the Aytu Buyback Agreement.

26. Additionally, APC previously outsourced all marketing and sales activities related to Natesto in the United States. APC entered into a master commercial services agreement with Syneos (the "**Syneos MSA**") to be APC's commercialization partner in the United States relating to Natesto in May 2019. The Syneos MSA provided that Syneos would provide services to APC

to commercialize Natesto in the United States. As described below, approximately $3.6 million is owing to Syneos under the Syneos MSA.

27. The Companies currently rely exclusively on contract manufacturing organizations and third-party logistics companies to manufacture and distribute Natesto.

iii. Noctiva

28. Noctiva has received approval from the FDA. APC has a development agreement in place with Renaissance Lakewood, LLC ("**Renaissance**"), a contract manufacturing organization, and has advanced negotiations for a supply agreement. However, given APC's financial uncertainty, the supply agreement has not been executed. Accordingly, Noctiva is not currently being manufactured or commercialized.

29. APC anticipates that it will depend on a single contract manufacturing organization for the manufacturing and supply of Noctiva. The development and commercialization of Noctiva will likely require significant additional capital and management attention.

30. The Companies are targeting the United States as the priority market for commercializing Noctiva. Licensing agreements would be considered for countries across the rest of the world. Subject to additional financing in the near future and APC developing a sales and licensing strategy, commercial batches of Noctiva may be produced in the United States as early as the fourth quarter of 2023.

31. APC has paid Renaissance approximately $1.2 million to date as well as purchased approximately $500,000 in raw materials for the production of Noctiva. As stated above, APC's financial uncertainty has delayed the launch of Noctiva.

iv. Banking Arrangements

32. In the ordinary course of business, the Companies use a cash management system (the "**Cash Management System**") to, among other things, collect funds and pay expenses associated with its operations. This Cash Management System provides the Companies with the ability to efficiently and accurately track and control corporate funds and to ensure cash availability.

33. As part of this Cash Management System, the Companies maintain seven bank accounts, which are summarily described below:

a. Royal Bank of Canada: USD operating account for each of APC, ABI, and ALI;

b. Royal Bank of Canada: CAD operating account for each of APC, ABI, and ALI; and

c. Royal Bank of Canada (Georgia): USD operating account for APC.

v. Employees

34. APC, directly and through its Subsidiaries, currently employs/contracts ten people. Nine of these individuals are employed/contracted in Canada, and one is employed in the United States. Details regarding APC's workforce are as follows:

	Canada	United States
Full Time / Part Time	9 Full Time	1 Full Time
Salaried / Contract	6 Salaried, 3 Contract	1 Salaried
Pay Period	Bi-monthly	Bi-monthly
Total Monthly Payroll	153,000	30,000
Total Global Monthly Payroll	**$183,000**	

35. Through its benefits provider, Agile Benefits, the Applicants sponsor a group benefit plan offering health care, dental care, short-term disability and long-term disability benefits for all of its employees.

36. The Applicants do not have any unionized employees or registered pension plans.

III. FINANCIAL POSITION OF THE APPLICANTS

37. Copies of the Companies' audited consolidated financial statements for the fiscal years ended December 31, 2020 and December 31, 2021 are attached hereto as **Exhibit** "**E**", and **Exhibit** "**F**", respectively.

38. A copy of the Companies' unaudited interim consolidated financial statements for the nine months ended September 30, 2022 (the "**Financial Statements**") is attached hereto as **Exhibit** "**G**".

A. Assets

39. As appears from the Financial Statements, as at September 30, 2022, the assets of the Companies had a net book value of approximately $47,670,000 and consisted of the following:

Asset Type	Value ($)
Cash	3,020,000
Trade and other receivables	1,131,000
Inventory	5,120,000
Prepaid and other assets	1,145,000
Current Assets	**10,416,000**
Property and equipment (net)	338,000
Right of use asset	279,000

Intangible assets (net)	36,637,000
Non-Current Assets	**37,254,000**
Total Assets:	**47,670,000**

B. Liabilities

40. As appears from the Financial Statements, as at September 30, 2022, the liabilities of the Companies had an unaudited book value of approximately $61,565,000 and consisted of the following:

Liability Type	Value ($)
Accounts payable and accrued liabilities	8,559,000
Provisions	2,118,000
Deferred cash consideration	750,000
Termination fee payable	4,002,000
Current portion of long-term debt	--
Current portion of lease liability	23,000
Current Liabilities:	**15,452,000**
Termination fee payable	--
Lease liability	286,000
Long-term debt	43,872,000
Promissory note	1,950,000
Derivative financial instruments	5,000
Non-Current Liabilities:	**46,113,000**
Total Liabilities:	**61,565,000**

41. As appears from the above, the Companies' current and long-term liabilities combined exceed the net book value of its current and long-term assets such that, on a balance sheet test, the Companies are insolvent.

42. There is also virtually no revenue stream at any of the Subsidiaries. Accordingly, the Companies cannot meet its obligations as they become due.

IV. THE COMPANIES' DEBT STRUCTURE

A. The FGC Note

43. As set out above, FGC is the majority shareholder of APC. The President and CEO of FGC is Ian Ihnatowycz, who serves as Chairperson of APC's Board of Directors.

44. On April 29, 2021, APC entered into a $15 million secured loan facility (the "**FGC Facility**") that FGC made available by way of advances under a secured promissory note between APC and FGC (as amended and restated, the "**FGC Note**"). Pursuant to the FGC Note, APC granted a security interest in substantially all of its present and after-acquired property in favour of FGC.

45. From December 2021 through December 2022, the FGC Note was amended and restated on several occasions. The principal effect of such amendments and restatements was to gradually increase the amount loaned under the FGC Facility from $15 million to $47.945 million, with the total amount outstanding on the FGC Facility being $47.945 million as at the date of this affidavit. A copy of the most recent restated FGC Note dated March 30, 2022 (the "**Third Amended and Restated FGC Note**") is attached hereto as **Exhibit "H"**.

46. As set forth above, the amounts advanced pursuant to the FGC Facility have been used to fund the operations of the Applicants for the past two (2) years. Funds advanced under the FGC Facility bear interest at a fixed rate of 8% per annum and the FGC Facility is repayable in

full by December 31, 2024. Prior to December 31, 2024, cash payments of interest or principal repayments are subject to certain exceptions related to APC's market capitalization. The FGC Facility can be repaid in full or in part without limitation. The FGC Facility matures on December 31, 2024.

B. Second FGC Loan

47. On December 21, 2022, APC and APL, as borrowers, and FGC, as lender, entered into a loan agreement (the "**FGC Loan Agreement**"), pursuant to which FGC made $2 million non-revolving credit facility available to APC and APL (the "**Second FGC Facility**"). The Second FGC Facility has been fully funded. A copy of the FGC Loan Agreement is attached hereto as **Exhibit "I"**.

48. The Second FGC Facility bears interest at a rate of 8% per annum which was subject to approval from the TSX. The terms of the FGC Loan Agreement triggered the requirement for TSX approval because (a) APC is a "**non-exempt**" issuer for the purposes of Part V of the TSX Company Manual; (b) FGC is an insider of APC; and (c) the interest payable pursuant to the FGC Loan Agreement together with interest paid pursuant to the FGC Facility within the past six months, in aggregate, was greater than 10% of APC's market capitalization at that time.

49. On January 10, 2023, the TSX confirmed they have received no complaints from shareholders and approved the Second FGC Facility subject to APC and APL delivering customary closing deliverables (the "**TSX Approval**"). The Second FGC Facility does not require any principal or interest payments until the Second FGC Facility matures on December 31, 2024. A copy of the TSX Approval is attached hereto as **Exhibit "J"**.

50. APC and APL's obligations under the Second FGC Facility are guaranteed by each of the Companies and all present and future subsidiaries of APC and APL. On December 21, 2022, the

Companies each executed an unlimited guarantee and indemnity in favour of FGC (the "**Guarantees**"). The Guarantees guaranteed the obligations owing under the FGC Facility and the Second FGC Facility. Copies of the Guarantees are collectively attached hereto as **Exhibit "K"**.

51. In addition, in connection with the Second FGC Facility, FGC required obligations in respect of both the FGC Facility and the Second FGC Facility to be secured by, among other things:

a. general security agreements dated December 21, 2022, executed by APC, ALI, and ABI in favour of FGC;

b. a share pledge agreement dated December 21, 2022, executed by APC in favour of FGC;

c. a pledge agreement dated December 21, 2022, executed by APC in favour of FGC;

d. a patent security agreement dated December 21, 2022, executed by APL in favour of FGC;

e. a trademark security agreement dated December 21, 2022, executed by APL in favour of FGC; and

f. a pledge and security agreement dated December 21, 2022, executed by APL in favour of FGC (collectively, the "**Security**").

52. As at the date of this affidavit, FGC is the Applicants' only secured creditor. Copies of a certified PPSA search against the Applicants with a currency date of January 19, 2023, and a report listing all UCC-1 financing statements filed in respect of the commercial property of ABI dated January 20, 2023 are attached hereto **Exhibit "L"** and **Exhibit "M"**, respectively.

C. Unsecured Debt

i. Serenity Acquisition and Promissory Note

53. As set out above, pursuant to the Serenity Acquisition Agreement, APL was acquired by APC. As part of the purchase consideration paid by APC in its acquisition of APL, APC delivered a promissory note to the former securityholders of APL in the amount of approximately US$4.91 million on March 7, 2022 (the "**Serenity Note**"). The Serenity Note bears interest equal to the applicable federal rate for short-term instruments published by the Internal Revenue Service.

54. The Serenity Note was amended and restated on June 6, 2022, one day prior to its original maturity date of June 7, 2022 (the "**Amended and Restated Serenity Note**"). After several extensions, on September 30, 2022, APC and the former securityholders of APL agreed to an amendment to the First Amended Serenity Note (the "**Amendment to the Amended and Restated Serenity Note** "). Pursuant to the Second Amended Serenity Note, the principal amount of the note would be increased from US$4.91 million to US$7.75 million, representing principal and accrued interest, and that repayment would be made in thirteen quarterly payments commencing from the calendar quarter immediately following the calendar quarter in which APC achieves the first commercial sale of Noctiva in the United States. Copies of the Amended and Restated Serenity Note and the Amendment to the Amended and Restated Serenity Note are collectively attached hereto as **Exhibit "N"**.

55. A success fee owing to Torreya Capital LLC ("**TCL**") in respect of the of APL acquisition also remains outstanding. TCL was to be paid a success fee of 10% of all consideration earned by SPL up to its first US$12.5 million of aggregate consideration, with TCL earning 3% of aggregate consideration earned above this amount. As certain the consideration payable under the Serenity Acquisition Agreement (i.e. the Serenity Note) was deferred, the success fee was also deferred.

56. Pursuant to the Serenity Acquisition Agreement, there is additional contingent share consideration due to the former securityholders of APL. Upon achievement of the first commercial sale of Noctiva, 803,715,000 of APC's common shares (~32.595% of the total issued and outstanding shares) are to be issued to the former securityholders of APL. Additionally, two contingent share payment tranches of $5 million worth of common shares each are payable if Noctiva net annual revenues in the United States and Canada reach: (a) $100 million before December 31, 2026; and (b) $150 million annually on or before December 13, 2028

ii. Employee Liabilities

57. While the Companies are current with respect to its payment of payroll and the remittance of employee source reductions, its ability to meet its payroll obligations is contingent on the granting of the relief sought in the Initial Order and the ARIO.

58. As at the date of this affidavit, APC and its Subsidiaries owe its employees approximately $112,000 for outstanding vacation pay.

iii. Other Unsecured Claims

59. In addition to the aforementioned claims, the Applicants' other unsecured claims include the following:

a. *Accounts Payable*: As at December 31, 2022, the Companies owed approximately $7.9 million on accounts payable, broken down by entity as follows: $0.4 million for ABI; $0.5 million for APL; and $7 million for APC.

b. *Natesto Related Payables*: As at December 31, 2022, APC owed approximately $6 million to Natesto-related payables. The bulk of which (approximately $3.6 million) is owed to Syneos for its services provided to sell Natesto in the marketplace.

c. *Aytu Buyback Agreement:* As at January 15, 2023, APC is nine payments in arrears amounting to $2.25 million in respect of its obligations pursuant to the Aytu Buyback Agreement.

D. Contingent Liabilities

i. Schenk Litigation

60. Valeant Pharmaceuticals International, Inc. and Valeant International Bermuda ("**Valeant**") are defendants in Ontario Superior Court of Justice Action No. CV-11-438382, which claims a declaration that Valeant is contractually obligated to compensate the plaintiff, Reiner Schenk ("**Schenk**") pursuant to the terms of a contract between Schenk and Biovail Corporation in the amount of $10 million (the "**Schenk Litigation**").

61. Valeant commenced a third party claim against, among others, APC, claiming contribution, indemnity and other relief over to the full extent that Valeant may be held liable to Schenk, and damages for breach of fiduciary duty, breach of contract and intentional interference with economic relations in any amount for which Valeant is found liable to Schenk (the "**Third Party Claim**"). APC has defended the Third Party Claim, denying any liability to Valeant.

62. Prior to these CCAA proceedings, the Applicants were in discussions regarding a possible settlement of the Schenk Litigation.

ii. Jones Day Litigation

63. On December 11, 2019, Jones Day commenced an action in the New York State Supreme Court against APL, and certain members of its senior management (which are current or former directors of APC and no longer part of the management of APL), for alleged unpaid legal bills in the amount of approximately $5.3 million. On September 21, 2020, APL filed an answer with

counterclaims against Jones Day. APL's counterclaim alleges breach of contract in connection with Jones Day's representation of APL in a prior lawsuit, fraud in respect of certain billing issues and malpractice. Also on September 21, 2020, the former senior management members filed a motion to dismiss Jones Day's complaint as against them.

64. On August 31, 2022, the senior management members of APL filed a motion for summary judgment to dismiss Jones Day's complaint against them. On September 8, 2022, Jones Day filed a motion to amend its complaint to add APC as a new defendant.

65. APL and the senior management members opposed the motion to amend because it seeks to both add APC as a defendant and also pierce APL's corporate veil to seek damages against the senior management members. APL's motion for summary judgment and Jones Day's motion to amend its complaint are both pending. Decisions on both motions will likely be issued in early 2023.

66. A provision of $2.118 million was recorded as at September 30, 2022 as a contingent liability to provide for a conservative estimate of anticipated costs of discovery, legal fees and other costs and potential settlement.

67. In the event that this Court grants the relief requested by the Applicants, the Companies intend to initiate Chapter 15 proceedings in the United States Bankruptcy Court which would stay the litigation proceedings commenced by Jones Day.

V. THE COMPANIES' FINANCIAL DIFFICULTIES

68. As described above, the Companies are experiencing significant cash flow issues that will continue to jeopardize its ability to pursue its strategic plans and product plans, especially in relation to the manufacture and distribution of Noctiva and commercialization of Natesto. As of

September 30, 2022 the Applicants had negative cash flow for the fiscal year of nearly $18.6 million from operating activities and losses continued to the end of 2022.

69. Working to advance Natesto through the COVID-19 pandemic resulted in a net-loss in respect of Natesto. Health care provider offices were closed for a significant period from 2020 through 2021, resulting in patient volumes declining significantly. As a result, prescription growth through this period was blunted.

70. Additionally, the significant costs associated with sales and marketing to develop the market for Natesto in the United States resulted in significant losses for the Companies and are a primary reason behind the Companies' financial difficulties.

71. At the same time, the Companies have incurred further debt in its acquisition of APL. While the acquisition of APL was a strategic growth opportunity, it has resulted in significant additional current and long-term debt to the Companies' balance sheet.

72. Further, the clinical development and testing of drug candidates are a long, expensive, and uncertain process. The Applicants have incurred substantial expense for and devoted a significant amount of time to pre-clinical testing and clinical trials. Given the nature of the Companies' business and product pipeline, the Companies will continue to incur research and development ("**R&D**") expenses in the future and R&D expenditures are expected to increase as further clinical studies are initiated to obtain regulatory approvals.

73. To fund these expenses along with other operating expenses, the Applicants have no readily available revenue stream other than Natesto sales, which were only approximately $3 million in 2022. As described above, to date losses have been funded since April 30, 2021 by FGC, which has advanced $49.945 million to the Applicants. However, FGC is no longer willing to make further advances to the Applicants outside of these CCAA proceedings.

74. These financial challenges have also resulted in the Companies losing a number of key employees from 2021 through 2022 resulting in certain operational turmoil and difficulties. The key employees who have resigned during this time frame include: (a) the former Senior Vice President of the United States Commercial sector who was the overall leader of United States sales and marketing; (b) the former Vice President of Sales who was the leader of the Companies' sales efforts in the United States; (c) the former Senior Director of United States Trades who was the leader of United States wholesale distribution activities; (d) the former Senior Director of Technical Operations who was the leader of the Companies' manufacturing activities and oversaw work with contract manufacturing organizations; (e) the former Product Manager of Canada who was the brand leader for Natesto in Canada; (f) the former Senior Corporate Counsel who was responsible for leading the United States commercial payor administration; (g) the former Chief Financial Officer who was the senior finance lead for the Companies resigned in November 2022; and (h) a former member of APC's board of directors resigned in December 2022.

VI. THE PRE-FILING STRATEGIC PROCESS

75. In order to address, the Applicants liquidity situation, throughout 2022, APC undertook numerous efforts to raise additional capital. APC reached out to numerous investors in the pharmaceutical industry in an attempt to raise additional capital that would allow the Companies to implement their plans to grow sales of Natesto and develop and commercialize Noctiva. Despite these efforts, APC was unable to find a workable financing transaction.

76. On September 21, 2022, APC announced that it was commencing a strategic review of capital and business alternatives, including but not limited to, possible debt or equity financing, asset sale, merger & acquisition, or licensing transactions (the "**Strategic Review Press Release**"). The Pre-Filing Strategic Process broadened the scope of APC's previous efforts to

raise additional capital. As part of this initiative, APC established a committee of independent directors (the "**Independent Committee**") to supervise the Pre-Filing Strategic Process. EY and EYO were also engaged as the independent financial advisor to the Companies, and FAAN was also engaged and I was appointed as the Chief Strategy Officer to assist in the strategic review. A copy of the Strategic Review Press Release is attached hereto as **Exhibit "O"**.

77. As part of the Pre-Filing Strategic Process, EYO reached out to various financial and strategic parties as part of this process in order to develop a sale, financing or licensing transaction. While EYO received interest and advanced with multiple parties, the process did not lead to any actionable transaction.

78. If the Initial Order is granted, the Applicants, with the proposed Monitor, intend to recommence certain discussions with parties about completing a transaction for particular assets or drugs in the context of these CCAA proceedings and the Applicants also intend to develop a sale and investment solicitation process that will be brought to the Court for approval. The contemplated sale and investment solicitation process will allow the Applicants to pursue available restructuring or sale opportunities in respect of their business and assets to maximize value for stakeholders.

VII. RELIEF SOUGHT

A. Stay of Proceedings

79. As set out above, the Companies are expected to continue to experience significant liquidity constraints in the weeks and months ahead and are unable to meet many their contractual obligations as they become due.

80. The Companies urgently require the Stay of Proceedings to protect the value of the Companies' business which will allow them to:

a. obtain the funding necessary to continue operations;

b. concurrently explore various restructuring options such as:

    i. seeking additional financing or refinancing;

    ii. running a sales investment solicitation process for part or substantially all the Companies' assets; and

    iii. negotiating with stakeholders.

81. As set out in the cash flow projection (the "**Cash Flow Statement**") that was prepared by the Applicants and reviewed by the Proposed Monitor for the period from the date of filing to April 9, 2023, a copy of which is attached hereto as **Exhibit** "**P**", the Companies expect that, with the funds to be advanced under the DIP Facility Agreement, it will have sufficient cash to fund its projected operating costs during such period.

82. The Companies therefore requests a Stay of Proceedings for an initial period of ten days (the "**Stay Period**"), and, if granted by this Court, the Companies will subsequently request at the Comeback Hearing an extension of the Stay Period until April 5, 2023.

B. Appointment of EY as Monitor

83. The proposed Initial Order contemplates that EY will act as Monitor in the Applicants' CCAA proceedings. EY has consented to act as Monitor of the Applicants in these CCAA proceedings, subject to Court approval. A copy of EY's consent to act dated January 24, 2023 is attached hereto as **Exhibit "Q"**.

84. EY is a trustee within the meaning of section 2 of the Bankruptcy and Insolvency Act (as amended) and is not subject to any of the restrictions on who may be appointed as Monitor set out in section 11.7(2) of the CCAA.

85. EY has extensive experience in matters of this nature and is therefore well-suited to this mandate. EY has provided no accounting or auditing advice to the Companies. Fees payable to EY pursuant to its engagement letter are based on hours worked multiplied by normal hourly rates. EY is not entitled to any success-based or other contingency-based fee with respect to any of the services provided, including assisting with the Pre-Filing Strategic Process.

86. I am advised by Mr. Alex Morrison of EY that the Proposed Monitor is supportive of the relief being sought by the Companies in the draft Initial Order, as described in this affidavit. Mr. Morrison has also advised me that the Proposed Monitor will be filing a pre-filing Monitor's report in respect of such relief. If appointed as Monitor, EY will also file a report in respect of the relief to be sought at the Comeback Hearing.

C. Approval of FAAN as CRO

87. APC and FAAN executed the CRO Engagement Letter on January 25, 2023. Attached hereto as **Exhibit "R"** is a redacted copy of the CRO Engagement Letter. Only the amount of the monthly work fee and success fee in the CRO Engagement Letter have been redacted as I believe disclosure of such amounts could impact my ability to negotiate competitive rates on future engagements. An unredacted copy will be filed as part of the Confidential Supplement to the Proposed Monitor's pre-filing Monitor's report.

88. The unredacted CRO Engagement Letter is proposed to be sealed as it contains commercially sensitive and personal information that, if disclosed, could be detrimental to the

CRO's ability to obtain market rates in future engagements. The redactions in the CRO Engagement Letter were designed to only protect commercially sensitive information.

89. The pharmaceutical industry is heavily regulated and complex. Accordingly, the success of APC's restructuring requires leadership with substantial experience and knowledge. It is for this reason that I, through FAAN's appointment as CRO, have been proposed to manage the restructuring. Since 2016, FAAN has been appointed as CRO in several other CCAA proceedings involving significant and complex restructuring and sale transactions. I also have a background as a Licensed Insolvency Trustee. I believe this expertise will assist the Applicants with their operations during the CCAA proceedings and improve the chance of a going-concern solution for the benefit of the Applicants and their stakeholders.

90. Pursuant to the CRO Engagement letter, the CRO would be empowered to, among other things:

a. assisting the Companies in the required preparations for potentially commencing CCAA proceedings;

b. serving as the Companies' primary contact with and providing information to the Proposed Monitor and other professionals involved in the CCAA proceedings regarding the business and affairs of the Companies;

c. assisting in the preparation of and evaluating the Companies-prepared projected cash flows and financing requirements in the context of its planned CCAA proceedings;

d. negotiating with prospective purchasers and other interested parties during the Companies' sale and investment solicitation process in the CCAA proceedings;

e. managing the CCAA proceedings on the Companies' behalf, including dealing with the administration of financing including updating forecasts and information that may be required for financing, and dealing with any insolvency related claims and reconciliation process during the CCAA;

f. dealing with other key stakeholders including employees lenders, vendors and suppliers;

g. providing information to and serving as a contact with the Companies' Canadian and United States legal advisors;

h. participating in the Companies' management and executive team;

i. making decisions with respect to the day-to-day aspects of the management and operations of the Companies' business;

j. overseeing the Companies' finance department, including acting a signing authority over the Companies' bank accounts;

k. overseeing the Companies' accounts payable payment processing; and

l. other such other services as requested or directed by the Companies' board of directors, which services are to be agreed to by FAAN and not duplicative of work others are performing for the Companies.

I understand that the Proposed Monitor is satisfied with the qualifications, expertise, and experience of FAAN, and supports the Applicants' retention of FAAN as CRO pursuant to the terms of the CRO Engagement Letter.

D. Administration Charge

91. The Initial Order provides for a Court-ordered charge in favour of the CRO, the Proposed Monitor, counsel to the Proposed Monitor, and the Applicants' counsel over all of the Property of the Applicants in order to secure payment of their respective fees and disbursements incurred in connection with services rendered in respect of the Applicants up to a maximum amount of C$150,000 (the "**Administration Charge**"). The amount of the Administration Charge is proposed to be increased to C$300,000 at the Comeback Hearing. The Administration Charge is proposed to rank ahead of and have priority over all of the other Charges and the DIP Lender's Charge (as defined below).

92. The Applicants requires the expertise, knowledge, and continued participation of the proposed beneficiaries of the Administration Charge during these CCAA proceedings in order to complete a successful restructuring. Each of the beneficiaries of the Administration Charge will have distinct roles in the Applicants' restructuring.

93. The Applicants and the Proposed Monitor worked collaboratively to estimate the quantum of the Administration Charge required. I believe that the Administration Charge is fair and reasonable in the circumstances. I understand that the Proposed Monitor is also of the view that the Administration Charge is fair and reasonable in the circumstances.

E. DIP Facility and DIP Lender's Charge

94. As appears from the Cash Flow Statement prepared by the Companies and reviewed by the Proposed Monitor, the Companies expect the need for interim financing to fund these CCAA proceedings.

95. In order to fund the operations of the Companies during these CCAA proceedings, the Applicants commenced negotiations with FGC to provide debtor-in-possession financing. Based

on the results of the Pre-Filing Strategic Process, which included solicitation of potential third-party financing, and the available collateral to secure any DIP financing, the Applicants did not believe any third parties would be interested in providing such financing.

96. Following negotiations with FGC, on January 25, 2023, APC and APL, as co-Borrowers (in such capacity, the "**Borrowers**"), and FGC, in its capacity as DIP Lender, entered into the DIP Facility Agreement. The Independent Committee, in consultation with myself, the proposed Monitor, and the Applicants' legal counsel, independently reviewed and considered the proposed DIP Facility Agreement and it approved following their deliberations. Ian Ihnatowycz did not participate in any vote or resolution approving the DIP Facility Agreement. A copy of the DIP Facility Agreement is attached hereto as **Exhibit "S"**.

97. The DIP Facility Agreement provides for a super-priority, interim, non-revolving credit facility up to a maximum principal amount of US$7,000,000. The interest rate applicable to advances under the DIP Facility is 8% per annum, calculated and compounded monthly and payable on the Maturity Date (as defined below).

98. Within the initial 10-day stay period, the Applicants are requesting authority to draw up to a maximum amount of US$500,000 under the DIP Facility Agreement (the "**Initial Advance**"). As shown in the Cash Flow Statement, given their liquidity situation, the Applicants likely will require this Initial Advance under the DIP Facility Agreement to continue operating in the ordinary course within the initial 10-day stay period. Additionally, if there are any issues or delays in collecting receipts or unexpected required expenditures within the initial 10-day stay period, the Initial Advance provides certainty to the Applicants and its stakeholders.

99. The DIP Facility Agreement is conditional, among other things, upon the granting of a priority charge over the Property in favour of the DIP Lender to secure the amounts borrowed under the DIP Facility (the "**DIP Lender's Charge**"). In accordance with the DIP Facility

Agreement, the DIP Facility is to be used during these CCAA proceedings for the following purposes:

a. to pay fees and expenses associated with the DIP Facility (including without limitation certain expenses, fees of the Monitor, compensation of the CRO, and legal fees of counsel to the DIP Lender, the Borrowers, and the Monitor;

b. to pay other general corporate expenses and operating costs of the Borrowers, including the Borrowers' expenses and operating costs in the CCAA proceedings pursuant to a budget prepared by APC and the Monitor and as agreed to by the DIP Lender; and

c. to fund such other costs and expenses as agreed to by the DIP Lender, in writing.

100. The DIP Facility is also conditional upon FAAN being appointed as CRO.

101. The DIP Facility is subject to customary covenants, conditions precedent, and representations and warranties made by the Borrowers to DIP Lender. Per the DIP Facility Agreement, the DIP Loan must be repaid in full by the date (the "**Maturity Date**") that is the earliest of:

a. December 31, 2024;

b. the date on which the ARIO expires without being extended or on which the CCAA Proceeding is terminated or dismissed; and

c. an event of default in respect of which the DIP Lender has elected to accelerate the Applicants' obligations pursuant to the DIP Loan (as defined below).

102. The DIP Facility Agreement provides, among other things, that the DIP Facility is contingent on the granting of a priority charge over the Property of the Applicants in favour of the

DIP Lender (the "**DIP Lender's Charge**"). The proposed Initial Order and ARIO contemplate that the DIP Lender's Charge will rank subordinate only to the Administration Charge.

103. The DIP Lender's Charge will secure all of the credit advanced under the DIP Loan, however, during the initial 10-day stay period the Applicants are only authorized to borrow a maximum of $500,000. The DIP Lender's Charge will not secure obligations incurred prior to these CCAA proceedings.

104. As the DIP Facility will be provided by FGC, who already benefits from a first ranking security interest, I do not expect any material prejudice to any of other existing creditor of the Companies should the Court approve the DIP Facility Agreement and the proposed DIP Lender's Charge.

105. The Proposed Monitor is supportive of the approval of the DIP Facility Agreement and corresponding DIP Lender's Charge. Accordingly, I believe that it is appropriate in the circumstances for this Court to approve the DIP Facility Agreement and the DIP Lender's Charge.

F. Directors' Charge

106. The Initial Order seeks a Directors' Charge over the Property to indemnify the directors and officers of the Companies (the "**Directors and Officers**") in respect of liabilities they may incur as Directors and Officers during these proceedings, up to a maximum principal amount of $200,000 (the "**Directors' Charge**"). The continuing support and insight of the Directors and Officers will preserve the value of the Applicants' business.

107. I am advised by the Applicants' legal counsel and believe that, in certain circumstances, directors can be held liable for certain obligations of a company, including those owing to employees and government entities, which may include unpaid accrued wages, unpaid accrued

vacation pay, unremitted source deductions, health taxes, workers' compensation and other payroll related obligations.

108. I am advised that APC maintains director and officer liability insurance (the "**D&O Policy**"), and that APC has granted contractual indemnities in favour of its directors and officers. However, the economic value of contractual indemnities granted by an entity that is insolvent is questionable, and I understand that the D&O Policy may include contractual contingencies and uncertainty associated with possible coverage related issues.

109. Although the Applicants intend to comply with applicable laws with respect to matters affecting it, the failure to complete a restructuring creates the prospect of personal liabilities for the Directors and Officers.

110. Notably, the proposed Initial Order provides that the Directors and Officers will only have recourse to the Directors' Charge as a "back-stop" in the event that the D&O Policy (which I believe covers most typical director and officer liabilities) is not available or applicable.

111. The Proposed Monitor supports the amount sought for the Directors' Charge. I believe that in these circumstances, the requested Directors' Charge is reasonable and adequate given, notably, the complexity of the Companies' business and the corresponding potential exposure of the Companies' Directors and Officers to personal liability, especially in the present context. The amount of the Directors' Charge is not proposed to increase at the Comeback Hearing.

112. Absent approval by this Court of the Directors' Charge in the amounts set out above, I have been advised that some or all of the Companies' Directors and Officers may resign, which would, in all likelihood, render these CCAA proceedings much more challenging, and possibly much more costly, to the detriment of the Companies' creditors and other stakeholders.

G. KERP

113. The Companies have certain key employees (the "**Key Employees**"), who perform roles critical to advancing the Applicants' restructuring, including various institutional knowledge related to the Companies' business and operations. As described above, certain senior members of management resigned prior to these CCAA proceedings in light of the Companies' financial performance. Accordingly, the Applicants have worked with their advisors to develop a key employee retention plan (the "**KERP**") to provide three (3) Key Employees if they maintain their roles through the Applicants' restructuring. The maximum aggregate amount payable under the KERP is C$455,250. However, there are no guaranteed payments under the KERP. Payments under the KERP are due only upon certain triggers or milestones in the Applicants' restructuring, which include:

a. upon closing of the sale of one or more of the Applicants' drugs;

b. upon the completion of the production of a commercial batch of Noctiva; and

c. upon the completion of a sale or restructuring transaction in respect of substantially all of the Applicants' assets or operations.

114. The compensation committee (the "**Compensation Committee**") of APC's board of directors, in consultation with FAAN, EY and the Companies' legal counsel, reviewed, commented on and modified the terms of the KERP in order to ensure that those employees subject to the KERP were properly incentivized to maximize the Applicants' operational success and their chance at a going-concern solution for the benefit of the Companies and their stakeholders.

115. If the KERP were not approved, I believe it is likely that the Key Employees will consider other employment options. Finding qualified individuals to replace them would have been disruptive, difficult and time consuming, particularly given the Key Employees institutional

knowledge related to the business. I also believe that the Key Employees will be critical in connection with any sales and investment solicitation process conducted by the Applicants in the future and will be required in connection with any third party's due diligence related to the Applicants and their drugs.

H. Authorization to Incur no Further Costs in Connection with Securities Filings

116. At the initial hearing for the commencement of these CCAA proceedings, the Applicants will not be seeking authorization to dispense with securities filing requirements.

117. At the Comeback Hearing, the Applicants will seek authorization to dispense with certain securities filing requirements. In particular, the Applicants seek authorization for the Companies to incur no further expenses in relation to any filings (including financial statements), disclosures, core or non-core documents, restatements, amendments to existing filings, press releases or any other actions (collectively, the "**Securities Filings**") that may be required by any federal, provincial, or other law respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including without limitation, the *Securities Act* (Ontario), RSO 1990 c S. 5 and comparable statutes enacted by other provinces of Canada, the Canadian Securities Exchange ("**CSE**") Policies 1-10 and other rules, regulations and policies of the CSE.

118. In my view, incurring the time and costs associated with preparing the Security Filings will detract from the Companies' successful restructuring. Further, there is no prejudice to stakeholders given that detailed financial information and other information regarding the Companies will continue to be made publicly available through the materials filed in these CCAA proceedings.

I. Ranking of the Charges

119. The proposed ranking of the Administration Charge and the Directors' Charge pursuant to the Initial Order is as follows:

a. an Administration Charge in favour of the CRO, the Monitor, counsel to the Monitor, and counsel to the Applicants in the initial amount of $150,000;

b. the DIP Lender's Charge; and

c. the Directors' Charge in favour of the Directors and Officers in the amount of $200,000.

120. The proposed ranking of the Charges pursuant to the ARIO is as follows:

a. an Administration Charge in favour of the CRO, the Monitor, counsel to the Monitor, and counsel to the Applicants in the increased amount of $300,000;

b. the DIP Lender's Charge;

c. the Directors' Charge in favour of the Directors and Officers in the amount of $200,000.

d. the KERP Charge in favour of the key employees referenced in the KERP up to the maximum amount of C$455,250.

121. Pursuant to the proposed Initial Order, the Administration Charge and the Directors' Charge on the Property would rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any person, notwithstanding the order of perfection or attachment, except for any secured creditor of the Companies who does not receive notice of this Application. The proposed ARIO contemplates that the Charges would rank ahead of all Encumbrances on a subsequent motion on notice to those persons likely to be affected thereby.

J. Chapter 15 Proceeding

122. Should the Initial Order be granted, the Companies intend to initiate Chapter 15 proceedings in the United States Bankruptcy Court seeking, among other things: (a) recognition of this CCAA proceeding as a foreign main proceeding pursuant to the United States Bankruptcy Code; (b) recognition and enforcement of the Initial Order; and (c) other appropriate relief under the Bankruptcy Code.

123. The Companies are connected to the United States as: (a) APL is a Delaware corporation; (b) the litigation between APC, APL and Jones Day is proceeding in the New York State Supreme Court; and (c) Noctiva is one of the two main assets of the Companies and the intellectual property rights to same are owned by APL.

124. The proposed Initial Order also provides that APC will be appointed as the "foreign representative" for the purposes of the Chapter 15 proceedings.

125. The Chapter 15 proceedings are necessary to ensure that if the Initial Order is granted, this Court's stay of proceedings is recognized and enforced in the United States generally and the New York State Supreme Court in particular.

126. The Proposed Monitor agrees that recognition of the proposed Initial Order in the United States, including the Stay of Proceedings, is necessary to preserve the going concern value of the Companies' business. The Proposed Monitor has reviewed the circumstances and agrees that Canada is the centre of main interest for the Companies.

VIII. CONCLUSION

127. For the reasons set out above, I believe that it is in the interest of the Companies, and other stakeholders of the Companies that they be granted protection under the CCAA in accordance with the terms of the proposed Initial Order and the terms of the proposed ARIO.

128. I swear this Affidavit in support of the Applicants' application pursuant to the CCAA and for no other or improper purpose.

SWORN REMOTELY via videoconference, by Naveed Z. Manzoor stated as being located in the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on this 25 day of January, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.	)))))))	
DocuSigned by: Philip Y 36124C4218DD47C...	)))	DocuSigned by: Naveed Z. Manzoor 090F0FC3FAE4473...
A Commissioner for Taking Affidavits, etc. PHILIP YANG	)	**NAVEED Z. MANZOOR**

This is Exhibit "A" referred to in the Affidavit of Naveed Z. Manzoor
sworn by Naveed Z. Manzoor of the Town of Oakville,
in the Province of Ontario, before me at the City of Toronto,
in the Province of Ontario, on January 25, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

Philip

Commissioner for Taking Affidavits

Ontario

Ministry of Public and
Business Service Delivery

Profile Report

ACERUS PHARMACEUTICALS CORPORATION as of January 11, 2023

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	ACERUS PHARMACEUTICALS CORPORATION
Ontario Corporation Number (OCN)	1864762
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Amalgamation	January 01, 2012
Registered or Head Office Address	7025 Langer Drive, Suite 205, Mississauga, Ontario, Canada, L5N 0E8

Active Director(s)

Minimum Number of Directors	3
Maximum Number of Directors	11

Name	BORYS CHABURSKY
Address for Service	2486 Dunwin Drive, Mississauga, Ontario, Canada, L5L 1J9
Resident Canadian	Yes
Date Began	December 20, 2015

Name	GEOFF COTTON
Address for Service	19 Del Ray Court, San Carlos, California, United States, 94070
Resident Canadian	No
Date Began	May 04, 2020

Name	STEPHEN ROBERT GREGORY
Address for Service	2486 Dunwin Drive, Mississauga, Ontario, Canada, L5L 1J9
Resident Canadian	Yes
Date Began	January 01, 2012

Name	EDWARD JOSEPH GUDAITIS
Address for Service	2060 Deer Run Avenue, Burlington, Ontario, Canada, L7M 2S3
Resident Canadian	Yes
Date Began	May 01, 2018

Name	SAMUEL HERSCHKOWITZ
Address for Service	480 Ne 31st Street, Unit 2501, Miami, Florida, United States, 33137
Resident Canadian	No
Date Began	March 07, 2022

Name	IAN IHOR OREST IHNATOWYCZ
Address for Service	2486 Dunwin Drive, Mississauga, Ontario, Canada, L5L 1J9
Resident Canadian	Yes
Date Began	September 09, 2013

Active Officer(s)

Name	EDWARD JOSEPH GUDAITIS
Position	Chief Executive Officer
Address for Service	2060 Deer Run Avenue, Burlington, Ontario, Canada, L7M 2S3
Date Began	May 01, 2018

Name	EDWARD JOSEPH GUDAITIS
Position	President
Address for Service	2060 Deer Run Avenue, Burlington, Ontario, Canada, L7M 2S3
Date Began	May 01, 2018

Name	NAVEED MANZOOR
Position	Chief Financial Officer
Address for Service	2486 Dunwin Drive, Mississauga, Ontario, Canada, L5L 1J9
Date Began	November 15, 2022

Name	PHILIPPE P. SAVARD
Position	Secretary
Address for Service	2486 Dunwin Drive, Mississauga, Ontario, Canada, L5L 1J9
Date Began	July 04, 2016

Inactive Administrators Reported on January 11, 2023 CIA Filing

Inactive Director(s)

Name	WILLIAM SCOTT LECKIE
Address for Service	169 Banff Road, Toronto, Ontario, Canada, M4P 2P9
Resident Canadian	Yes
Date Began	June 23, 2020
Date Ceased	December 26, 2022

Inactive Officer(s)

Name	ROBERT MARTIN MOTZ
Position	Chief Financial Officer
Address for Service	5521 Shorecrest Cres., Mississauga, Ontario, Canada, L5M 4Y6
Date Began	October 30, 2018
Date Ceased	November 15, 2022

Corporate Name History

Name	ACERUS PHARMACEUTICALS CORPORATION
Effective Date	September 08, 2015
Previous Name	TRIMEL PHARMACEUTICALS CORPORATION
Effective Date	January 01, 2012

Amalgamating Corporations

Corporation Name	TRIMEL BIOPHARMA INC.
Ontario Corporation Number	2185322
Corporation Name	TRIMEL PHARMACEUTICALS CORPORATION
Ontario Corporation Number	2212148

Active Business Names

This corporation does not have any active business names registered under the Business Names Act in Ontario.

Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Transaction Number: APP-A10104119752
Report Generated on January 11, 2023, 15:46

Document List

Filing Name	Effective Date
CIA - Notice of Change PAF: KELLY CAREY	January 11, 2023
BCA - Articles of Amendment	April 26, 2022
CIA - Notice of Change PAF: Kelly CAREY	March 10, 2022
CIA - Notice of Change PAF: Kelly CAREY	December 23, 2021
Annual Return - 2019 PAF: ROBERT MOTZ - DIRECTOR	July 19, 2020
CIA - Notice of Change PAF: SADAF HATAM - OTHER	July 07, 2020
CIA - Notice of Change PAF: SADAF HATAM - OTHER	June 30, 2020
CIA - Notice of Change PAF: SADAF HATAM - OTHER	May 07, 2020
Annual Return - 2018 PAF: ROBERT MOTZ - DIRECTOR	July 28, 2019
Annual Return - 2017 PAF: KEN YOON - DIRECTOR	June 27, 2018
CIA - Notice of Change PAF: PAMELA HEIKAMP - OTHER	June 06, 2018
CIA - Notice of Change PAF: SARAH C. MATTHEWS - OTHER	May 01, 2018
CIA - Notice of Change PAF: SARAH C. MATTHEWS - OTHER	December 07, 2017

CIA - Notice of Change PAF: SARAH C. MATTHEWS - OTHER	November 28, 2017
CIA - Notice of Change PAF: SARAH C. MATTHEWS - OTHER	November 28, 2017
CIA - Notice of Change PAF: SARAH C. MATTHEWS - OTHER	October 11, 2017
Annual Return - 2016 PAF: TOM ROSSI - DIRECTOR	July 23, 2017
CIA - Notice of Change PAF: SARAH C. MATTHEWS - OTHER	December 29, 2015
CIA - Notice of Change PAF: SARAH C. MATTHEWS - OTHER	September 10, 2015
BCA - Articles of Amendment	September 08, 2015
CIA - Notice of Change PAF: SARAH C. MATTHEWS - OTHER	August 06, 2015
CIA - Notice of Change PAF: MATTHEW HAWKINS - OFFICER	February 27, 2014
CIA - Requirement to File 7	December 19, 2013
CIA - Notice of Change PAF: MATTHEW HAWKINS - OFFICER	December 16, 2013
CIA - Notice of Change PAF: MATTHEW HAWKINS - OFFICER	September 20, 2013
CIA - Notice of Change PAF: SARAH C. MATTHEWS - OTHER	September 19, 2013
CIA - Notice of Change PAF: MATTHEW SCOTT HAWKINS - OFFICER	May 28, 2013
CIA - Notice of Change PAF: SARAH C. MATTHEWS - OTHER	May 07, 2013
CIA - Notice of Change	March 11, 2013

PAF: SARAH C. MATTHEWS - OTHER

CIA - Notice of Change PAF: SARAH C. MATTHEWS - OTHER	January 29, 2013
CIA - Notice of Change PAF: SARAH C. MATTHEWS - OTHER	July 16, 2012
CIA - Initial Return PAF: SARAH C. MATTHEWS - OTHER	May 14, 2012
BCA - Articles of Amalgamation	January 01, 2012

All “PAF” (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

This is Exhibit “B” referred to in the Affidavit of Naveed Z. Manzoor
sworn by Naveed Z. Manzoor of the Town of Oakville,
in the Province of Ontario, before me at the City of Toronto,
in the Province of Ontario, on January 25, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

DocuSigned by:

Philip V

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Commissioner for Taking Affidavits

Management's Discussion & Analysis of
Acerus Pharmaceuticals Corporation
For the three and nine months ended September 30, 2022

The following management's discussion and analysis ("MD&A") of the financial condition and results of the operations of Acerus Pharmaceuticals Corporation and its wholly owned subsidiaries (the "Company", "Acerus", "we" or "our") constitutes management's review of the factors that affected our financial and operating performance for the three and nine months ended September 30, 2022. This MD&A is dated November 14, 2022 and should be read in conjunction with the annual audited consolidated financial statements and accompanying notes for the year ended December 31, 2021.

The unaudited condensed interim consolidated financial statements were prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board, including International Accounting Standard ("IAS") 34, Interim Financial reporting, and are presented in thousands of United States ("U.S.") dollars except for per share amounts and unless otherwise noted. For more detailed information regarding certain forward-looking statements contained herein, please see the note below regarding "Forward-looking Statements". The results of the operations, business prospects and financial condition of the Company will be affected by, among others, the "Risk Factors" set out in our Annual Information Form dated March 14, 2022 available at www.sedar.com.

We continue to incur losses and cash outflows from operating activities and at September 30, 2022, had a working capital deficit of $5,036 and a shareholders' deficit of $13,895. Our ability to realize its assets and meet its obligations as they come due is dependent on successfully commercializing its existing products, bringing new products and technologies to market and achieving future profitable operations, which is not expected within the next twelve months.

On September 21, 2022, we announced that the Board of Directors approved a strategic review of capital and business alternatives, including, but not limited to, possible debt or equity financing, asset sale, merger & acquisition or licensing transactions in an effort to generate cash needed to pay the Company's existing obligations. A committee of independent directors was struck to supervise this strategic review process. Ernst & Young Orenda Corporate Finance Inc. have also been engaged as independent financial advisors to us in this process. We have since received a number of expressions of interest in licensing certain of our products, which we are currently evaluating. At November 14, 2022 the Company's cash balance stood at $1,385. We will need to curtail expenditures until additional funding can be secured, otherwise we anticipate the Company will run out of cash before the end of December 2022.

These circumstances create material uncertainties that cast significant doubt as to the ability of the Company to meet its obligations as they come due and, accordingly, the ultimate appropriateness of the use of accounting principles applicable to a going concern as the Company will require additional funding from lenders or investors, to pay its current liability obligations and meet its forecast cashflow requirements over the next year.

There can be no assurances that the steps the Company is taking will be successful.

Forward-looking statements

This MD&A contains forward-looking information. This forward-looking information is not based on historical facts but rather on our expectations regarding the future growth of the Company and our respective results of operations, performance and business prospects and opportunities. Forward-looking information may include financial and other projections, as well as statements regarding future plans, objectives or economic performance, or the assumptions underlying any of the foregoing. This MD&A uses words such as "believe", "expect", "would", "will", "expects", "anticipates", "intends", "estimates", or similar expressions to identify forward-looking information. Such forward-looking information reflects our current beliefs based on information currently available to us.

These forward-looking statements are subject to important assumptions and the Company has also made certain macroeconomic and general industry assumptions in the preparation of such forward-looking statements. While the Company considers these factors and assumptions to be reasonable based on information currently available, there can be no assurance that actual results will be consistent with these forward-looking statements. Forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause the actual results, performance or achievements of the Acerus business, or developments in the Company's industry, to differ materially from the anticipated results, performance, achievements or developments expressed or implied by such forward-looking statements. Risks related to forward-looking statements include, among other things: the ability of the Company to continue as a going concern; the Company's limited operating history; the Company's ability to meet future capital requirements; the fluctuating operating results of the Company; First Generation's significant influence over matters put before the shareholders; the degree of market acceptance of the Company's products; risks relating to generic competition for the Company's products; extensive government regulation; risks associated with debt financing; marketing and distribution risks; manufacturing-related risks; supplier risks; risks relating to the supply of raw materials; publication of adverse clinical trial results; risks related to unexpected product safety or efficacy concerns; risks relating to promotional activities; risks associated with the cost and reimbursement of the Company's products; risks related to reliance on data obtained from Symphony or similar providers; intellectual property risks, including the uncertainty of intellectual property protection, risks associated with licensed patent rights and the risk of third party claims of infringement; risks related to disputes regarding ownership or inventorship of products and technologies; risks associated with trade secrets; risks related to the performance of services by third parties; risks associated with the public market and volatility associated with the Company's shares; risk of potential third-party liability; risks relating to clinical testing conducted by the Company; regulatory approval related matters; risks related to certain minimum payment obligations; a dependence on key personnel; risk of potential dilution of shareholders; risks associated with potential future acquisition activities; risks associated with the expiry of inventory; risks relating to the valuation of intangible assets; risks associated with returns, allowances and chargebacks; risks relating to the ability of the Company to expand its operations; competition risks; risks associated with technological change; foreign exchange risk; concentration risk; risks associated with certain indemnity obligations; tax-related risks; risks relating to the Company's ability to generate ancillary additional revenue; risks relating to securities analyst coverage of the Company; risks related to having limited experience in the U.S. market, risks related to the actions of its commercial partners, risks associated with the costs of complying with U.S. laws and regulations, risks related to controlled substances in the U.S., risks related to U.S. third party payer actions, risks related to U.S. federal coverage and reimbursement policies, risks related to training a U.S. sales force and risks related to evolving tariffs and trade policies between the U.S. and other countries; risks related to the Company's acquisition of Serenity Pharmaceuticals LLC ("Serenity") including: the Company's lack of experience marketing nocturia products; overestimating the market opportunity for Noctiva™; underestimating its costs to market Noctiva™; not having a supply agreement in place to produce Noctiva™; and risks associated with the impact of the novel coronavirus ("COVID-19") as a global pandemic on the economy, workforces, financial markets and supply chain.

Risks related to forward-looking statements include those risks referred to in our filings with the Canadian Securities regulators, including risks described in our Annual Information Form dated March 14, 2022, under the heading "Risk Factors". Actual results, performance or achievement could differ materially from that expressed in, or implied by, any forward-looking information in this MD&A, and, accordingly, investors should not place undue reliance on any such forward-looking information. Further, any forward-looking information speaks only as of the date on which such statement is made, and we undertake no obligation to update any forward-looking information to reflect the occurrence of unanticipated events, except as required by law. New factors emerge from time to time and the importance of current factors may change over time and it is not possible for us to predict all such factors, changes in such factors and to assess in advance the impact of each such factor on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking information contained in this MD&A.

Description of business

The unaudited condensed interim consolidated financial statements represent the consolidated accounts of Acerus Pharmaceuticals Corporation ("Acerus") (incorporated in Ontario, Canada) and its wholly-owned subsidiaries, Acerus Labs Inc. ("ALI") (incorporated in Ontario), Acerus Biopharma Inc. ("ABI") (incorporated in Ontario) and Acerus Pharmaceuticals USA, LLC (formerly Serenity Pharmaceuticals LLC) incorporated in Delaware, USA. The head office, principal address and records office of the Company are located in Mississauga, Ontario, Canada. The Company's registered address is Suite 205, 7025 Langer Drive, Mississauga, Ontario, L5N 0E8.

Acerus Pharmaceuticals Corporation is a Canadian-based specialty pharmaceutical company focused on the commercialization and development of innovative prescription products that improve patient experience, with a primary focus in the field of men's health. We currently have one marketed product: Natesto®, the first and only testosterone nasal gel for testosterone replacement therapy in adult males diagnosed with hypogonadism. Our primary market is the United States where we commercialize our product with our contract commercial provider Syneos Health ("Syneos"). Our previous contract with Aytu Biosciences Inc. ("Aytu") was terminated effective March 31, 2021. Following a transition period that ended on July 31, 2021, we assumed all responsibilities within the U.S. market for services previously contracted to them.

On March 7, 2022, we announced that we had acquired Serenity Pharmaceuticals LLC ("Serenity"), a Miami, FL based pharmaceutical company. Serenity's principal asset is Noctiva™ (desmopressin acetate), a patented prescription treatment for nocturnal polyuria that had received FDA approval. Noctiva™ is clinically indicated for the treatment of nocturia due to nocturnal polyuria in adults who awaken at least two times per night to void. We expect to resume manufacturing of Noctiva™ by the second half of 2023 and launch Noctiva™ along with Natesto® using the same sales force noted above. We believe that there is significant synergy between Noctiva™ and Natesto® with similar physician call points in the urology and high prescribing general practitioner segment. Refer to the "*Key products and developments"* section for more information.

Natesto® has also been licensed for distribution in Canada and in over 60 additional countries worldwide, through a global network of licensed distributors. Marketing approvals in jurisdictions outside of North America are expected to take place over the course of the coming years.

Our active pipeline includes two innovative products: avanafil a new chemical entity PDE5 inhibitor for the treatment of erectile dysfunction, which has been approved by the U.S. Food and Drug Administration ("FDA") and the European Medicines Agency ("EU EMA") and is commercialized in the U.S. under the trade name Stendra® and, in the European Union ("EU") under the trade name Spedra® and Lidbree™ (formerly referred to as Shact™), a short acting lidocaine formulation delivered through a proprietary device into the vaginal mucosal tissue. Refer to the "*Key products and developments"* section for more information.

Beyond the active product pipeline, we have product rights to Tefina™, a clinical stage product aimed at addressing a significant unmet need for women with female sexual dysfunction.

On April 19, 2022, the Company announced that it intended to undertake a consolidation of its outstanding common shares on the basis of one (1) post-consolidation share for every two hundred (200) pre-consolidation shares (the "Consolidation"). Subsequently approved by the Toronto Stock Exchange ("TSX"), the Consolidation took effect on April 26,2022 and the Company's common shares commenced trading on the TSX on a post-consolidation basis beginning at the open of markets on April 29, 2022. After the Consolidation, the number of common shares issued and outstanding were consolidated from approximately 1,541,549,299 to approximately 7,707,738 on a non-diluted basis. All fractions of post-consolidation shares were rounded down to the nearest whole number.

For further information please see the Annual Information Form dated March 14, 2022 and our other filings available on SEDAR at www.sedar.com.

Key products and developments

Noctiva™

On March 7, 2022, we acquired Serenity Pharmaceuticals LLC ("Serenity"), a Miami, Florida based pharmaceutical company. Serenity's principal asset is Noctiva™ (desmopressin acetate), a patented prescription treatment for nocturnal polyuria that had received FDA approval. Noctiva™ is the first FDA approved product for the treatment of nocturia, the condition of waking two or more times per night to void, due to nocturnal polyuria (overproduction of urine during the night). Noctiva™ is an emulsified low-dose vasopressin antilog administered through a preservative-free nasal spray 30 minutes before bedtime. Noctiva™ has two dosage strengths, 0.83 mcg/0.1 mL and 1.66 mcg/0.1 mL. Each spray delivers 0.1 mL of Noctiva™. We believe that nocturia affects approximately 40 million Americans and that nocturnal polyuria is present in approximately 88% of those. Of the 40 million Americans affected by nocturia, over 10 million actively seek treatment for their condition. Noctiva™ is designed to decrease the number of night-time voids in men and women suffering from nocturia and uses a patented spray technology to maximize drug delivery while minimizing the risk for Hyponatremia. Noctiva™ had been commercialized in the past but at the time of acquisition was not for sale.

As Noctiva™ represents virtually all of the underlying value of Serenity, we treated the acquisition as an asset acquisition based on the concentration test noted in Paragraph B7B of IFRS3. Accordingly, the acquisition has been treated as the acquisition primarily of an intangible asset as shown below and not as a business combination. As a result, no goodwill or deferred taxes arose on this transaction.

Details of the purchase consideration and net assets acquired are as follows:

i) Purchase consideration:

		September 30, 2022
Cash	$	605
Deferred cash consideration		750
Promissory note		4,908
Contingent share consideration: deferred share issuance		22,601
Contingent share consideration: sales performance milestones		3,445
Closing costs and success fees		1,393
Acquisition cost	$	33,702

The promissory note and deferred cash consideration were originally repayable on June 7, 2022, 90 days after closing. On August 5, 2022, the Company announced that it had amended the promissory note related to the up-front fee owed to former Serenity Pharmaceuticals LLC security holders to extend the original maturity date such that 50% of the balance would be payable on September 30, 2022, and the remainder, including accrued interest, would be payable on December 31, 2022. The deferred cash consideration is due on demand.

On September 30, 2022, the repayment terms of the promissory note owed to former Serenity Pharmaceuticals LLC security holders were once again amended to a repayment schedule commencing the first business day of each calendar quarter following the calendar quarter in which the first commercial sale of Noctiva™ is achieved in the U.S. market. Under the terms of the new promissory note, a total of $7.75 million representing principal and accrued interest shall be paid to the security holders in thirteen quarterly payments commencing from the calendar quarter immediately following the calendar quarter in the which the achievement of the first commercial sale in the USA is achieved. See further discussion below regarding the determination of fair value of the amended promissory note.

The contingent share consideration (and corresponding increase in contributed surplus) has been measured at the estimated fair value of the net assets acquired less the cash and promissory notes paid / payable in accordance with IFRS 2 “Share based payments”. The deferred share consideration consists of:

- A deferred share issuance of 803,715,000 (4,018,575 post consolidation) shares of the Company. These shares (representing approximately 1/3 of the fully diluted shares of the Company) are issuable upon the later of (i) January 23, 2023; or (ii) 30 days after first commercial sale of Noctiva in the USA or Canada;
- Two contingent share payment tranches of $5 million worth of common shares each if Noctiva™ net annual revenues in the USA and Canada reach:
    - $100 million before December 31, 2026, and
    - $150 million annually on or before December 13, 2028.

		September 30, 2022
Intangible assets	$	36,331
Provisions		(2,250)
Assumed liabilities		(379)
Net assets and liabilities recognized	$	33,702

Should the Company not achieve a first commercial sale of Noctiva™ in the US market within 24 months, the rescheduled promissory note payments referred to above would continue to be due once a first commercial sale is ultimately achieved. However, a $3 million penalty also becomes payable to the sellers and the IP associated with all pipeline products (which excludes Noctiva™) would revert to the sellers as compensation for late commercialization.

As the renegotiated terms of the promissory note are substantially different from the terms of the original promissory note and this has been accounted for as an extinguishment of the original financial liability and the recognition of a new financial liability at fair value. In the renegotiated terms there are different sets of cash flows depending on when and if Noctiva is commercialized in the U.S., but the minimum amount that the company cannot avoid paying is $3 million. The estimated range of recovery from face value was estimated to be 65% based upon Refinitiv distressed debt market report for the healthcare sector for September 2022, which reflects an implied discount rate of 35% based upon the remaining term to the penalty payment date. Accordingly, a fair value adjustment of $2,958 was recorded as a gain on debt modification in the condensed interim consolidated statements of loss and comprehensive loss. A +/- 1% change in the discount rate would change the estimated initial fair value of the promissory note by +/- $21.

In addition to the purchase consideration described above, the Company has agreed to pay milestone payments in the form of royalties to the vendors. These payments are not reflected in the purchase price of the intangible. Refer to the *"Contractual obligations and commitments"* section below for further discussion.

Amortization of the intangible will begin at the commencement when the asset is available for use and will continue until patent expiry in 2030. Availability for use is expected by the end of 2023 upon qualification of the previous Noctiva™ contract manufacturer.

Natesto®

We have entered into the following license, development and supply agreements for Natesto®:

Date	Company	Territory	Terms
April 22, 2016	Aytu BioScience Inc. ("Aytu")	United States	• Non-refundable upfront payments totaling $8.0 million • Sales-based milestones that could potentially total $37.4 million • Tiered supply price per unit • Agreement amended and restated agreement effective July 2019 • Agreement terminated effective March 31, 2021, with a 120-day transition period ending July 31, 2021
December 15, 2016	Hyundai Pharm Co., Ltd ("Hyundai")	South Korea	• Non-refundable upfront fee • Milestone payment on regulatory approval • Tiered supply price per unit
June 5, 2017	Therios Healthcare ("Therios")	Saudi Arabia, United Arab Emirates, and Egypt	• Fixed supply price per unit • The agreement was terminated by mutual consent on May 19, 2020
June 14, 2017	medac Gesellschaft für Klinische Spezialpräparate mbH ("medac")	15 European countries: Germany, United Kingdom, France, Italy, Czech Republic, Slovakia, Spain, Sweden, Finland, Denmark, Norway, Poland, Austria, Netherland and Belgium (See update below on October 31, 2018)	• Non-refundable upfront fee • Milestone payment on regulatory approval and sales-based milestone payments • Tiered supply price per unit
October 17, 2017	Eu Hwa Pte LTD. ("HWA")	Thailand, Malaysia/Brunei, Singapore, Vietnam, Philippines, Hong Kong/Macau and one other small South East Asian country	• Non-refundable upfront fee • Milestone payment on regulatory approval • Tiered supply price per unit
November 23, 2017	Apsen Farmacêutica ("Apsen")	Brazil	• Non-refundable upfront fee • Milestone payment on regulatory approval • Tiered supply price per unit
April 9, 2018	Producto Científicos, S.A.	Mexico and 18 Central and Latin American countries (Argentina, Columbia, Peru, Chile, Ecuador, Guatemala, El Salvador,	• Non-refundable upfront fee • Milestone payment on regulatory approval • Tiered supply price per unit

	de C.V ("Carnot Laboratorios")	Nicaragua, Honduras, Panama, Costa Rica, Cuba, Dominican Republic, Venezuela, Bolivia, Uruguay, Paraguay and Haiti)	• This agreement was terminated by mutual consent on May 18, 2021 upon repayment of the upfront fee.
October 30, 2018	medac	Amended to include all existing European Union Member states and the United Kingdom, Norway, Liechtenstein, Iceland, Turkey, Australia, New Zealand, South Africa and Israel.	• Non-refundable upfront fee • All other terms as per the original agreement • This agreement was terminated by mutual consent on April 4, 2022 at no cost.
March 30, 2021	Maylen Farma	20 countries in eastern Europe, Central Asia and the Middle East.	• Milestone payment on regulatory approval • Tiered supply price per unit

Natesto® in Canada.

Canadian market shipments resumed on August 30, 2022. The marketing focus for the remainder of 2022 is to re-establish supply to our former prescribers.

Natesto® in Europe and Asia.

On January 10, 2020, we announced that the dossier filed as a Decentralized Procedure in 19 European countries for the approval of Natesto® had been voluntarily withdrawn. The regulatory dossier was filed by our European licensee - medac Gesellschaft für klinische Spezialpräparate mbH ("medac"). The MPA (Swedish Health Authority), the Reference Member State (RMS) for the procedure, has requested that studies be completed, which were not otherwise required in other filings globally (including in Canada and the United States). After consulting with medac, we have mutually agreed to voluntarily withdraw the application to allow for the completion of the studies. Subsequently, we terminated our agreement with medac on April 4, 2022.

We continue to evaluate both the commercial opportunity and regulatory requirements pertinent for the resubmission and commercialization of Natesto® in the European market. Orient Europharma Co., Ltd., our South Asian partner, is expected to receive the approval of Natesto® in Hong Kong by Q4 2022 and look to commercialize in the coming year.

Natesto® in the U.S.

On April 1, 2021, we announced the buy back of all remaining U.S. rights for Natesto from Aytu. Under the terms of the Termination and Transition Agreement, we agreed to pay a termination fee of $7.5 million, to be paid in equal instalments of $0.25 million over 30 months beginning April 15, 2021. We also agree to repurchase all unsold inventory on hand as of March 31, 2021, the termination date. Aytu continued to support the distribution of Natesto® during a transition period which ended on July 31, 2021. The Termination and Transition Agreement also provided that any expenses claimed during the 120-day transition period attributable to sales made prior to April 1, 2021, be shared in accordance with the previous License and Supply Agreement (as described above). From April 1, 2021, Acerus earns 100% of net revenue on product sales of Natesto® in the US.

On May 10, 2021, we announced that we had entered into a three-year agreement with Amneal Pharmaceuticals Inc. ("Amneal") to co-promote Natesto® in the United States Endocrinology segment. Under the terms of the agreement, Amneal will sell Natesto® to their existing Endocrinology targets through June 30, 2024, leveraging the current Endocrinology clients of Amneal's 50+ sales representatives. In compensation for their marketing efforts, Amneal will receive a commission for most of the net profits attributed to Endocrinology targets in the three active promotional years, with Acerus retaining a low double-digit percentage of such profits during the active promotion period. Amneal will also receive a three-year trailing royalty following the active promotion period, with compensation to them decreasing from a majority of net profits to a minority of the net profits.

Despite Amneal's efforts to ramp up and disseminate product knowledge to their existing Endocrinology customers, results through the first year of the agreement were not material have not met the expectations for either Amneal or us. Consequently, the arrangement was terminated effective June 30, 2022. From July 1, 2022 forward, the Endocrinology segment was reassigned our specialty sales force engaged through Syneos Health described below.

In 2019, we also engaged Syneos Health (NASDAQ: SYNH), a leading integrated biopharmaceutical solutions organization including the industry's largest Contract Commercial Organization (CCO), to help us establish a high performing commercial footprint in the U.S. Syneos Health has extensive experience in Men's Health and with Natesto®, and offers an end-to-end model that enables rapid deployment of a U.S. commercial team; scale across all aspects of commercialization, including medical and regulatory affairs, managed markets, marketing and sales; and provides greater flexibility and effectiveness in resource deployment. In partnership with Syneos, on July 20, 2020, Acerus announced the launch of its U.S. Specialty sales force. In total, 30+ Syneos personnel are currently deployed in sales and commercial operations support. Acerus also employs 4 employees located in the US responsible for the day to day management of our Natesto® business.

During 2021, we were granted an additional patent and listing in the Orange Book extending intellectual property protection on Natesto® in the U.S. to 2034.

Estrace®

On November 30, 2020, we sold all of our Estrace® assets to a third party. We will receive purchase consideration computed as a royalty on sales for a period of approximately five years ending May 31, 2026. An amount of $691 was initially accrued as a contract asset for the portion of the estimated future royalties receivable being the amount we considered was highly probable of not being subject to a significant reversal when the uncertainty associated with this variable consideration is subsequently resolved. As certain launch conditions were not met by June 30, 2021, including the successful transfer of the manufacturing process by us to a new contract manufacturer, the third party is under no obligation to relaunch the product. Specifically, we have been unable to replicate the production attributes of Estrace with the new contract manufacturer that would support an L3 attestation with Health Canada to qualify the new manufacturer. Therefore, taking into account our reduced confidence level in being able to complete the launch conditions, and timing thereof, and the impact this may have on the third party's decision to relaunch the product, the carrying value was previously reduced to $nil on June 30, 2021 to reflect our estimate of the amount highly probable of not being subject to a significant reversal when these uncertainties are resolved. As delays persisted through December 31, 2021, a further charge of $150 was recorded in cost of goods sold to reflect our estimate of the net realizable value of raw materials currently held at the new contract manufacturer should we not ultimately be able to complete the manufacturing transfer. A final demonstration batch was produced in March 2022 to ascertain whether the new contract manufacturer had achieved a like for like production to support an L3 attestation. The results did not support the attestation. As a result, we agreed with the third party to whom the product rights were sold to transfer our marketing authorizations and to terminate any further work related to qualifying the new contract manufacturer. Acerus will not receive any payments on future sales of Estrace®, if any. A final charge of $201 was recorded in cost of goods sold to reflect a net realizable value of $nil for raw materials currently held at the new contract manufacturer. An accrual of $147 remains as at September 30, 2022 to reflect final costs to terminate all agreements related to this activity. No further costs were accrued at September 30, 2022 to conclude this activity.

avanafil (available in the U.S. under the brand name **Stendra®**)

On April 15, 2020, we received a NOD for its avanafil New Drug Submission. Health Canada requested the provision of additional quality information related to the avanafil drug substance in alignment with International Council for Harmonization (ICH) technical guidance adopted by Health Canada. We submitted our response to the NOD on November 11, 2020. On December 11, 2020, Health Canada confirmed that the submission had passed screening and was accepted into review. In October, 2021, the Company received a Notice of Deficiency from Health Canada related to its avanafil New Drug Submission ("NDS"). Health Canada had previously requested the provision of additional pre-clinical and toxicology data related to the avanafil active pharmaceutical ingredient (API) from the API manufacturer, Sanofi. Sanofi did not provide the available data in a format requested by Health Canada as per the timeline prescribed. As a result, Acerus has had to withdraw the avanafil dossier from the review process. Acerus is working with Petros Pharmaceuticals, the licensor of avanafil to Acerus, and Sanofi to ensure that the information will be provided in a timely manner and to discuss how to apportion the additional regulatory costs incurred as a result of the failure of Sanofi to supply the information to Health Canada. A resubmission is expected to be made to Health Canada prior to December 31, 2022, with the expected introduction of avanafil to the Canadian market occurring in late 2023.

On December 11, 2020, VIVUS, Inc. ("VIVUS"), the licensor of avanafil to Metuchen, announced that it had received approval of its plan of reorganization, under which IEH Biopharma LLC ("IEH") now holds 100% ownership of VIVUS. As set forth in the plan of reorganization, VIVUS will continue to fulfill its supply chain obligations for avanafil and provide access to the intellectual property it has licensed.

Lidbree™

On May 29, 2018, we entered into an exclusive agreement to commercialize Pharmanest AB's ("Pharmanest") Short Acting Lidocaine Product ("Lidbree™"), a pain relief drug device combination, in Canada. Under the terms of the license agreement, Pharmanest received an upfront payment and a regulatory milestone payment when we receive marketing approval in Canada. Pharmanest will also receive milestone payments based on the Company achieving sales targets. Pharmanest will oversee the manufacturing of Lidbree™ and will receive a tiered supply price for the product based on a percentage on net sales of the product.

Corporate Update

Share Capital

19,806 shares (3,961,218 pre-consolidation) were issued on March 16, 2022 to settle RSUs that became fully vested on December 31, 2021.

Long-term debt financing

First Generation Loan

On April 30, 2021, we announced closing a $15 million subordinated secured loan facility ("Loan Facility") with First Generation, a company affiliated with the Chairman of the Board of Directors of the Company. The loan will be made available by way of one or more advances under a secured promissory note. The Loan Facility is subordinated to the existing credit facility with SWK and bears interest at a fixed rate of 8% per annum. Subject to the terms of the subordination and intercreditor agreement between First Generation and SWK, the Loan Facility is repayable in full by December 31, 2024. Prior to December 31, 2024, cash payments of interest or principal repayments are subject to certain exceptions related to the Company's market capitalization and the outstanding amount of the senior facility with SWK. The Loan Facility can be repaid in full or in part without limitation following repayment of the full amount owing to SWK.

On December 13, 2021, we announced we had entered into an amending agreement with First Generation to increase the subordinated loan facility from $15 million to $25 million. SWK consented to the $10 million increase as well as a temporary amendment to reduce the minimum Consolidated Unencumbered Liquid Asset covenant from $2 million to $250 until February 1, 2022.

On February 18, 2022, we announced that we had entered into an amending agreement with First Generation to increase the subordinated loan facility from US$25 million to US$30.845 million. This increase was made available to the Company by way of a single advance under a secured grid promissory note with First Generation. The proceeds from the Loan Facility increase were used on February 17, 2022, to settle all obligations under the SWK credit facility. SWK subsequently acknowledged the full release and settlement of the Company's obligations. Upon receiving this acknowledgement, the entire First Generation Loan Facility became a first priority secured debt on the Company's assets.

On March 30, 2022, the Company announced that it had entered into an amending agreement to increase the loan facility from $30.845 million to $35.845 million of which $2.5 million of the increase was advanced on March 31, 2022 with the remaining $2.5 million was advanced on April 19, 2022. An amendment to the March 31, 2022 agreement was executed on June 23, 2022 for an additional amount of $2.1 million funded on June 23, 2022.

On August 4, 2022, the Company announced that it had entered into an amending agreement to increase the loan facility from $37.945 million to $47.945 million of which $5.0 million of the increase was advanced on August 5, 2022 and $5.0 million on August 9, 2022.

In accordance with IFRS 9 - Financial Instruments, loans must be initially measured at fair value. The Company has assessed the fair market interest rate attributable to the original subordinated loan facility of $25 million and determined that an interest rate of 14% represents fair value. Accordingly, a fair value adjustment of $4,343 has been recorded on advances to date. As the loan is from a related party who has a controlling interest in the Company, the resultant gain has been recorded as contributed surplus. A +/- 1% change in the discount rate would change the estimated initial fair value of the loan by +/- $663.

In accordance with IFRS 9 - Financial Instruments, the Company has also assessed the fair market interest rate attributable to the senior secured loan facility amendments in the first six months of $12.945 million and determined that an interest rate of 14% represents fair value primarily due to the fact that security for these amendments is no longer subordinated to SWK's previous security priority. Accordingly, a fair value adjustment of $1,930 has been recorded on advances to date. As the loan is from a related party who has a controlling interest in the Company, the resultant gain has been recorded as contributed surplus. A +/- 1% change in the discount rate would change the estimated initial fair value of the loan by +/- $299.

In accordance with IFRS 9 - Financial Instruments, the Company has also assessed the fair market interest rate attributable to the senior secured facility amendments of $10 million in the current quarter and determined that an interest rate of 17% represents fair value reflecting the assessment undertaken on the prior period amendment as well as Bank of Canada prime rate increases through the current period. Accordingly, a fair value adjustment of $1,893 has been recorded on advances under these new facilities. As the loan is from a related party who has a controlling interest in the Company, the resultant gain has been recorded as contributed surplus. A +/- 1% change in the discount rate would change the estimated initial fair value of the loan by +/- $189.

At September 30, 2022, $47.945 million is outstanding on the secured loan facility. No principal or interest payments are expected over the next twelve months.

SWK – Credit Facility

The SWK credit facility was repaid on February 18, 2022, from the proceeds of the First generation loan entered into on the same date as noted above.

Canadian credit facility

The prior Canadian Credit facility of $0.75 million was not renewed and expired in August 2022.

Factors affecting results from operations

Revenue and cost of sales

Our product revenues for the three and nine months ended September 30, 2022 reflects the sale Natesto® net of deductions for early pay discounts, rebates, co-pay, distribution fees, chargebacks and returns (collectively known as gross to net adjustments). A description of these adjustments is as follows:

- Early pay discounts are granted for payment on mutually agreed terms.
- Rebates represent discounts off the wholesale acquisition cost (“WAC”) of product negotiated between the Company and individual Pharmacy Benefit Managers (“PBMs”) in return for listing on the PBMs health plan formularies.
- Co-Pay represents the Company’s cash discount offered to patients directly to cover the remaining out of pocket costs for the Company’s products.
- Distribution fees represent the costs charged by wholesalers for distributing the Company’s product throughout North America.
- Charge backs represent discounts off the wholesale acquisition cost of product negotiated between the Company and select wholesalers; notably, large pharmacy chains and government administered benefit plans.
- Returns represents products previously sold subsequently returned to the Company due to product expiry (i.e. short-dated product). The Company’s wholesaler agreements provide for an 18-month period for the return of short dated product commencing 6 months before the products expiry date.

Amounts accrued for individual gross to net items are included in Accounts payable and accrued liabilities within current liabilities. These provisions are based on both historical levels and relevant forward-looking information. While such historical experience and forward-looking information has allowed for reasonable estimates in the past, these may not always be accurate indicators of future events. We monitor these provisions quarterly and make adjustments when we believe actual results may differ from established reserves.

Prior to the termination of the license and supply agreement with Aytu on March 31, 2021, we recognized Natesto® revenue on delivery of the product to this marketing partner as the sum of two items: 1) the contractual supply price when the product is delivered; and 2) an estimate of the top-up revenue that is highly probably will not result in a significant reversal in the amount of cumulative revenue earned when the marketing partner recognizes the sale of the product. An adjustment was made, if required, to the actual top-up revenue earned when the marketing partner recognizes the sale of the product. The initial estimate of the top-up revenue, and subsequent adjustments if required, were reflected as a contract asset until it is earned.

Cost of sales reflect the cost of finished goods which include manufacturing, distribution and warehousing costs.

Research and development expenses

Our research and development (“R&D”) expenses consist primarily of project specific costs, namely: project management, clinical studies, laboratory analysis, new product submissions, formulation development, CMO qualification and packaging design costs as well as milestone obligations based on the achievement of specific development, or regulatory milestones on or before specific dates. Research and development expenses also include salary, benefits and share-based compensation for R&D management and staff and amortization of intangible assets, leasehold improvements, and manufacturing and laboratory assets.

Our R&D activities focus on clinical research and product development, including but not limited to internal and external activities associated with advancing product candidates towards obtaining regulatory approval for marketing in various jurisdictions.

Selling, general and administrative expenses

Our selling, general and administrative expenses consist primarily of salary, benefits, and share-based compensation for non-R&D executive management and other staff, professional fees, public company related costs, selling and marketing expenses, office expenses and amortization of leasehold improvements and equipment used for administrative purposes.

Other expenses

Other expenses consist of interest expense, accretion expense, amortization of deferred financing fees, fair value adjustment to the derivative financial instruments, gains and losses on debt modifications, foreign exchange gains and losses and interest income.

Taxation

Canada has laws related to various taxes imposed by national/federal, provincial and municipal authorities. Applicable taxes include a value added tax ("VAT") and harmonized sales tax ("HST"), corporate income tax, payroll taxes and other taxes. The VAT and HST taxes that are payable on goods and services billed and purchased are 19.6% in Europe and 13% in Canada, respectively. Taxes paid on goods and services purchased are generally recoverable as input tax credits. The corporate income tax rate in Canada is 26.5% in 2022 and is unchanged from 2021.

Select consolidated financial information

	Three months ended September 30, 2022	Three months ended September 30, 2021	Nine months ended September 30, 2021	Nine months ended September 30, 2020
Statement of operations data				
Revenue	$ 770	$ 587	$ 2,300	$ (4,871)
Operating loss	(5,688)	(6,301)	(17,901)	(25,468)
Net Loss	(4,173)	(4,898)	(19,058)	(24,794)
Basic and diluted net loss per common share	$ (0.54)	$ (0.64)	$ (2.47)	$ (3.23)

Balance sheet data:	September 30, 2022	December 31, 2021
Total assets	$ 47,670	$ 9,652
Total liabilities	61,565	35,666
Long-term debt	45,822	23,290

Review of operating results – Three months ended September 30, 2022

Revenue and gross margin

	Three months ending September 30, 2022	Three months ending September 30, 2021	Change $	Change %
Revenue				
Product revenue	$ 770	$ 587	$ 183	31 %
	770	587	183	31 %
Cost of goods sold	202	489	(287)	(59)%
Gross margin	$ 568	$ 98	$ 470	(480)%

Revenue increased $0.2 million for the three months ended September 30, 2022, versus the prior period in 2021, reflecting an increase quarter over quarter of 31% in product sales into the US market.

Cost of goods sold decreased by $0.3 million for the three months ended September 30, 2022, versus the prior period in 2021 attributable to a $0.3 million charge for an off-specification production batch of Natesto at our CMO.

Operating expenses

	Three months ending September 30, 2022	2021	Change $	Change %
Operating expenses				
Research and development	$ 1,936	$ 1,353	$ 583	43 %
Selling, general and administrative	4,320	5,046	(726)	(14)%
	$ 6,256	$ 6,399	$ (143)	(2)%

Research and development

Research and development expenses have increased by $0.6 million for the three months ended September 30, 2022, versus the prior period in 2021. Of this increase, approximately $0.3 million is attributable to clinical trial expenses for Natesto® in the U.S. related to the Ambulatory Blood Pressure Monitoring trial (required by the FDA) that was deferred from 2020 due to Covid related restrictions. A further $0.3 million is attributable to expenses incurred to return Noctiva to active production with our contract manufacturer.

Given the nature of our business and product pipeline, we will continue to incur research and development expenses in the future. Research and development expenditures will increase as we initiate further clinical studies to differentiate our Natesto® product and as we incur regulatory costs to get product approvals in Canada as well as to support our distribution partners as they file for approval outside North America. In addition, formulation optimization and product development costs may be incurred for products utilizing other in-licensed or in-housed developed technologies in the future as well as costs anticipated to develop the next generation of dispenser for Natesto®. Related to the acquisition of Noctiva™ product in March 2022, we will also incur development expenses to return the product to active production, which is expected by Q1 2023.

Selling, general and administrative

Selling, general and administrative expenses decreased by $0.7 million for the three months ended September 30, 2022, versus the prior period in 2021. Compensation expenses were lower by $0.7 million related to the reversal of bonuses accrued for 2021 and 2022 that will not be paid. Expenses incurred with Syneos as well as discretionary marketing and advertising expenses were lower by a further $0.7 million in response to fiscal restraints to preserve liquidity. However, these expense reductions were offset by $0.7 million in non recoverable business development costs incurred in an unsuccessful attempt to pursue a debt financing facility.

We have begun the process of relaunching Noctiva™ in the US market expected by Q1 2023. Costs to be incurred associated with this strategy will include manufacturing start up (noted above), sales force development, marketing and brand advertising and other critical pre and post launch market and business development activities. These costs may be material through the balance of the fiscal year.

Other expenses (income)

	Three months ending September 30, 2022	2021	Change $	Change %
Other expenses (income)				
Interest expense and other financing costs	$ 1,529	$ 1,007	$ 522	52 %
Litigation settlement proceeds	-	(2,328)	2,328	n/a
Interest income	(9)	2	(11)	n/a
Foreign exchange gain	(63)	(31)	(32)	103 %
Change in fair value of derivative financial instruments	(14)	(53)	39	(74)%
Gain on modification of debt	(2,958)	-	(2,958)	n/a
	$ (1,515)	$ (1,403)	$ (112)	n/a

The $0.5 million increase in interest expense and other financing costs is due to the increase in interest bearing debt: notably, the First Generation Loan Facility as well as accreted interest expense on the Aytu termination fee payable. Please also refer to the *First Generation Loan* discussion within the "*Long-term debt financing*" section. The $3.0 million gain on modification of debt arises on the amendment of the promissory note related to the acquisition of the product rights for Noctiva™. Please refer to the *Noctiva*™ discussion within the "*Key products and developments*" section.

Review of operating results – Nine months ended September 30, 2022

Revenue and gross margin (loss)

	Nine months ended September 30, 2022	2021	Change $	Change %
Product revenue	$ 2,300	$ 1,383	$ 917	66 %
Termination fee	-	(6,254)	6,254	n/a
	2,300	(4,871)	7,171	n/a
Cost of goods sold	934	725	209	29 %
Gross margin (loss)	$ 1,366	$ (5,596)	$ 6,962	n/a

Revenue increased $0.9 million for the nine months ended September 30, 2022, versus the prior period in 2021, reflecting the recognition of 100% of the gross margin on Natesto® sales in the US market versus a revenue share in the comparative period under the previous Aytu agreement. This change was effective April 1, 2021, following the termination of our previous agreement with Aytu effective March 31, 2021. We agreed to pay Aytu a termination fee of $7,500, payable in equal installments of $250 over 30 months, in return for buying back all of our rights to Natesto® in the U.S. market. The first installment was paid on April 15, 2021. We recorded a charge against revenue of $6,204 in the three months ended March 31, 2021, representing the fair value of the $7,500 obligation payable. The fair value was estimated by discounting the installment payments using a rate of 17%. A +/- 10% change in the discount rate would change the estimated fair value by +/- $106.

Cost of goods sold increased by $0.2 million for the nine months ended September 30, 2022, versus the prior period in 2021. The current period reflects a $0.3 million charge to write down of Estrace raw material and obsolete inventory destruction charges versus $0.3 million charge for an off-specification production batch of Natesto at our CMO in the prior period. The remaining net $0.2 million increase in the current period is consistent with the increase in product revenue.

Operating expenses

	Nine months ended September 30, 2022	2021	Change $	Change %
Operating expenses				
Research and development	$ 5,460	$ 3,254	$ 2,206	68 %
Selling, general and administrative	13,807	16,618	(2,811)	(17)%
	$ 19,267	$ 19,872	$ (605)	(3)%

Research and development

Research and development expenses have increased by $2.2 million for the nine months ended September 30, 2022, versus the prior period in 2021 of which approximately $1.6 million is attributable to an increase in clinical trial activities for Natesto® in the U.S. related to the Ambulatory Blood Pressure Monitoring trial (required by the FDA) that was deferred from 2020 due to Covid related restrictions. A further $0.6 million is attributable to expenses incurred to return Noctiva to active production with our contract manufacturer.

Given the nature of our business and product pipeline, we will continue to incur research and development expenses in the future. Research and development expenditures will increase as we initiate further clinical studies to differentiate our Natesto® product and as we incur regulatory costs to get product approvals in Canada as well as to support our distribution partners as they file for approval outside North America. In addition, formulation optimization and product development costs may be incurred for products utilizing other in-licensed or in-housed developed technologies in the future as well as costs anticipated to develop the next generation of dispenser for Natesto®. Related to the acquisition of Noctiva™ product in March 2022, we will also incur development expenses to return the product active production, which is expected by Q1 2023.

Selling, general and administrative

Selling, general and administrative expenses decreased by $2.8 million for the nine months ended September 30, 2022, versus the prior period in 2021. Of the decrease, $0.7 million relates to a one-time charge recognized in the prior period to write off the accrued receivable recorded in Q4 2020 for the expected proceeds on the sale of Estrace as previously discussed. Expenses incurred with Syneos as well as discretionary marketing and advertising expenses were lower by a further $1.8 million in response to fiscal restraints to preserve liquidity as well as nonrecurring start up activities incurred with Syneos our new advertising agency incurred in the prior period. A further $0.7 million decrease is attributable to lower compensation expenses related to the reversal of bonuses accrued for 2021 and 2022 that will not be paid. A $0.3 million is attributable to reduced noncash depreciation and leasehold amortization expenses as a result of the move to smaller head office premises since the comparative period in 2021. The current period decreases were offset by $0.7 million in non recoverable business development costs incurred in an unsuccessful attempt to pursue a debt financing facility.

We have begun the process of relaunching Noctiva™ in the US market expected by Q1 2023. Costs to be incurred associated with this strategy will include manufacturing start up (noted above), sales force development, marketing and brand advertising and other critical pre and post launch market and business development activities. These costs could be material through the balance of the fiscal year.

Other expenses (income)

	Nine months ended September 30, 2022	2021	Change $	Change %
Other expenses (income)				
Interest expense and other financing costs	$ 4,257	$ 1,707	$ 2,550	149 %
Litigation settlement proceeds	-	(2,328)	2,328	n/a
Interest income	(12)	(5)	(7)	(140)%
Foreign exchange gain	(85)	(71)	(14)	20 %
Change in fair value of derivative financial instruments	(45)	(41)	(4)	10 %
(Gain) loss on modification of debt	(2,958)	64	(3,022)	n/a
	$ 1,157	$ (674)	$ 1,831	(272)%

The $2.6 million increase in interest expense and other financing costs is due to the increase in interest bearing debt: notably, the First Generation Loan Facility as well as accreted interest expense on the Aytu termination fee payable. Please refer to the *First Generation Loan* discussion within the "*Long-term debt financing*" section. The $3.0 million gain on modification of debt arises on the amendment of the promissory note related to the acquisition of the product rights for Noctiva™. Please refer to the *Noctiva™* discussion within the "*Key products and developments*" section.

Select quarterly information

The following table highlights selected unaudited condensed interim consolidated financial data for each of the eight most recent quarters that, in management's opinion, have been prepared on a basis consistent with the audited consolidated financial statements for the year ended December 31, 2021. The selected financial information presented below reflects all adjustments, consisting primarily of normal recurring adjustments which are, in the opinion of management, necessary for a fair presentation of results for the interim periods. These results are not necessarily indicative of results for any future period, and you should not rely on these results to predict future performance.

	Three months ended September 30, 2022	June 30, 2022	March 31, 2022	December 31, 2021
Statement of operations data				
Product revenue	$ 770	$ 748	$ 782	$ 738
Cost of goods sold	202	481	251	393
Research and development	1,936	2,234	1,290	3,309
Selling, general & administrative expense	4,320	4,885	4,602	5,234
Finance costs, net	(1,515)	1,083	1,589	825
Net loss	(4,173)	(7,935)	(6,950)	(9,023)
Basic and diluted net loss per common share	$ (0.54)	$ (1.03)	$ (0.90)	$ (1.17)

	Three months ended September 30, 2021	June 30, 2021	March 31, 2021	December 31, 2020
Statement of operations data				
Product revenue	$ 587	$ 562	$ 234	$ 271
Termination Fee	-	(50)	(6,204)	-
Cost of goods sold	489	45	191	846
Research and development	1,353	928	973	744
Selling, general & administrative expense	5,046	6,285	5,287	5,617
Finance costs, net	925	324	405	167
Litigation settlement proceeds	(2,328)	-	-	-
Net loss	(4,898)	(7,070)	(12,826)	(7,103)
Basic and diluted net loss per common share	$ (0.64)	$ (1.67)	$ (1.42)	$ (1.40)

The fluctuations in reported results during these periods resulted primarily from the following factors:

- As noted in the "Key products and developments" section, we terminated our previous agreement with Aytu on March 31, 2021. Commencing April 1, 2021, we now earn 100% of the gross margin on the sale of Natesto® in the US market. As a result of this change, we are now able to recognize revenue on the basis of monthly sales into our sales channels rather than on periodic bulk shipments to Aytu.
- The litigation settlement proceeds recognized in Q3 2021 were received from Recipharm upon acceptance of their offer to settle our claim arising from the violation of the manufacturing license agreement for the production of Estrace®. Please also refer to the "Litigation" section of our annual audited consolidated financial statements for the year ended December 31, 2021.
- In Q1 2021 we recorded a charge against revenue of $6,204 representing the fair value of the $7,500 termination fee obligation payable to Aytu. We also paid a fee of $50 in May 2021 to Carnot Laboratorios to terminate our current agreement.
- Q3 2022 cost of goods sold reflects normalized expenses with no unusual items to discuss. Q2 2022 cost of goods sold includes charges of $0.3 million for the balance of Estrace raw material and destruction charges. Q3 2021 cost of goods sold includes a charge of $0.3 million to write off an off-specification production batch of Natesto®. Q2 2021 cost of goods sold includes a recovery of raw material previously written down as well as positive product reruns experience adjustments related to the 2019 recall of Natesto® Q3 2020 cost of goods sold reflects a charge of $275 for spoilage of slow-moving raw materials. An additional provision for spoilage of $0.5 million was recognized against Q4 2020 cost of goods sold.
- Research and development expenses have, on balance, returned to normalized levels primarily related to clinical trials since the curtailment of clinical trial activities in Q2 2020 due to CIOVD-19 restrictions. However, expense variability is nonetheless evident, primarily attributable to the FDA required Ambulatory Blood Pressure Monitoring trial. Research and development expenses for Q4 2021 reflects an impairment charge of $1.7 million for TriVair. A charge of $0.2 million was also recognized in March 2021 related to additional costs to achieve the manufacturing transfer related to the sale of Estrace® in 2020.
- Selling, general and administrative expense in the current quarter reflects constraint generally in discretionary expense to preserve liquidity. Expense levels in previous five quarters have otherwise normalized albeit affected somewhat by normal sales force churn and intermittent COVID 19 restrictions. Increases from Q3 2020 through Q2 2021 reflects the completed ramp up of contracted resources deployed under our agreement with Syneos to promote Natesto® in the U.S.. Expenses for Q3 2021 include a recovery of $0.4 million for reimbursement of legal expenses incurred in the Recipharm litigation. The increase in Q2 2021 reflects a noncash loss of $0.7 million for the loss on the Estrace accrued receivable and costs spent on marketing and advertising campaigns for Natesto® in the US market with a new advertising agency.

Financial position

The following table presents a summary of our financial position:

	September 30, 2022	December 31, 2021	Change $	Change %
Working capital (total current assets less total current liabilities)	$ (5,036)	$ (3,424)	$ (1,612)	47 %
Non-current assets	37,254	1,003	36,251	3,614 %
Long-term obligations	46,113	23,593	22,520	95 %
Shareholders' deficit	(13,895)	(26,014)	12,119	(47)%

Working capital

The $1.6 million decrease in working capital between December 31, 2021 to September 30, 2022 reflects the following:

- $3.3 million increase in accounts payable and accrued liabilities maximizing available credit limits as well as the assumption of liabilities related to the Noctiva™ intangible asset acquisition.
- $0.8 million increase in deferred cash consideration issued related to Noctiva™ intangible asset acquisition.
- $0.3 million decrease in prepaids due to movements in supplier prepayments.
- $1.5 million increase in current portion of termination fee payable.

Offset by:

- $0.9 million increase in cash attributable to $18.7 million of cash used from operations, $6.6 million used for principal and interest payments, offset by $27.9 million in advances on the loan facility from First Generation and a combined $1.7 million in cash investing activities in property & equipment and the Noctiva™ intangible asset acquisition.
-
- $0.7 million increase in accounts receivable from increase in Natesto® sales.
- $0.5 million increase in inventory reflecting write down of obsolete raw materials.
- $2.2 million decrease in current portion of long-term debt attributable to the extinguishment of the SWK loan in February 2022.

Non-current assets

Non-current assets consist of property and equipment, right of use asset and intangible assets. Property and equipment mainly consist of office furniture and manufacturing equipment. Right of use asset relates to the lease our new head office leased premises in Mississauga, Canada. Intangible assets consist of technology and patent product rights. At September 30, 2022 manufacturing equipment with a net book value of $0.3 million was held off-site by a third party ($0.4 million at December 31, 2021). The $36.3 million increase in non-current assets at September 30, 2022 versus December 31, 2021 is entirely attributable to the acquisition of Noctiva™ described in the *Key products and developments* section above.

Long-term obligations

Long-term obligations consist of long-term debt, the long-term portion of the termination fee, promissory note, derivative financial instruments and lease liability.

Please refer to the "*Long-term debt financing*" section above for details on settlement of the SWK facility and the First Generation loan facility. Please refer to the *Noctiva™* discussion within the "*Key products and developments*" section.

Shareholders' deficiency

On April 19, 2022, we announced that we intended to undertake a consolidation of its outstanding common shares on the basis of one (1) post-consolidation share for every two hundred (200) pre-consolidation shares (the "Consolidation"). The Consolidation was previously approved by shareholders of the Company at the annual and special meeting of shareholders of the Company held on June 14, 2021. Subsequently approved by the Toronto Stock Exchange ("TSX") on April 26, 2022, the common shares began trading on the TSX on a post-consolidation basis beginning at the open of markets on April 29, 2022.

As a result of the Consolidation, the number of common shares issued and outstanding was reduced from 1,541,549,299 to 7,707,738 on a non-diluted basis. All fractions of post-consolidation shares were rounded down to the nearest whole number.

We are authorized to issue an unlimited number of common shares. Each common share entitles the holder thereof to receive notice of and exercise one vote at all meetings of shareholders. As at September 30, 2022, we had 7,707,738 common shares issued and outstanding and 559,635 outstanding stock options with a weighted average exercise price of CDN$10.43.

The $12.1 million decrease in shareholders' deficit at September 30, 2022 versus December 31, 2021 is primarily due to the $19.0 million net loss offset by a $0.5 million of share based compensation, $4.6 million from the fair value adjustment on the loan facility and $26.0 million recorded for contingent consideration related to the acquisition of Noctiva™, all relieved to contributed surplus. In addition, $0.2 million was transferred from Contributed surplus to Share capital to reflect the issuance of 19,806 common shares for RSUs that had vested.

Liquidity and capital resources

Liquidity risk

As detailed in the long-term obligations section above, a principal amount of $47.945 million has been drawn on the First Generation loan facility as at September 30, 2022. See "*Long-term debt financing*" section for more detail.

Liquidity risk is the risk that we may encounter difficulties in meeting our financial liability obligations as they become due. The purpose of liquidity management is to ensure that there is sufficient cash to meet all of our financial commitments and obligations as they come due. We control liquidity risk through management of working capital, cash flows, and sourcing of funding. We have planning and budgeting processes in place to help determine the funds required to support our normal operating requirements on an ongoing basis. Since inception, we have financed our cash requirements primarily through issuances of equity securities and long-term debt.

The unaudited condensed interim consolidated financial statements for the three and nine months ended September 30, 2022 have been prepared on a going concern basis, which assert that we have the ability in the near term to continue to realize our assets and discharge our liabilities and commitments. We have assessed our ability to continue as a going concern and concluded that in order to complete our planned product development and commercialization programs, additional capital will be required within the next quarter. Furthermore, the Company will require additional funding from lenders or investors, to pay its current liability obligations and to meet its forecast cash flow requirements over the next year.

Our ability to accomplish our strategic plans is dependent upon earning sufficient revenues from existing products, bringing new products and technologies to market, achieving future profitable operations, and executing other strategic initiatives, including those arising from the independent committee leading the strategic review noted above, that could provide cash flows, or alternatively curtailing expenditures. There are no assurances that any of these initiatives will be successful. For example, delays in reintroducing Natesto® to the Canadian market, or unsuccessfully executing on our US market strategy, could result in the Company failing to meet projected revenues or other budgeted targets. In addition, factors within and outside our management's control could have a significant bearing on our ability to obtain additional financing. Please also refer to "*Going Concern*" section for more detail.

Cash flows

	For the nine months ended September 30,			
Cash flows from/(used in):	2022	2021	Change $	Change %
Operating activities	$ (18,585)	$ (16,262)	$ (2,323)	(14)%
Financing activities	21,348	9,338	12,010	(129)%
Investing activities	(1,902)	44	(1,946)	n/a
Net (decrease) increase in cash	$ 861	$ (6,880)	$ 7,741	n/a

At September 30, 2022, we had a cash balance of $3.0 million. Please note discuss above regarding liquidity risk.

The cash outflow from operating activities of $18.6 million for the nine months ended September 30, 2022 is a result of a $19.3 million net loss, a $1.5 million outflow from working capital and offset by $2.2 million in non-cash expenses. The cash outflow from operating activities of $16.3 million for the nine months ended September 30, 2021 is a result of a $24.8 million net loss, a $0.8 million outflow from working capital and offset by $9.3 million in non-cash expenses.

The cash inflow from financing activities of $21.3 million for the nine months ended September 30, 2022 was due to $27.9 million in advances on the First Generation loan offset by $6.6 million in principal and interest payments on the former SWK debt. The cash inflow of $9.3 million from financing activities for the nine months ended September 30, 2021 was due to $12.0 million in advances on the First Generation loan offset by $2.5 million in principal and interest payments on the New facility with SWK and by $0.2 million in capital lease payments.

Capital expenditures

Capital expenditures of $1.9 million for the nine months ended September 30, 2022 related primarily to the cash acquisition costs for Noctiva™ versus $nil million in the comparative nine month period in 2021.

Contractual obligations and commitments

As of September 30, 2022, and in normal course of business, we have the following obligations to make future payments, representing contracts and other commitments that are known and committed.

	Less than 3 months	3-6 months	6 months - 1 year	Between 1 and 2 years	Between 2 and 5 years	Total
Accounts payable and accrued liabilities	$ 8,259	$ -	$ 300	$ -	$ -	$ 8,559
Purchase commitments	3,615	1,123	207	229	51	$ 5,225
Termination Fee	2,000	750	1,500	-	-	$ 4,250
Lease liability (principal and interest)	10	10	21	42	123	$ 206
Promissory Note	-	-	-	675	7,075	$ 7,750
Deferred cash consideration	-	-	750	-	-	$ 750
Long-term debt (principal and interest)	-	-	-	-	60,594	$ 60,594
As at September 30, 2022	13,884	1,883	2,778	946	67,843	$ 87,334

More significant purchase commitments include $1.5 million contracted with Syneos Health (discussed under "*Natesto® in the U.S.*" above), $1.1 million contracted for the US APBM and investigator lead trials, $0.6 million for production of Natesto® and $0.8 million for re-establishing the production of Noctiva™.

Please refer to the "*Long-term debt financing*" sections for details on the First Generation loan facility.

In relation to the pulmonary and nasal dry powder delivery technology ("TriVair"), there is a milestone payment of $2.0 million due upon FDA approval for each product up to a maximum of $8.0 million (see note 5(b) of the December 31, 2021 consolidated financial statements) for products submitted for approval by ABI itself.

We may also be required to make certain regulatory or sales-based milestone payments as part of other in-licensing agreements as described in notes 5(d) and (e) in the consolidated financial statements for the year ended December 31, 2021.

In relation to the acquisition of Serenity Pharmaceuticals LLC, in addition to the purchase consideration for Noctiva™ described in the "*Key products and developments*" section above, we have agreed to pay milestone payments in the form of royalties to the vendors as follows:

- For sales in the US and Canada: 12% on annual net sales less than or equal to $50 million; 15% on annual net sales between $50 million and $100 million; and 18% on annual net sales exceeding $100 million.
- For sales outside of the US and Canada: 40% of net profits earned by licensed distributors.

These payments are not reflected in the purchase price of the intangible asset. These royalties cease if a generic version is launched.

We also agreed to pay a success fee to Torreya Capital LLC on total consideration paid on the acquisition of Serenity Pharmaceuticals LLC. The fee is computed as 10 % of all paid and issued consideration; notably cash consideration, contingent share consideration, assumed liabilities and future royalty payments to Serenity Pharmaceuticals LLC up to the first $12,500,000 of aggregate consideration. Thereafter, a fee of 3% is earned on any aggregate consideration paid in excess of $41,666. An estimate of this fee has been accrued and capitalized as part of the costs of acquiring the Noctiva™ intangible asset described in the "*Key products and developments*" section above.

Related party transactions

Key management includes our directors and executive officers. The remuneration of directors and key members of management and professional fees paid for the three and nine months ended September 30, 2022 and 2021 were as follows:

	For the three months ended September 30,		For the nine months ended September 30,	
	2022	2021	2022	2021
Short-term compensation of key management and directors	$ (35)	$ 509	$ 1,173	$ 1,563
Share-based compensation	99	297	496	722
Interest expense	920	197	2,190	250
	$ 984	$ 1,003	$ 3,859	$ 2,535

These transactions are in the normal course of operations. During the three months ended September 30, 2022, we reversed bonuses payable amounting $644 to key management that were previously accrued for 2021 and 2022.

Trade and other accounts receivable include $71 due from an executive officer for payroll withholdings remitted upon the vesting of RSUs. The amount due bears interest at the Canada Customs and Revenue Agency prescribed rate, currently 2%.

Executive employment agreements allow for total additional payments of approximately $2.3 million if all are terminated as a result of a change in control, $2.3 million if all are terminated without cause, and $nil if all are terminated with cause.

As at September 30, 2022, Acerus had a $15.4 million receivable ($14.0 million receivable as at December 31, 2021) from its wholly owned subsidiary ABI. The receivable is non-interest bearing, due on demand and eliminates upon consolidation.

Please refer to the *"Shareholders' deficiency"* section for details on any equity movements.

First Generation's share ownership is 89.3% as at September 30, 2022 a decrease from 89.5% as at December 31, 2021 due to the issuance of common shares for RSUs that have vested.

Concentration

The Company considers there to be a concentration risk for customers that account for 10% or more of its product revenue. The following table illustrates any customer which accounted for 10% or more of product revenue for the nine months ended September 30, 2022 and 2021:

	September 30, 2022	September 30, 2021
Cardinal Health, Inc.	25%	25%
AmerisourceBergen Corporation	22%	31%
McKesson Corporation	21%	34%

Changes in the mix of concentrations amongst the Company's largest customers are due to changes in the supply chain of our indirect customers.

The Company's accounts receivable primarily arise from product sales to its third-party logistics provider for the U.S market and wholesalers and drugstore chains in Canada. At September 30, 2022, approximately 75% of the gross accounts receivable are concentrated with the Company's third party logistics provider for the U.S. market. The Company performs ongoing credit evaluations of its customers and maintains an allowance for potential uncollectible amounts. The company does not expect to have write offs or adjustments to accounts receivable which would have a material adverse effect on its financial position, liquidity, or result from operations.

The Company's finished products and raw materials are obtained from single source suppliers. Although the Company seeks to identify more than one source for its various finished products and raw materials, loss of a single source supplier could have an adverse effect on the Company's results of operations, financial condition, and cash flows. Further, a second source supplier may not be able to produce the same volumes of inventory as the Company's primary supplier.

Dividends

We intend to re-invest future earnings to finance our growth and therefore do not intend to pay dividends in the foreseeable future. Any subsequent decision to pay dividends is at the discr3tion of the Board of Directors and will depend on our financial position, operating results, capital requirements and other factors deemed relevant by the Board of Directors.

Financial instruments

As at September 30, 2022, our financial instruments consisted of cash, trade and other receivables, accounts payable and accrued liabilities, promissory note, long-term debt, and derivative financial instrument. The derivative financial instrument is measured at fair value with any changes recognized through the consolidated statement of loss and comprehensive loss and is classified as Level 2. Cash, trade and other receivables, contract assets, accounts payable and accrued liabilities and the promissory note are measured at amortized costs and their fair values approximate carrying values due to their short-term nature.

The long-term debt with First Generation is measured at amortized cost. At September 30, 2022, the fair value of the First Generation debt, promissory note, termination fee payable and the lease liability approximates their current carrying values of $43,872, $1,950, $4,002 and $309 respectively.

Currency risk

We are exposed to currency risk related to the fluctuation of foreign exchange rates. We are exposed to currency risk through net assets denominated in Canadian dollars, Euros, and British Pounds of the parent company, whose functional currency is the US dollar.

	September 30, 2022		
	CDN	EUR	GBP
Cash	$ 149	$ -	$ -
Trade and other receivables	-	106	-
Accounts payable and accrued liabilities	(1,806)	(70)	(12)
Lease liability	(424)	-	-
	$ (2,081)	$ 36	$ (12)

Based on the above net exposure at September 30, 2022, and assuming that all other variables remain constant, a 5% appreciation or depreciation of the U.S. dollar against the other currencies would have resulted in the following impact on net (loss)/income:

US Dollar

Net income effect:	CDN	EUR	GBP	Total
Appreciate 5%	$ 72	$ 2	$ (1)	$ 73
Depreciate 5%	(80)	(2)	1	(81)

Credit risk

Credit risk is the risk of a financial loss if a customer or counterparty to a financial instrument fails to meet its contractual obligation. Financial instruments that potentially expose us to significant concentrations of credit risk consist of cash, and trade and other receivables. Our investment policies are designed to mitigate the possibility of deterioration of principal, enhance our ability to meet our liquidity needs and provide high returns within those parameters. Cash is on deposit with a Canadian chartered bank located in Canada and with its affiliated bank located in the U.S.

We monitor the collectability of trade and other receivables and estimates on allowance for doubtful accounts. As at September 30, 2022, the allowance for doubtful accounts was $nil. Allowance for doubtful accounts is minimal because there has not been a significant change in credit quality and all amounts are considered recoverable.

Market risk

The change in fair value of our derivative liability, which is measured at fair value through profit and loss (“FVTPL”), results from the periodic “mark-to-market” revaluation. The valuation is impacted, among other inputs, by the market price of our common shares. As a result, the change in fair value of the derivative liability, which is reported through the consolidated statement of (loss)/income and comprehensive (loss)/income, has been and may continue in future periods to be materially affected most notably by changes in our common share price.

Assuming that all other variables remain constant, a 5% appreciation or depreciation of our share price would have resulted in an immaterial impact on our net loss.

Accounting pronouncements

The accounting policies applied are consistent with the significant accounting policies used in the preparation of the audited annual consolidated financial statements for the year ended December 31, 2021. These policies have been consistently applied to all periods presented except as noted below regarding the change in functional currency.

Critical accounting estimates

In preparing our condensed interim consolidated financial statements, we are required to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent liabilities at the date of the condensed interim consolidated financial statements and the reported amounts of revenue and expenses during the reporting periods. Actual results may differ from these estimates. Estimates are based on our best knowledge of current events and actions that we may undertake in the future. Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimates are revised and any future periods are affected.

Going concern

The condensed interim consolidated financial statements for the three and nine months ended September 30, 2022 were prepared using IFRS applicable to a going concern, which contemplates the realization of assets and settlement of liabilities in the normal course of business as they come due for the foreseeable future. We continue to incur losses and cash outflows from operating activities and at September 30, 2022, had a working capital deficit of $5,036 and a shareholders’ deficit of $13,895. Our ability to realize its assets and meet its obligations as they come due is dependent on successfully commercializing its existing products, bringing new products and technologies to market and achieving future profitable operations, which is not expected within the next twelve months.

On September 21, 2022, we announced that the Board of Directors approved a strategic review of capital and business alternatives, including, but not limited to, possible debt or equity financing, asset sale, merger & acquisition or licensing transactions in an effort to generate cash needed to pay the Company’s existing obligations. A committee of independent directors was struck to supervise this strategic review process. Ernst & Young Orenda Corporate Finance Inc. have also been engaged as independent financial advisors to us in this process. We have since received a number of expressions of interest in licensing certain of our products, which we are currently evaluating. At November 14, 2022 the Company's cash balance stood at $1,385. We will need to curtail expenditures until additional funding can be secured, otherwise we anticipate the Company will run out of cash before the end of December 2022.

These circumstances create material uncertainties that cast significant doubt as to the ability of the Company to meet its obligations as they come due and, accordingly, the ultimate appropriateness of the use of accounting principles applicable to a going concern as the Company will require additional funding from lenders or investors, to pay its current liability obligations and meet its forecast cashflow requirements over the next year.

There can be no assurances that the steps the Company is taking will be successful.

Revenue recognition

We record Product revenue from sales in North America at the invoiced amount less estimated accruals for gross to net adjustments; namely, early pay discounts, rebates, co-pay, distribution fees, chargebacks and returns. Information about the judgments, estimates and assumptions that have the most significant effect on the recognition and measurement of product revenue are discussed below.

Rebates & Co-Pay

The accrual for rebates and co-pay is a significant and complex estimate used in the recognition of product revenue and represents variable consideration under IFRS 15. Rebates are negotiated with individual PBMs as a percentage off of WAC pursuant to agreements signed with the Company. In return, the PBM agrees to list the Company's drug on its health plan formulary typically in a preferential priority to other drug therapy alternatives. Rebates are invoiced by and paid directly to the PBMs for products subsequently prescribed under the health plans administered by them. Co-Pay represents the Company's cash discount offered to patients directly to cover the remaining out of pocket costs for the Company's products after rebates are applied. The cash rebate is claimed using a Co-Pay card issued to the patient, which is administered by a third party vendor. In our assessment, we estimate accruals for rebates & co-pay based on current contractual terms, historical claims experience and forward looking projected prescription forecasts of shipments from wholesalers that will be dispensed for eligible benefit plan participants. While such experience has allowed for reasonable estimates in the past, historical claims and forward looking forecasts may not always be an accurate indicator of future rebate & co-pay liabilities. We continually monitor the accrual for rebates and co-pay and make adjustments when we believe that actuals may differ from established accruals. Rebates and co-pay charges are recognized as a reduction of sales revenue in the period in which the underlying sales are recognized.

Returns

The accrual for returns is a significant and complex estimate used in the recognition of product revenue and represents variable consideration under IFRS 15. Our wholesaler agreements provide for an 18-month window for the return of short dated product which commences 6 months before the products expiry date. Accruals for returns are recognized in the period the underlying product revenue is recognized. We estimate accruals for returns based on assumptions of the inventory of its products in the wholesale distribution channel that remain subject to returns, developed using existing return policies with customers, product expiry dates, data from wholesalers and large pharmacy chains of their inventory levels, external prescription data, historical returns experience and projected future returns. During the six months prior to the termination of the Aytu agreement, Aytu experienced higher than previously expected returns of Natesto. History may not always be an accurate indicator of future returns. The key estimates used to calculate the returns accrual include an assumed return rate of 1% and an assumed inventory in the retail channel equal to approximately one months' sales. If the assumed returns rate was to increase or decrease by 100% (i.e. 1% to 2%), the return accrual would increase or decrease by $70 respectively. We continually monitor accruals for returns and makes adjustments when we believe that actual product returns may differ from established reserves. While such experience has allowed for reasonable estimations in the past, history may not always be an accurate indicator of future returns.

Impairment of non-financial assets

We have an intangible asset relating to a technology platform ("TriVair") for pulmonary and nasal delivery of pharmaceutical medication that was acquired in 2009. Future revenues from this intangible asset is dependent on successful development and subsequent commercialization of the related products or entering into a potential transaction to license or sell the technology. We have granted a third party exclusive worldwide rights to develop, manufacture and market nasal and pulmonary inhalation devices developed or manufactured using the TriVair technology under a five-year intellectual property right and product development agreement. In return, the Company is entitled to receive 37% of any upfront fees, payments, or milestone payments on the first partnering transaction entered into by this third party (and 25% on any subsequent partnering transactions) and 15% of all revenues received by this third party in connection with the sale of products developed using the technology to other parties. The third party has the option to extend this agreement by a further five years from the expiry of the term if the total amounts received by the Company during the initial term are at least $2,500. No revenues have been received to date. We are required to assess at the end of each reporting period whether there is any indication that this intangible asset may be impaired. If any such indication exists, management is required to estimate the recoverable amount of the intangible asset. Where an impairment exists, the asset is written down to its recoverable amount. This requires a significant amount of management judgment.

During December 2021, the Company was informed that the application to prosecute a patent for TriVair for the US market was rejected for a second time. This decision culminated several years of effort with the US regulator. A Request for rehearing was filed in January 2022 to support a third submission, which was also subsequently rejected in February 2022. The likelihood of the existing design being patented for the US market without either a significant design modification, or a limitation in therapy application regarding pulmonary and/or nasal delivery, remains unlikely.

The recoverability of this intangible asset was dependent on successful technology development and subsequent commercialization of related products. Despite successfully prosecuting the TriVair patent in other non-US markets, the absence of success in the US market has impeded any significant commercial success to date. In the absence of a US market patent prosecution, and in the absence of any commercial opportunities to date for the existing technology in non-US markets, the recoverable amount of the intangible asset was reduced to $nil at December 31, 2021 with a charge of $1,656 recorded in research and development expense. The remaining life of the TriVair patents within other jurisdictions where a patent has been successfully prosecuted; notably, Canada and Japan, is 15 years and 4 months.

Derecognition of Estrace product right intangible asset and related accrued receivable

The Company entered into an asset purchase agreement to sell all of its Estrace® assets (excluding accounts receivable and inventory), effective November 30, 2020, to a third party in exchange for consideration in the form of royalties ranging from 10% to 15% on future Estrace product sales made by the third party over a period of approximately five years ending May 31, 2026. However, as the Company was not able to meet certain "launch conditions", including the transfer of the manufacturing process to the new contract manufacturer by June 30, 2021, the third party is under no obligation to relaunch the product.

Derecognizing the acquired assets occurs when the buyer obtains control of the assets and has the ability to direct the use of and obtain substantially all of the remaining benefits from the assets which required the use of significant judgement by management. In management's view, based on the facts and circumstances surrounding this transaction, control of the acquired assets was considered to have transferred to the third party on November 30, 2020, notwithstanding the additional performance obligations the Company is required to complete to fulfil the launch conditions specified in the agreement. As a result, the acquired assets were derecognized and a loss of $1,629 recorded on their disposal in the year ended December 31, 2020, assuming disposal proceeds of $691 and after providing for $288 of costs expected to be incurred to complete the transfer of the manufacturing process to the new contract manufacturer as laid out in the proposed manufacturing transfer agreement between the Company, the third party and the new contract manufacturer.

The future royalties receivable represents variable consideration and is only included in the disposal proceeds to the extent that it is highly probable that a significant reversal in the amount of cumulative consideration will not occur when the uncertainty associated with the variable consideration is subsequently resolved. Determining the amount of variable consideration to record requires significant judgment and involves significant estimation uncertainty. The Company applied the expected value method using a probability weighted approach modeling multiple scenarios and assigning probability factors to each scenario to determine this amount, resulting in disposal proceeds of $691 being recorded in the year ended December 31, 2020, which was included in contract assets. As certain launch conditions were not met by June 30, 2021 (and have still not been met), including the successful transfer of the manufacturing process by the Company to a new contract manufacturer, the third party is under no obligation to relaunch the product. Taking into account the Company's confidence level in being able to complete the launch conditions, and timing thereof, and the impact this may have on the third party's decision to relaunch the product, the carrying value has been reduced to $nil on June 30, 2021 to reflect our estimate of the amount highly probable of not being subject to a significant reversal if/when these uncertainties are resolved. As delays persisted through December 31, 2021, a further charge of $150 was recorded in cost of goods sold to reflect our estimate of the net realizable value of raw materials currently held at the new contract manufacturer should we not ultimately be able to complete the manufacturing transfer.

As noted in the "Key products and developments" section above, during March 2022, a final demonstration batch was produced to ascertain whether the new contract manufacturer had achieved a like for like production to support an L3 attestation. The results did not support the attestation. As a result, we agreed with the third party to whom the product rights were sold to transfer our marketing authorizations and to terminate any further work related to qualifying the new contract manufacturer. Acerus will not receive any payments on future sales of Estrace®, if any. A final charge of $201 was recorded in cost of goods sold to reflect a net realizable value of $nil for raw materials currently held at the new contract manufacturer. An accrual of $147 remains as at September 30, 2022 to reflect final costs to terminate all agreements related to this activity. No further costs were accrued at September 30, 2022 to conclude this activity.

Non-IFRS financial measures

The non-IFRS measures included in this MD&A are not recognized measures under IFRS and do not have a standardized meaning prescribed by IFRS and may not be comparable to similar measures presented by other issuers. When used, these measures are defined in such terms as to allow the reconciliation to the closest IFRS measure. These measures are provided as additional information to complement those IFRS measures by providing further understanding of our results of operations from our perspective. Accordingly, they should not be considered in isolation nor as a substitute for analysis of our financial information reported under IFRS. Despite the importance of these measures to management in goal setting and performance measurement, we stress that these are non-IFRS measures that may be limited in their usefulness to investors.

We use non-IFRS measures, such as EBITDA and Adjusted EBITDA to provide investors with a supplemental measure of our operating performance and thus highlight trends in our core business that may not otherwise be apparent when relying solely on IFRS financial measures. We also believe that securities analysts, investors and other interested parties frequently use non-IFRS measures in the valuation of issuers. We also use non-IFRS measures in order to facilitate operating performance comparisons from period to period, prepare annual operating budgets, and to assess our ability to meet our future debt service, capital expenditure and working capital requirements.

The definition and reconciliation of EBITDA and Adjusted EBITDA used and presented by the Company to the most directly comparable IFRS measures follows below.

EBITDA and Adjusted EBITDA

EBITDA is defined as net (loss)/income adjusted for income tax, depreciation of property and equipment, amortization of intangible assets, interest on long-term debt and other financing costs, interest income, and changes in fair values of derivative financial instruments. Management uses EBITDA to assess the Company's operating performance.

Adjusted EBITDA is defined as EBITDA adjusted for, as applicable, licensing and other revenue, royalty expenses associated with triggering events, Buyout, milestones, share based compensation, impairment of intangible asset, foreign exchange (gain)/loss and the impact of charges related to a product recall. We use Adjusted EBITDA as a key metric in assessing our business performance when we compare results to budgets, forecasts and prior years. Management believes Adjusted EBITDA is a good alternative measure of cash flow generation from operations as it removes cash flow fluctuations caused by extraordinary and non-recurring items, including changes in working capital. A reconciliation of net loss to EBITDA (and Adjusted EBITDA) is set out below.

	For the three months ended September 30, 2022	2021	For the nine months ended September 30, 2022	2021
Net loss	$ (4,173)	$ (4,898)	$ (19,058)	$ (24,794)
Adjustments:				
Amortization of intangible assets	10	37	30	112
Depreciation of property and equipment	39	36	117	479
Depreciation of right of use asset	8	7	23	10
Interest expense and other financing costs*	1,529	1,007	4,257	1,707
Interest income	(9)	2	(12)	(5)
Change in fair value of derivative	(14)	(53)	(45)	(41)
(Gain) loss on modification of debt	(2,958)	-	(2,958)	64
EBITDA	$ (5,568)	$ (3,862)	$ (17,646)	$ (22,468)
Termination Fees	-	-	-	6,254
Litigation settlement proceeds	-	(2,328)	-	(2,328)
Share based compensation	96	333	513	800
Foreign exchange gain	(63)	(31)	(85)	(71)
Gain from sale of property and equipment	-	-	-	56
Adjusted EBITDA	$ (5,535)	$ (5,888)	$ (17,218)	$ (17,757)

* This figure includes interest expense, amortization of deferred financing costs and accretion expense related to our outstanding debts.

Management's responsibility for financial reporting

Disclosure controls and procedures and internal controls over financial reporting

As at September 30, 2022 management has disclosure controls and procedures ("DCP") that provide reasonable assurance that information required to be disclosed by the Company in its filings under Canadian securities legislation is recorded, processed, summarized and reported in a timely manner. The system of DCP includes, among other things, the Company's Corporate Disclosure and Whistleblower policies and Code of Conduct, the review and approval procedures of the Disclosure Committee and continuous review and monitoring procedures by senior management.

As at September 30, 2022 management has designed internal controls over financial reporting ("ICFR") within the Company in order to provide reasonable assurance regarding the reliability of financial reporting and the preparation of consolidated financial statements for external purposes in accordance with IFRS. These controls were designed based on the framework established by Internal Control - Integrated Framework: 2013 issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). Due to its inherent limitations, ICFR may not prevent or detect misstatements. In addition, the design of any system of control is based upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all future events, no matter how remote, or that the degree of compliance with the policies or procedures may not deteriorate. Accordingly, even effective ICFR can only provide reasonable, not absolute, assurance of achieving the control objectives for financial reporting.

Changes in internal controls over financial reporting

There have been no changes to the Company's internal controls over financial reporting during the three and nine months ended September 30, 2022, that have materially affected, or are reasonably likely to materially affect, its internal controls over financial reporting.

Litigation

Schenk Litigation

Valeant Pharmaceuticals International, Inc. and Valeant International Bermuda ("Valeant") are defendants in Ontario Superior Court of Justice Action No. CV-11-438382, which claims a declaration that Valeant is contractually obligated to compensate the plaintiff, Reiner Schenk ("Schenk") pursuant to the terms of a contract between Schenk and Biovail Corporation. The main action was commenced by Notice of Action issued on October 31, 2011 and a Statement of Claim was issued on December 14, 2011. Acerus Pharmaceuticals

Corporation was named as one of the defendants in the main action, but the action was discontinued as against Acerus on December 14, 2011. On October 29, 2013, Valeant commenced a third party claim against Acerus (among others) claiming contribution, indemnity and other relief over to the full extent that Valeant may be held liable to Schenk, and damages for breach of fiduciary duty, breach of contract and intentional interference with economic relations in any amount for which Valeant is found liable to Schenk. Acerus has defended the third-party claim, denying any liability to Valeant. The parties have concluded examinations for discovery and attended a pre-trial conference in February 2020. The trial was scheduled to commence in April 2020 and was anticipated to be two weeks long. However, in an effort to reduce the transmission of COVID-19, the Ontario Superior Court suspended all regular operations in March 2020. Accordingly, the trial was adjourned to a later date. The parties attended a further pre-trial conference in December 2021 and the trial is now expected to take place in January 2023. As of September 30, 2022, the Company has not accrued for any potential claims.

Jones Day litigation

On December 11, 2019, Jones Day commenced an action in the New York State Supreme Court against Serenity, and certain members of its senior management, for alleged unpaid legal bills. On September 21, 2020, Serenity filed an answer with counterclaims against Jones Day. Serenity's counterclaim alleges breach of contract in connection with Jones Day's representation of Serenity in a prior lawsuit, fraud in respect of certain billing issues and malpractice. Also on September 21, 2020, the senior management members filed a motion to dismiss Jones Day's complaint as against them. Jones Day also brought a motion to dismiss Serenity's counterclaims. On May 12, 2020, a decision was rendered in both motions. Serenity's motion was dismissed, and Jones Day's motion was granted with respect to the counterclaims in fraud and malpractice but dismissed in respect of the breach of contract claim. On August 31, 2022, the senior management members filed a motion for summary judgment to dismiss Jones Day's complaint against them. On September 8, 2022, Jones Day filed a motion to amend its complaint to add Acerus as a new defendant. Serenity and the senior management members opposed the motion to amend because it seeks to both add Acerus as a defendant and also pierce Serenity's corporate veil to seek damages against the senior management members. Defendants' motion for summary judgment and Plaintiff's motion to amend its complaint are both pending. Decisions on both motions will likely be issued in late 2022 or sometime in 2023.

As a separate matter, the parties are engaged in motion practice related to discovery. Jones Day is seeking sanctions for an alleged violation of a court order regarding document production. However, according to New York law, all discovery is stayed while a motion for summary judgment is pending. In addition, the discovery order has been appealed and a decision on the discovery order is expected to be issued sometime within the next six months.

Whilst we feel confident in successfully upholding our claim of breach of contract and fending off the Jones Day demands, a provision of $2,118 is recorded at September 30, 2022 to provide for a conservative estimate of anticipated costs of discovery, legal fees and other costs and potential settlement.

Additional information

Additional information about Acerus, including the Company's Annual Information Form dated March 14, 2022, is available in documents filed by the Company with Canadian securities regulatory authorities and made available on the System for Electronic Document Analysis and Retrieval at www.sedar.com.

This is Exhibit "C" referred to in the Affidavit of Naveed Z. Manzoor
sworn by Naveed Z. Manzoor of the Town of Oakville,
in the Province of Ontario, before me at the City of Toronto,
in the Province of Ontario, on January 25, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

DocuSigned by:

Philip

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Commissioner for Taking Affidavits

Ontario

Ministry of Public and
Business Service Delivery

Profile Report

ACERUS BIOPHARMA INC. as of January 11, 2023

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	ACERUS BIOPHARMA INC.
Ontario Corporation Number (OCN)	1982715
Governing Jurisdiction	Canada - Ontario
Former Jurisdiction	Barbados
Status	Active
Date of Incorporation/Amalgamation	September 09, 2008
Date of Continuance	November 08, 2017
Registered or Head Office Address	2486 Dunwin Drive, Mississauga, Ontario, Canada, L5L 1J9

Active Director(s)

Minimum Number of Directors	1
Maximum Number of Directors	10

Name	EDWARD GUDAITIS
Address for Service	2486 Dunwin Drive, Mississauga, Ontario, Canada, L5L 1J9
Resident Canadian	Yes
Date Began	May 01, 2018

Name	PHILIPPE SAVARD
Address for Service	2486 Dunwin Drive, Mississauga, Ontario, Canada, L5L 1J9
Resident Canadian	Yes
Date Began	[Not Provided]

Active Officer(s)

Name	EDWARD GUDAITIS
Position	President
Address for Service	2486 Dunwin Drive, Mississauga, Ontario, Canada, L5L 1J9
Date Began	May 01, 2018

Name	PHILIPPE SAVARD
Position	Secretary
Address for Service	2486 Dunwin Drive, Mississauga, Ontario, Canada, L5L 1J9
Date Began	November 08, 2017

Corporate Name History

Name	ACERUS BIOPHARMA INC.
Effective Date	November 08, 2017
Previous Name	ACERUS PHARMACEUTICALS SRL
Effective Date	September 09, 2008

Active Business Names

This corporation does not have any active business names registered under the Business Names Act in Ontario.

Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Document List

Filing Name	Effective Date
CIA - Notice of Change PAF: PHILIPPE SAVARD - DIRECTOR	June 08, 2018
CIA - Initial Return PAF: ADAM KLINE - OTHER	November 16, 2017
BCA - Articles of Continuance	November 08, 2017

All “PAF” (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

This is Exhibit "D" referred to in the Affidavit of Naveed Z. Manzoor
sworn by Naveed Z. Manzoor of the Town of Oakville,
in the Province of Ontario, before me at the City of Toronto,
in the Province of Ontario, on January 25, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

DocuSigned by:
Philip V
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Commissioner for Taking Affidavits

Ontario

Ministry of Public and
Business Service Delivery

Profile Report

ACERUS LABS INC. as of January 11, 2023

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	ACERUS LABS INC.
Ontario Corporation Number (OCN)	2583230
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	June 19, 2017
Registered or Head Office Address	2486 Dunwin Drive, Mississauga, Ontario, Canada, L5L 1J9

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Active Director(s)

Minimum Number of Directors	1
Maximum Number of Directors	10

Name	EDWARD GUDAITIS
Address for Service	2486 Dunwin Drive, Mississauga, Ontario, Canada, L5L 1J9
Resident Canadian	Yes
Date Began	May 01, 2018

Name	PHILIPPE SAVARD
Address for Service	2486 Dunwin Drive, Mississauga, Ontario, Canada, L5L 1J9
Resident Canadian	Yes
Date Began	June 19, 2017

Active Officer(s)

Name	EDWARD GUDAITIS
Position	President
Address for Service	2486 Dunwin Drive, Mississauga, Ontario, Canada, L5L 1J9
Date Began	May 01, 2018

Name	PHILIPPE SAVARD
Position	Secretary
Address for Service	2486 Dunwin Drive, Mississauga, Ontario, Canada, L5L 1J9
Date Began	June 19, 2017

Transaction Number: APP-A10104117715
Report Generated on January 11, 2023, 15:46

Corporate Name History

Name	ACERUS LABS INC.
Effective Date	June 19, 2017

Active Business Names

This corporation does not have any active business names registered under the Business Names Act in Ontario.

Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Document List

Filing Name	Effective Date
Annual Return - 2019 PAF: ROBERT MOTZ - OFFICER	August 02, 2020
Annual Return - 2018 PAF: ROBERT MOTZ - OFFICER	July 28, 2019
Annual Return - 2017 PAF: KEN YOON - OFFICER	July 08, 2018
CIA - Notice of Change PAF: PHILLIPE SAVARD - DIRECTOR	June 08, 2018
CIA - Initial Return PAF: ADAM KLINE - OTHER	October 31, 2017
BCA - Articles of Incorporation	June 19, 2017

All “PAF” (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

This is Exhibit "E" referred to in the Affidavit of Naveed Z. Manzoor
sworn by Naveed Z. Manzoor of the Town of Oakville,
in the Province of Ontario, before me at the City of Toronto,
in the Province of Ontario, on January 25, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

DocuSigned by:

Philip V

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Commissioner for Taking Affidavits

Acerus Pharmaceuticals Corporation

Audited Consolidated Financial Statements

December 31, 2020

(expressed in thousands of U.S. dollars except per share amounts and unless otherwise stated)

Independent auditor's report

To the Shareholders of Acerus Pharmaceuticals Corporation

Our opinion

In our opinion, the accompanying consolidated financial statements present fairly, in all material respects, the financial position of Acerus Pharmaceuticals Corporation and its subsidiaries (together, the Company) as at December 31, 2020 and 2019, and its financial performance and its cash flows for the years then ended in accordance with International Financial Reporting Standards (IFRS).

What we have audited

The Company's consolidated financial statements comprise:

- the consolidated statements of financial position as at December 31, 2020 and 2019;
- the consolidated statements of loss and comprehensive loss for the years then ended;
- the consolidated statements of changes in shareholders' equity (deficit) for the years then ended;
- the consolidated statements of cash flows for the years then ended; and
- the notes to the consolidated financial statements, which include significant accounting policies and other explanatory information.

Basis for opinion

We conducted our audit in accordance with Canadian generally accepted auditing standards. Our responsibilities under those standards are further described in the *Auditor's responsibilities for the audit of the consolidated financial statements* section of our report.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Independence

We are independent of the Company in accordance with the ethical requirements that are relevant to our audit of the consolidated financial statements in Canada. We have fulfilled our other ethical responsibilities in accordance with these requirements.

Material uncertainty related to going concern

We draw attention to Note 1 in the consolidated financial statements, which describes events or conditions that indicate the existence of a material uncertainty that may cast significant doubt about the Company's ability to continue as a going concern. Our opinion is not modified in respect of this matter.

PricewaterhouseCoopers LLP
PwC Centre, 354 Davis Road, Suite 600, Oakville, Ontario, Canada L6J 0C5
T: +1 905 815 6300, F: +1 905 815 6499

Key audit matters

Key audit matters are those matters that, in our professional judgment, were of most significance in our audit of the consolidated financial statements for the year ended December 31, 2020. These matters were addressed in the context of our audit of the consolidated financial statements as a whole, and in forming our opinion thereon, and we do not provide a separate opinion on these matters. In addition to the matter described in the *Material uncertainty related to going concern* section, we have determined the matters described below to be the key audit matters to be communicated in our report.

Key audit matter	How our audit addressed the key audit matter
Valuation of contract asset – Natesto product revenue *Refer to note 3 – Significant accounting policies – Revenue, note 4 – Critical accounting estimates and judgments, and note 7 – Contract asset to the consolidated financial statements* Natesto product revenue from the Company's U.S. marketing partner is recognized in two steps: (1) at a fixed contractual supply price when the product is delivered to the marketing partner; and (2) an additional top-up amount is earned based on the gross profit recognized when the U.S. marketing partner recognizes sales of the product. In estimating the total transaction price to be recorded as revenue at the time control passes (on shipment of the products to the U.S. marketing partner), management is required to estimate the portion of the additional top-up amount (variable consideration) that is highly probable will not result in a significant reversal in the amount of cumulative revenue once the U.S. marketing partner has sold the product and the gross profit realized by the U.S. marketing partner is known. The initial estimate of the top-up revenue, and subsequent adjustments if required, is reflected as a contract asset until it is earned. The Company had a contract asset of $0.25 million as at December 31, 2020, relating to the variable consideration component of sales made to its U.S.	Our approach to addressing the matter involved the following procedures, among others: • Read the license agreement with the US marketing partner to understand the key terms of the agreement. • Tested how management determined the contract asset – Natesto product revenue, which included the following: – Evaluated the reasonableness of management's assessment of the estimated future gross selling price, future gross to net deduction rates and gross margin per unit of the U.S. marketing partner considering. o their U.S. marketing partner's historical results including average gross selling prices, product return rates, rebates, discounts and coupon (trade spend) levels, o 2021 price increases; which were confirmed with the U.S. marketing partner o 2021 forecast coupon (trade spend) rates, which were confirmed with their contract commercial provider. – Confirmed with the Company's U.S. marketing partner the quantity of Natesto inventory on hand at December 31, 2020

Key audit matter	How our audit addressed the key audit matter
marketing partner that have not yet been sold by that party. Management's assessment of the estimated future gross profit per unit of its U.S. marketing partner takes into consideration both historical gross revenues, gross to net revenue deductions and gross margin experience as reported by its U.S. marketing partner as well as expectations of the future selling price, gross to net revenue deductions and gross margin per unit of its U.S. marketing partner. This required the use of significant judgment by management. We considered this a key audit matter due to the significant judgment made by management in assessing future gross selling price, future gross to net revenue deductions and gross margin per unit of its U.S. marketing partner that would be highly probable of not resulting in a significant reversal of the variable consideration recorded. This in turn led to a high degree of auditor subjectivity and judgment in performing procedures relating to the valuation of this contract asset.	used as the basis to determine the contract asset. – Tested the mathematical accuracy of management's contract asset – Natesto product revenue calculation.
Sale of Estrace® product right intangible asset *Refer to note 3 – Significant accounting policies note 4 – Critical accounting judgments and key sources of estimation uncertainty, note 5 – Product Rights and asset acquisitions and note 12 – Intangible assets to the consolidated financial statements* The Company entered into an asset purchase agreement to sell its Estrace® assets (excluding accounts receivable and inventory), effective November 30, 2020, to a third party in exchange for consideration in the form of royalties ranging from 10% to 15% on future Estrace product sales made by the third party over a period of approximately five years ending May 31, 2026. If the Company is	Our approach to addressing the matter involved the following procedures, among others: • Read the asset purchase agreement and proposed manufacturing transfer agreement to understand the key terms of the agreements. • Evaluated management's assessment supporting their conclusion that control has passed to the purchaser, considering the terms of the asset purchase agreement and proposed manufacturing transfer agreement. • Tested how management determined the variable consideration to be recognized that management considered highly probable would not result in a significant reversal when

Key audit matter	How our audit addressed the key audit matter
not able to meet certain “launch conditions” including the transfer of the manufacturing process to the new contract manufacturer by June 30, 2021, the third party is under no obligation to relaunch the product. If the Company completes the launch conditions by June 30, 2021, the third party is required to relaunch the product within six months of the launch conditions being met otherwise the Company has the option to buy back the acquired assets for $0.1 million. Intangible assets are only derecognized once control has transferred to another party, or when no future economic benefits are expected from their use or disposal which required the use of significant judgment by management. In management’s judgment, based on the facts and circumstances surrounding this transaction, control of the acquired assets transferred to the third party on November 30, 2020, notwithstanding the additional performance obligations the Company is required to complete to fulfil the launch conditions specified in the agreement. The future royalties receivable represents variable consideration and is only included in the disposal proceeds to the extent that it is highly probable that a significant reversal in the amount of cumulative consideration will not occur when the uncertainty associated with the variable consideration is subsequently resolved. To determine the variable consideration to be recognized at the time of sale, management applied the expected value method using a probability weighted approach modeling multiple scenarios that depict the sales the purchaser may be able to achieve (the model). This required the use of significant judgment by management and involves significant estimation uncertainty. The Company recorded a loss on the sale of its Estrace® assets (primarily the product right intangible asset) of $1.63 million. The loss was determined based on disposal proceeds of $0.69	the uncertainty associated with the variable consideration is subsequently resolved, which included the following: – Tested the appropriateness of the method used by management and the mathematical accuracy of the variable consideration. – Evaluated the reasonableness of the scenarios used by management in the model and probabilities assigned to those scenarios, considering historical sales, and the purchasers’ view of potential sales levels shared with management. – Agreed royalty rates used to the asset purchase agreement. • Tested the Company’s share of the estimated costs to complete the manufacturing transfer process to the new contract manufacturer by tracing to the contract and subsequent change orders between the Company and the new contract manufacturer on a sample basis. • Tested the disclosures made in the consolidated financial statements, particularly on the significant assumptions related to the variable consideration.

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Key audit matter	How our audit addressed the key audit matter
million, and the Company's share of the estimated costs to complete the manufacturing transfer process of $0.29 million. We considered this a key audit matter due to the significant judgments made by management when (a) assessing whether control has passed to the purchaser; and (b) estimating the variable consideration to be recognized. This in turn led to a high degree of auditor subjectivity and judgment in performing the related procedures and evaluating audit evidence relating to the scenarios used by management.	
Assessment of impairment indicators relating to the Trivair product right intangible asset *Refer to note 3 – Significant accounting policies note 4 – Critical accounting judgments and key sources of estimation uncertainty, note 5 – Product Rights and asset acquisitions and note 12 – Intangible assets to the consolidated financial statements* The Company has an intangible asset with a carrying value of $1.8 million relating to a technology platform ("TriVair") for pulmonary and nasal delivery of pharmaceutical medication that was acquired in 2009. The recoverability of this intangible asset is dependent on successful development and subsequent commercialization of the related products or entering into a potential transaction to license or sell the technology. In 2015 the Company granted a third party exclusive worldwide rights to develop, manufacture and market nasal and pulmonary inhalation devices developed or manufactured using the TriVair technology under a five-year intellectual property rights and product development agreement. During the year the agreement was amended and extended through to September 2025. Under the agreement the Company is entitled to receive 37% of any upfront fees, payments, or milestone payments on the first partnering transaction entered	Our approach to addressing the matter involved the following procedures, among others: • Read the amended intellectual property rights and product development agreement to understand the key terms of the agreement. • Evaluated management's assessment supporting their conclusion that there are no indicators that the intangible asset may be impaired at this time by confirming with the third party licensee the potential pipeline of applications being developed, current interest in the technology in the market and the status of international patent applications to support management's assessment. • Evaluated the disclosures made in the consolidated financial statements on the significant judgment relating to management's assessment of impairment indicators.

Key audit matter	How our audit addressed the key audit matter
into by this third party (and 25% on any subsequent partnering transactions) and 15% of all revenues received by this third party in connection with the sale of products developed using the technology to other parties. The third party has the option to extend this agreement by a further five years from the expiry of the term if the total amounts received by the Company during the initial term are at least $2.5 million. No revenues have been received to date. Management is required to assess at the end of each reporting period whether there is any indication that this intangible asset may be impaired. The assessment of impairment indicators requires a significant amount of management judgment. In management's view, based on the potential pipeline of applications being developed by the third party, no indicators of impairment have been identified during the current year with respect to this intangible asset. We considered this a key audit matter due to the significant judgment made by management when assessing whether there are any indicators of impairment. This in turn led to a high degree of auditor subjectivity and judgment in performing the related procedures and evaluating audit evidence relating to the assessment made by management.	

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Other information

Management is responsible for the other information. The other information comprises the Management's Discussion and Analysis.

Our opinion on the consolidated financial statements does not cover the other information and we do not express any form of assurance conclusion thereon.

In connection with our audit of the consolidated financial statements, our responsibility is to read the other information identified above and, in doing so, consider whether the other information is materially inconsistent with the consolidated financial statements or our knowledge obtained in the audit, or otherwise appears to be materially misstated.

If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

Responsibilities of management and those charged with governance for the consolidated financial statements

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with IFRS, and for such internal control as management determines is necessary to enable the preparation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is responsible for assessing the Company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Company or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Company's financial reporting process.

Auditor's responsibilities for the audit of the consolidated financial statements

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these consolidated financial statements.

As part of an audit in accordance with Canadian generally accepted auditing standards, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the consolidated financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Company's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the consolidated financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Company to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the consolidated financial statements, including the disclosures, and whether the consolidated financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information of the entities or business activities within the Company to express an opinion on the consolidated financial statements. We are responsible for the direction, supervision and performance of the group audit. We remain solely responsible for our audit opinion.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

We also provide those charged with governance with a statement that we have complied with relevant ethical requirements regarding independence, and to communicate with them all relationships and other matters that may reasonably be thought to bear on our independence, and where applicable, related safeguards.

From the matters communicated with those charged with governance, we determine those matters that were of most significance in the audit of the consolidated financial statements of the current period and are therefore the key audit matters. We describe these matters in our auditor’s report unless law or regulation precludes public disclosure about the matter or when, in extremely rare circumstances, we determine that a matter should not be communicated in our report because the adverse consequences of doing so would reasonably be expected to outweigh the public interest benefits of such communication.

The engagement partner on the audit resulting in this independent auditor’s report is Simon Kent.

/s/PricewaterhouseCoopers LLP

Chartered Professional Accountants, Licensed Public Accountants

Oakville, Ontario
March 10, 2021

Acerus Pharmaceuticals Corporation

Consolidated Statements of Financial Position
As at December 31, 2020 and 2019
(expressed in thousands of U.S. dollars)

	Notes	December 31, 2020	December 31, 2019
ASSETS			
Current assets			
Cash		$ 9,153	$ 5,860
Trade and other receivables	6	528	171
Contract asset	7	936	473
Inventory	8	2,313	1,494
Prepaid and other assets	9	1,104	1,237
Total current assets		14,034	9,235
Property and equipment, net	10	806	1,051
Right of use asset	11	-	263
Intangible assets, net	12	2,142	4,891
Total assets		$ 16,982	$ 15,440
LIABILITIES AND SHAREHOLDERS' EQUITY (DEFICIT)			
Current liabilities			
Accounts payable and accrued liabilities	13	$ 5,435	$ 7,408
Current portion of long-term debt	14	1,439	-
Current portion of lease liability	11	229	101
Total current liabilities		7,103	7,509
Lease liability	11	-	510
Long-term debt	14	6,580	19,990
Derivative financial instruments	15	139	262
Total liabilities		13,822	28,271
Shareholders' equity (deficit)			
Share capital	16	$ 198,163	$ 158,402
Warrants	16	-	1,420
Contributed surplus		13,435	11,361
Accumulated other comprehensive loss		(13,949)	(13,949)
Deficit		(194,489)	(170,065)
Total shareholders' equity (deficit)		3,160	(12,831)
Total liabilities & shareholders' equity (deficit)		$ 16,982	$ 15,440

The accompanying notes are an integral part of these consolidated financial statements.
Going concern (note 1)
Commitments and contingencies (note 23)
These consolidated financial statements were authorized for issue by the Board of Directors on March 10, 2021.

Acerus Pharmaceuticals Corporation
Consolidated Statements of Loss and Comprehensive Loss
For the years ended December 31, 2020 and 2019
(expressed in thousands of U.S. dollars, except per share and share data)

	Notes	For the year ended December 31, 2020	2019
Revenue			
Product revenue		$ 1,085	$ 3,575
Licensing and other revenue		-	193
		1,085	3,768
Cost of goods sold	17	2,014	2,199
Gross margin (loss)		(929)	1,569
Expenses			
Research and development	17	2,526	2,829
Selling, general and administrative	17	19,430	12,776
Total operating expenses		21,956	15,605
Operating loss		(22,885)	(14,036)
Other expenses/(income)			
Interest on long-term debt and other financing costs	14,18	1,975	2,532
Interest income		(67)	(17)
Foreign exchange (gain)loss		(112)	(261)
Change in fair value of derivative financial instruments	15	(182)	(161)
Gain on remeasurement of lease liability		(75)	-
Total other expenses		1,539	2,093
Loss for the year before income taxes		(24,424)	(16,129)
Income tax expense	19	-	-
Net loss for the year		$ (24,424)	$ (16,129)
Other comprehensive income, net of income tax			
Foreign currency translation adjustment		-	(98)
Total comprehensive loss for the year		$ (24,424)	$ (16,227)
Loss per common share			
Basic and diluted net loss per common share	20	$ (0.03)	$ (0.06)
Weighted average common shares outstanding			
Basic and diluted	20	975,848,903	255,002,276

The accompanying notes are an integral part of these consolidated financial statements.

Acerus Pharmaceuticals Corporation

Consolidated Statements of Changes in Shareholders' Equity (Deficit)
For the years ended December 31, 2020 and 2019
(expressed in thousands of U.S. dollars)

	Note	Share capital	Warrants	Contributed surplus	Accumulated other comprehensive loss	Deficit	Total
Balance, January 1, 2019		$ 154,737	$ 1,420	$ 11,500	$ (13,851)	$ (153,877)	$ (71)
Adjustment for IFRS 16: Leases		-	-	-	-	(59)	(59)
Adjusted Balance as at January 1, 2019		154,737	1,420	11,500	(13,851)	(153,936)	(130)
Net loss for the period		-	-	-	-	(16,129)	(16,129)
Foreign currency translation adjustment		-	-	-	(98)	-	(98)
Total comprehensive loss for the period		-	-	-	(98)	(16,129)	(16,227)
Issuance of common shares, net of costs	16	3,350	-	-	-	-	3,350
Exercise of stock options	16	315		(315)	-	-	-
Share based compensation		-	-	176	-	-	176
Balance as at December 31, 2019		$ 158,402	$ 1,420	$ 11,361	$ (13,949)	$ (170,065)	$ (12,831)
Balance as at January 1, 2020		158,402	1,420	11,361	(13,949)	(170,065)	(12,831)
Net loss for the period		-	-	-	-	(24,424)	(24,424)
Total comprehensive loss for the period		-	-	-	-	(24,424)	(24,424)
Issuance of common shares, net of costs	16	27,829	-	-	-	-	27,829
Debt and interest accrued conversion, net of costs	16	11,932	-	-	-	-	11,932
Warrant expiry	16	-	(1,420)	1,420	-	-	-
Share based compensation	21	-	-	654	-	-	654
Balance as at December 31, 2020		$ 198,163	$ -	$ 13,435	$ (13,949)	$ (194,489)	$ 3,160

The accompanying notes are an integral part of these consolidated financial statements.

Acerus Pharmaceuticals Corporation
Consolidated Statements of Cash Flows
For the years ended December 31, 2020 and 2019
(expressed in thousands of U.S. dollars)

	Note	December 31, 2020	December 31, 2019
Operating activities:			
Net loss for the period		$ (24,424)	$ (16,129)
Items not affecting cash:			
Adjustment for unrealized foreign exchange (gain)		15	(485)
Amortization of intangible assets	12	717	818
Depreciation of property and equipment	10	245	254
Depreciation of right of use asset	11	48	47
Interest expense and other financing costs	14,18	1,975	2,532
Change in fair value of derivative financial instruments	15	(182)	(161)
Share based compensation	21	654	176
Loss on sale of intangible asset	12	1,629	-
Gain on disposal of property and equipment		-	(5)
Impairment on intangible asset	12	-	2,536
Gain on remeasurement of lease liability	11	(75)	-
Inventory impairment		-	316
Net changes in non-cash working capital items related to operating activities:			
Trade and other receivables		(357)	986
Contract asset		228	(473)
Inventory		(819)	720
Prepaids and other assets		133	(1,044)
Accounts payable and accrued liabilities		(1,954)	(1,471)
Net cash used in operating activities		(22,167)	(11,383)
Financing activities			
Interest, financing fees and transactions costs paid	14,18	(1,434)	(1,474)
Proceeds from issuance of common shares, net of financing costs	16	27,829	3,350
Financing costs from debt conversion	14	(94)	-
Payment of long-term debt	14	(750)	-
Principal elements of lease payments	11	(91)	(79)
Proceeds from issuance of long-term debt	14	-	11,500
Net cash from financing activities		25,460	13,297
Investing activities			
Proceeds from disposition of intangible asset	12	-	5
Acquisition of property and equipment, net of deposits		-	(13)
Acquisition of product rights		-	(100)
Net cash used in investing activities		-	(108)
Net increase in cash for the period		3,293	1,806
Exchange gain on cash		-	225
Cash, beginning of period		5,860	3,829
Cash, end of period		$ 9,153	$ 5,860

The accompanying notes are an integral part of these consolidated financial statements.

Acerus Pharmaceuticals Corporation
Notes to Consolidated Financial Statements
For the years ended December 31, 2020 and 2019
(All amounts expressed in thousands of U.S. dollars except per share amounts
and unless otherwise stated)

1. GOING CONCERN

These audited consolidated financial statements have been prepared using International Financial Reporting Standards applicable to a going concern, which contemplates the realization of assets and settlement of liabilities in the normal course of business as they come due for the foreseeable future.

The ability of Acerus Pharmaceuticals Corporation ("Acerus") and its subsidiaries (together, the "Company") to realize its assets and meet its obligations as they come due is dependent on successfully commercializing its existing products, bringing new products and technologies to market and achieving future profitable operations, the outcome of which cannot be predicted at this time. Furthermore, the Company will require additional funding, either from commercial sales of its existing products, or commercial transactions with lenders or investors, to continue the development and commercialization of additional products. These circumstances cast significant doubt as to the ability of the Company to meet its obligations as they come due and, accordingly, the ultimate appropriateness of the use of accounting principles applicable to a going concern.

Management has assessed the Company's ability to continue as a going concern and concluded that in order to complete its planned product development and commercialization programs, and meet the amended minimum threshold for consolidated unencumbered liquid assets required to be maintained by the Company, additional capital will be required within the next two quarters. In addition, management expect that the Company will breach its minimum revenue and EBITDA financial covenants as at March 31, 2021 unless a waiver is obtained from its lender. As a result, the long-term debt could become currently due shortly thereafter. The Company's ability to accomplish its strategic plans is dependent upon earning sufficient revenues from existing products, bringing new products and technologies to market, achieving future profitable operations, obtaining additional financing, and executing other strategic initiatives that could provide cash flows, or alternatively curtailing expenditures. There are no assurances that any of these initiatives will be successful. Delays in reintroducing Natesto to the Canadian market, or unsuccessfully executing its US market strategy, could result in the Company failing to meet projected revenues or other budgeted targets which could result in the Company continuing to violate its debt covenants. In addition, factors within and outside the Company's control could have a significant bearing on its ability to obtain additional financing.

These consolidated financial statements do not reflect the adjustments to the carrying values of assets and liabilities and the reported expenses and statement of financial position classifications that would be necessary if the Company were unable to realize its assets and settle its liabilities as a going concern in the normal course of operations. Such adjustments could be material.

2. DESCRIPTION OF BUSINESS

These audited consolidated financial statements represent the consolidated accounts of Acerus Pharmaceuticals Corporation ("Acerus") (incorporated in Ontario, Canada) and its wholly-owned subsidiaries, Acerus Labs Inc. ("ALI") (incorporated in Ontario) and Acerus Biopharma Inc. ("ABI") (incorporated in Ontario). The head office, principal address and records office of the Company are located in Mississauga, Ontario, Canada. The Company's registered address is 2486 Dunwin Drive, Mississauga, Ontario, L5L 1J9.

Acerus is a Canadian-based specialty pharmaceutical company focused on the development, manufacture, marketing and distribution of branded products that improve patient experience, with a primary focus in the field of men's health. The Company commercializes its products with its contract commercial providers Aytu BioScience Inc. ("Aytu") and Syneos Health Inc. ("Syneos") in the United States and through a global network of licensed distributors in other territories.

Impact of COVID-19 pandemic

In March 2020, the World Health Organization declared the outbreak of a novel coronavirus as a global pandemic, which continues to spread throughout Canada and around the world. This contagious disease outbreak and any related adverse public health developments, has adversely affected workforces, economies, and financial markets globally, leading to an economic downturn. This disruption has impacted the Company's operations and overall business by delaying the progress of its research and development programs and selling activities. While there is significant uncertainty as to the duration and impact of this outbreak, the Company does not currently foresee adverse effects on the Company's supply

2. DESCRIPTION OF BUSINESS (continued)

chain, collectability of its receivables, or further impairment triggering events in relation to the carrying value of the Company's intangible assets at this time arising from COVID-19. The Company qualified for and received some financial assistance under the Canada Emergency Wage Subsidy as detailed in note 17.

3. SIGNIFICANT ACCOUNTING POLICIES

(a) Basis of presentation

These consolidated financial statements have been prepared in accordance with International Financial Reporting Standards ("IFRS") and International Financial Reporting Interpretations Committee ("IFRIC") interpretations assessed by the International Accounting Standards Board. The consolidated financial statements have been prepared under the historical cost convention, except for certain financial instruments (warrants) that are measured at fair value, as explained in the accounting policies below. The accounting policies have been consistently applied to the years presented unless otherwise stated.

The preparation of the consolidated financial statements in conformity with IFRS requires the use of certain critical accounting estimates. It also requires management to exercise its judgment in the process of applying the Company's accounting policies. The areas involving a higher degree of judgment or complexity, or areas where assumptions and estimates are significant to the consolidated financial statements, are disclosed in note 4.

(b) Changes in accounting policy and disclosures

At the date of authorization of these financial statements, several new, but not yet effective Standards and amendments to existing Standards, and Interpretations have been published by the IASB. None of these Standards or amendments to existing Standards have been adopted early by the Company. The Company anticipates that all relevant pronouncements will be adopted for the first period beginning on or after the effective date of the pronouncement. New Standards, amendments and Interpretations not adopted in the current year have not been disclosed as they are not expected to have a material impact on the Company's consolidated financial statements.

IBOR reform

In recent years, global regulators have prioritized the reform and replacement of benchmark interest rates such as LIBOR and other interbank offered rates (IBORs). As a result, public authorities and other market participants are selecting new benchmark interest rates in key currencies with the objective that such rates will be based on liquid underlying market transactions. With this reform, the IASB have provided amendments to IFRS 9 - Financial Instruments, IFRS 7 - Financial Instruments: Disclosures and IAS 39 - Financial Instruments: Recognition and Measurement. The amendments are effective for annual periods beginning on or after January 1, 2021 and are to be applied retrospectively. These changes may impact the fair value of liabilities and financial instruments. Management do not expect the impacts of the amendments to have a material impact on the Company's financial statements.

(c) Consolidation

The wholly-owned subsidiaries of the Company are consolidated to produce the financial results for the consolidated Company. All intercompany transactions, balances, income and expenses on transactions between subsidiaries are fully eliminated. Profits and losses resulting from intercompany transactions that were recognized are also fully eliminated.

(d) Segment reporting

Operating segments are reported in a manner consistent with the internal reporting provided to the chief operating decision-makers. The chief operating decision-makers, who are responsible for allocating resources and assessing performance of the operating segments, have been identified as the Chief Executive Officer and the Chief Financial Officer.

3. SIGNIFICANT ACCOUNTING POLICIES (continued)

(e) Foreign currency translation

Presentation currency & financial statements

Effective January 1, 2020, the Company changed the functional currency of the Canadian parent and its wholly-owned subsidiary ALI to the United States dollar given the increasing prevalence of the United States dollar-denominating activities of the Company over time. ABI remains consistent in using the United States dollar as its functional currency. The change in functional currency from the Canadian dollars to the United States dollar is accounted for prospectively from January 1, 2020. The exchange rate used to translate the balance sheet to reflect the change in functional currency on adoption was $0.77. This results in all of the entities in the audited consolidated financial statements having a functional currency and presentation currency as the United States dollar.

The consolidated financial statements are presented in United States dollars, which in the opinion of management, is the most appropriate presentation currency as the United States dollar is used to significant effect in, or has a significant impact on, the operations of the Company and reflects the economic substance of a majority of the underlying events and circumstances relevant to the Company.

Transactions and balances

Foreign currency transactions are translated into the functional currency of the relevant entity using the exchange rates prevailing at the date of the transactions. Foreign exchange gains and losses resulting from the settlement of such transactions and from the translation at period-end exchange rates of monetary assets and liabilities denominated in foreign currencies are recognized in other income (expense) costs in the consolidated statement of loss and comprehensive loss.

(f) Trade receivables

Trade receivables are amounts due from customers for inventory sold in the ordinary course of business. If collection is expected in one year or less, they are classified as current assets. If not, they are presented as non-current assets.

Trade receivables are recognized initially at fair value and subsequently measured at amortized cost using the effective interest method, less provision for impairment. Provisions for doubtful trade receivables are established using an expected credit loss model (ECL). The provisions are based on a forward-looking ECL, which includes possible default events on the trade receivables over the entire holding period of the trade receivable, considering the occurrence of a significant increase in credit risk. Significant financial difficulties of a customer, such as probability of bankruptcy, financial reorganization, default or delinquency in payments are considered indicators that recovery of the trade receivable is doubtful. These provisions represent the difference between the trade receivable's carrying amount in the consolidated statement of financial position and the estimated net collectible amount. Charges for doubtful trade receivables are recorded as marketing and selling costs recognized in the consolidated statement of loss within "Selling, general & administration" expenses. As at December 31, 2020 and 2019, management determined that no provision for impairment was required.

(g) Inventory

Inventories consist of raw materials, work-in-process and finished goods. Inventories are stated at the lower of cost based on first-in-first-out ("FIFO") and net realizable value. Net realizable value is the estimated selling price in the ordinary course of business, less applicable variable selling expenses.

3. SIGNIFICANT ACCOUNTING POLICIES (continued)

(h) Property and equipment

Property and equipment are stated at cost less accumulated depreciation and impairment losses. Depreciation is recorded as follows:

Computers	- straight-line over 3 years;
Office furniture and fixtures	- straight-line over 5 years;
Laboratory equipment	- straight-line over 5 to 10 years;
Manufacturing equipment	- straight-line over 3 to 10 years;
Leasehold improvements	- straight-line over the expected term of the lease.

Expenditures that extend the useful life of the asset are capitalized and minor repair and maintenance costs are expensed as incurred to the consolidated statement of loss and comprehensive loss. The assets' residual values and useful lives are reviewed, and adjusted if appropriate, at the end of each reporting period. An asset's carrying amount is written down immediately to its recoverable amount if the asset's carrying amount is greater than its estimated recoverable amount. Gains and losses on disposals are determined by comparing the proceeds with the carrying amount and are recognized within the consolidated statement of loss and comprehensive loss.

(i) Leases

Leases are recognized as a right-of-use asset and a corresponding liability at the date at which the leased asset is available for use by the Company. Each lease payment is allocated between the liability and finance cost. The finance cost is charged to comprehensive loss over the lease term so as to produce a constant periodic rate of interest on the remaining balance of the liability for each period. The right-of-use asset is depreciated over the shorter of the asset's useful life and the lease term on a straight-line basis.

Assets and liabilities arising from a lease are initially measured on a present value basis. Lease liabilities include the net present value of fixed lease payments.

The lease payments over the lease term are discounted using the interest rate implicit in the lease. If that rate cannot be determined, the lessee's incremental borrowing rate is used, being the rate that the lessee would have to pay to borrow the funds necessary to obtain an asset of similar value in a similar economic environment with similar terms and conditions. Subsequent to initial measurement, the liability will be reduced for payments made and increased for interest. It is remeasured to reflect any reassessment or modification, or if there are changes in in-substance fixed payments. When the lease liability is remeasured, the corresponding adjustment is reflected in the right-of-use asset, or comprehensive loss if the right-of-use asset is already reduced to zero.

In determining the lease term, management considers all the facts and circumstances that create an economic incentive to exercise an extension option, or not exercise a termination option. The extension option is only included in the lease term if the lease is reasonably certain to be extended. The assessment is reviewed if a significant event or a significant change in circumstances occurs which affects this assessment and that is within management's control.

Right-of-use assets are measured at cost comprising the following:

- The amount of the initial measurement of lease liability
- Any lease payments made at or before the commencement date less any lease incentives received
- Any initial direct costs, and
- Any restoration costs

Payments associated with short-term leases and leases of low-value assets are recognized on a straight-line basis as an expense in comprehensive loss. Short-term leases are leases with a lease term of 12 months or less. Low-value assets comprise IT-equipment.

3. SIGNIFICANT ACCOUNTING POLICIES (continued)

(j) Intangible assets

Intangible assets acquired separately

Intangible assets with determinable lives are stated at cost less accumulated amortization and impairment losses. Such intangible assets are amortized over their estimated useful lives using the straight-line method. Intangible assets held by the Company currently hold estimated useful lives between eight and twenty years.

Derecognition of intangible assets

An intangible asset is derecognized on disposal once control has transferred to another party, or when no future economic benefits are expected from use or disposal. Gains or losses arising from derecognition of an intangible asset, measured as the difference between the net disposal proceeds and the carrying amount of the asset, are recognized in the consolidated statement of loss and comprehensive loss when the asset is derecognized. Where the disposal proceeds consist of variable consideration (e.g. future royalty payments), the estimated disposal proceeds are only recorded to the extent that it is highly probable that a significant reversal in the amount of cumulative consideration will not occur when the uncertainty associated with the variable consideration is subsequently resolved.

(k) Impairment of non-financial assets

The Company reviews assets such as property and equipment and intangible assets with finite useful lives for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. For the purpose of measuring recoverable amounts, assets are grouped at the lowest levels for which there are separately identifiable cash flows (cash generating units or "CGUs"). Recoverable amount is the higher of an asset's fair value less the cost of disposal and value in use (being the present value of the expected future cash flows of the relevant asset or CGU) as determined by management.

Any impairment losses are recognized immediately in the consolidated statement of loss and comprehensive loss. Non-financial assets other than goodwill that suffered impairment are reviewed for possible reversal of the impairment at each reporting date.

(l) Income taxes

Income taxes are accounted for using the liability method. Deferred tax assets and liabilities are recognized for the differences between the tax basis and carrying amounts of assets and liabilities, for operating losses and for tax credit carry-forwards. Deferred tax assets are recognized to the extent that it is probable that future taxable profit will be available against which temporary differences can be utilized. Deferred tax assets and liabilities are measured using enacted or substantially enacted tax rates and laws.

Management makes estimates and takes tax filing positions and where it is uncertain whether certain estimates and tax filing positions will be sustained upon examination by applicable tax authorities, provisions for uncertain tax positions are recorded based on management's estimate of the most likely outcome. Where the final tax outcome of these matters is different from the amounts that were initially recorded, such differences will impact the current and deferred income tax assets and liabilities in the period in which such determination is made.

3. SIGNIFICANT ACCOUNTING POLICIES (continued)

(m) Financial instruments (excluding hedging instruments)

Financial assets and financial liabilities are recognized when the Company becomes a party to the contractual provisions of the instruments.

(i) Classification

The Company classifies its financial instruments in the following categories: at fair value through profit and loss ("FVPL"), at fair value through other comprehensive income (loss) ("FVOCI") or at amortized cost. The Company determines the classification of financial assets and liabilities at initial recognition. The classification of the Company's financial assets and liabilities is disclosed in note 24.

(ii) Measurement

Amortized cost

Financial assets and liabilities at amortized cost are initially recognized at fair value (except for trade receivables that do not contain a significant financing component which are measured at the transaction price) plus or minus transaction costs and subsequently carried at amortized cost less any impairment.

Fair value through profit and loss

Financial assets and liabilities carried at FVPL are initially recorded at fair value and transaction costs are expensed in the consolidated statements of operations and comprehensive loss. Derivatives are included in this category unless designated as hedges. Realized and unrealized gains and losses arising from changes in the fair value of the financial assets and liabilities held at FVPL are included in the consolidated statements of loss and comprehensive loss within other gains and losses in the period in which they arise.

Fair value through other comprehensive income

Financial assets carried at FVOCI are measured at fair value. Interest, dividends and impairment gains and losses are recognized in the consolidated statement of operations on the same basis as for amortized cost assets. Changes in fair value are recognized initially in other comprehensive income. When the assets are derecognized or reclassified the cumulative changes in fair value are reclassified to the consolidated statement of loss (except where they relate to investments in equity instruments). The Company has no financial instruments measured at fair value through other comprehensive loss.

(iii) Impairment of financial assets at amortized cost

For trade receivables and contract assets, the Company applies the simplified approach to providing for expected credit losses prescribed by IFRS 9, which requires the use of the lifetime expected loss provision for all trade receivables and contract assets based on the Company's historical default rates over the expected life of the trade receivables adjusted for forward-looking estimates (see notes 6, 7 and 24).

3. SIGNIFICANT ACCOUNTING POLICIES (continued)

(m) Financial instruments (excluding hedging instruments) (continued)

(iv) Derecognition

i. Financial assets - The Company derecognizes financial assets only when the contractual rights to cash flows from the financial assets expire, or when it transfers the financial assets and substantially all of the associated risks and rewards of ownership to another entity. Gains and losses on derecognition are recognized in the consolidated statements of loss and comprehensive loss.
ii. Financial liabilities - The Company derecognizes financial liabilities only when its obligations under the financial liabilities are discharged, cancelled or expired. Generally, the difference between the carrying amount of the financial liability derecognized and the consideration paid and payable, including any non-cash assets transferred or liabilities assumed, is recognized in the consolidated statements of loss and comprehensive loss.

Financial liabilities and equity instruments

Classification as debt or equity

Instruments issued by the Company are classified as either financial liabilities or as equity in accordance with the substance of the contractual arrangements and the definitions of a financial liability and an equity instrument.

Equity instruments

An equity instrument is any contract that evidences a residual interest in the assets of an entity after deducting all of its liabilities. Equity instruments issued by the Company are recognized at the proceeds received, net of direct issue costs. Proceeds received on issuance of units, consisting of common shares and warrants, are allocated to those two instruments based on their relative fair values. Transaction costs are also allocated to the common shares and warrants in proportion to the allocation of proceeds.

Repurchase of the Company's own equity instruments is recognized and deducted directly in equity. No gain or loss is recognized in profit or loss on the purchase, sale, issue or cancellation of the Company's own equity instruments.

Compound financial instruments

Compound financial instruments contain both a liability and an embedded derivative in accordance with the substance of the contractual arrangement. At the date of issue, the fair value of the liability component is estimated using the interest rate applied by the market for similar debt instruments. The liability is subsequently measured on an amortized cost basis using the effective interest method over the expected life. The embedded derivative is initially recorded at fair value using pricing model techniques. It is recognized and presented together with the liability in the consolidated statement of financial position and is subsequently re-measured at fair value through profit and loss.

(n) Derivative financial instruments

Warrants issued as part of a financing arrangement and not in exchange for goods or services are accounted for within the scope of IAS 32 and IFRS9. The accounting under IAS 32, depends on the terms and conditions of the warrants and whether the warrants have characteristics of: (i) a derivative financial liability ("financial liability") that is measured at fair value, with changes in value recorded in profit or loss; or (ii) an equity instrument. Equity classification applies to instruments where a fixed amount of cash (or liability), denominated in the issuer's functional currency, is exchanged for a fixed number of shares. Warrants that fail to meet equity classification are accounted for as financial liabilities.

Acerus has issued warrants as part of financing arrangement that have a cashless exercise option. These are treated as a derivative liability and therefore measured at fair value. Gains and losses on re-measurement are presented separately in the consolidated statement of loss and comprehensive loss. These instruments are classified as non-current based on their expected life.

3. SIGNIFICANT ACCOUNTING POLICIES (continued)

(n) Derivative financial instruments (continued)

Transaction costs that are directly attributable to the long-term debt and the joint issuance of these warrants have been allocated to long term debt and to the warrants based on their relative fair value.

In addition to the above, the Company also has an embedded derivative of nominal value related to long-term debt (interest floor and prepayment option).

Derivatives embedded in non-derivative host contracts are separated from the host contract when their economic risk and characteristics are not closely related to those of the host contract and the compound instrument is not measured at FVTPL.

(o) Revenue

Revenue from the sale of goods, which is recorded as "Product revenue" in the consolidated statement of loss, is recognized when a contractual promise to a customer (the performance obligation) has been fulfilled by transferring control over the promised goods and services to the customer. The amount of revenue to be recognized is based on the consideration the Company expects to receive in exchange for its goods and services. If the contract contains more than one performance obligation, the consideration is allocated based on relative standalone selling price of each performance obligation.

Consideration the Company receives in exchange for its goods or services may be fixed or variable. Variable consideration is only recognized when it is highly probable that a significant reversal will not occur and is recorded as a contract asset. The most common elements of variable considerations are listed below:

- Discounts granted to customers are provisioned and recorded as a deduction from revenue at the time the related revenue are recorded or when the incentives are offered. They are calculated on the basis of historical experience and the specific terms in the individual agreements.
- Sales returns provisions are recognized and recorded as revenue deductions when there is historical experience of the Company agreeing to customer returns and the Company can reasonably estimate expected future returns. In doing so, the estimated rate of return is applied, determined based on historical experience of customer returns and considering any other relevant factors. The provisions are applied to the amounts invoiced, taking into consideration the number of returned products to be destroyed versus products that can be placed back in inventory for resale.
- Revenues for certain of our partners are earned in two steps: 1) at a contractual supply price when the product is delivered to the marketing partner; and 2) an additional top-up amount is earned based on a net pricing schedule when the marketing partner recognizes sales of the product. As of January 1, 2019, the Company commenced recognizing revenue for their U.S. partner on delivery of the product as the sum of two items: 1) the contractual supply price when the product is delivered; 2) an estimate of the top-up revenue that is highly probably will not result in a significant reversal in the amount of cumulative revenue earned when the marketing partner recognizes the sale of the product. An adjustment is made, if required, to the actual top-up revenue earned when the marketing partner recognizes the sale of the product. The initial estimate of the top-up revenue, and subsequent adjustments if required, is reflected as a contract asset until it is earned (note 7).

Provisions for revenue deductions are adjusted to actual amounts as discounts and returns are processed. The provision represents estimates of the related obligations, requiring the use of judgement when estimating the effect of these sales deductions.

3. SIGNIFICANT ACCOUNTING POLICIES (continued)

(o) Revenue (continued)

License and other revenue mainly consist of upfront payments and milestone payments received from license and supply agreements. License and supply agreements may contain multiple elements. The individual elements of each agreement are divided into separate units of accounting if certain criteria are met. The applicable revenue recognition approach is then applied to each unit. Otherwise, the applicable revenue recognition criteria are applied to combined elements as a single unit of accounting.

Upfront payments are considerations received for the right to use the Company's intellectual property. Revenues from upfront payments in license and supply agreements are recognized when control transfers to the licensee and the license period begins. Milestone income is recognized at the point in time when it is highly probable that the respective milestone event criteria is met, and the risk of reversal of revenue recognition is remote.

(p) Cost of sales

Costs of sales comprise the cost of inventory sold during the year, royalty expenses, depreciation, amortization charges and distribution costs.

(q) Share-based compensation

The Company has an Omnibus Incentive Plan ("Plan") as described in note 21. The Plan provides for the issuance of stock options, restricted share units and performance share units to employees, officers, consultants and others as determined by the Board of Directors. The Plan also provides for the issuance of deferred share units to the directors.

Stock options

Each option installment is treated as a separate option grant with graded-vesting features, forfeitures are estimated at the time of grant and revised if actual forfeitures are likely to differ from previous estimates, and options granted to parties other than employees are measured at their fair value on the date goods or services are received. The fair value of the goods and services received are determined indirectly by reference to the fair value of the instrument granted, unless the fair value of the goods and services received is readily apparent.

Options generally vest over a period of up to three years. Over the vesting period of the option grants, the fair value is recognized as compensation expense with a corresponding increase in contributed surplus. The contributed surplus is reduced as options are exercised through a credit to share capital. The consideration paid by option holders is credited to share capital when the options are exercised.

Restricted share units ("RSUs")

RSUs will be settled by the issuance of Company shares. RSUs vest one to three years from the date of grant. The cost of the RSU is charged to selling, general and administrative expenses using the cliff vesting method. The fair value of each grant of RSUs is the fair value of the Company's share price on the date of the grant. The resulting compensation expense is charged to income over the period the participants unconditionally become entitled to the award, with a corresponding increase in contributed surplus.

The compensation expense related to stock option and RSU share-based payments is determined using the Black-Scholes option pricing model. The significant variables and estimates used in the model are the volatility, dividend yield, expected option life, and risk-free interest rate. In addition, management also applies an estimated forfeiture rate. Additional information is disclosed in note 21.

Performance share units ("PSUs")

PSUs will be settled by the issuance of Company shares. PSUs vest one to three years from the date of grant. The cost of the PSU is charged to selling, general and administrative expenses using the graded vesting method. The fair value of

3. SIGNIFICANT ACCOUNTING POLICIES (continued)

each grant of PSUs is the fair value of the Company's share price on the date of the grant. The resulting compensation expense is charged to income over the period the participants unconditionally become entitled to the award, with a corresponding increase in contributed surplus. Non-market vesting conditions are considered in making assumptions about the number of awards that are expected to vest. At each reporting date, the Company reassesses its estimates of the number of awards that are expected to vest and recognizes the impact of any revision as a charge to income with a corresponding increase in contributed surplus. No PSUs have been issued as at December 31, 2020.

Deferred share units ("DSUs")

DSUs vest upon grant and are settled in cash. The vested DSUs are marked-to-market at the end of each reporting period based upon the closing price of the Company's shares with the change in fair value recorded in selling, general and administrative expenses. No DSUs have been issued as at December 31, 2020.

(r) Investment tax credits

Investment tax credits, which are earned as a result of incurring qualifying research and development expenditures, are treated either as a reduction of the relevant asset account or research and development expenses in the period that the credits become available and there is reasonable assurance that they will be realized.

(s) Loss per share

Basic loss per share is calculated by dividing the net loss by the weighted average number of common shares outstanding during the year. Diluted loss per share is calculated by dividing the applicable net loss/income by the sum of the weighted average number of shares outstanding during the year and all additional common shares that would have been outstanding if potentially dilutive common shares had been issued during the year.

(t) Clinical trial expenses

Clinical trial expenses are accrued based on estimates of the services received and efforts expended pursuant to contracts with clinical research organizations (CROs), consultants and other vendors. In the normal course of business, the Company contracts third parties to perform various clinical trial activities in the ongoing development of potential products. The financial terms of these agreements vary from contract to contract, are subject to negotiation and may result in uneven payment flows. Payments under the contracts depend on factors such as the achievement of certain events, the successful enrolment of patients or the completion of portions of the clinical trial or similar conditions. The Company accrues and expenses clinical trial activities based upon estimates of the proportion of work completed over the life of the individual clinical trial and patient enrolment rates in accordance with agreements established with CROs and clinical trial sites

4. CRITICAL ACCOUNTING JUDGEMENTS AND KEY SOURCES OF ESTIMATION UNCERTAINTY

When preparing the consolidated financial statements, management undertakes a number of judgments, estimates and assumptions regarding recognition and measurement of assets, liabilities, income and expenses. Information about the judgments, estimates and assumptions that have the most significant effect on the recognition and measurement of assets, liabilities, income and expenses are discussed below.

Critical accounting estimates and judgments

Revenue recognition

Product revenue is recorded at the invoiced amount less estimated accruals for product returns, discounts, chargebacks and other price adjustments. These provisions with respect to product revenues are presently based on historical levels and are recognized as a reduction of revenue. While such experience has allowed for reasonable estimates in the past,

4. CRITICAL ACCOUNTING JUDGEMENTS AND KEY SOURCES OF ESTIMATION UNCERTAINTY (continued)

history may not always be an accurate indicator of future events. Management will monitor these provisions and make adjustments when it believes actual results may differ from established reserves.

Natesto product revenues from our U.S. marketing partner is earned in two steps: 1) at a contractual supply price when the product is delivered to the marketing partner; and 2) an additional top-up amount is earned based on the gross profit recognized when the U.S. marketing partner recognizes sales of the product. In estimating the total transaction price to be recorded as revenue at the time control passes (on shipment of the products to the marketing partner), management is required to estimate the portion of the additional top-up amount (variable consideration) that is highly probable will not result in a significant reversal in the amount of cumulative revenue once the marketing partner has sold the product and the gross profit realized by the U.S. marketing partner is known. Management's assessment of the estimated future gross profit per unit of its U.S. marketing partner takes into consideration both historical gross revenues, gross to net revenue deductions and gross margin experience as reported by the U.S. marketing partner, as well as expectations of the future selling price, gross to net revenue deductions and gross margins per unit of our U.S. marketing partner in order to commercialize the sale of our products to meet our collective strategic objectives. See note 7 for further details.

Impairment of non-financial assets

The Company has an intangible asset with a carrying value of $1,765 relating to a technology platform ("TriVair") for pulmonary and nasal delivery of pharmaceutical medication that was acquired in 2009 (notes 5 and 12). The recoverability of this intangible asset is dependent on successful development and subsequent commercialization of the related products or entering into a potential transaction to license or sell the technology. The Company has granted a third party exclusive worldwide rights to develop, manufacture and market nasal and pulmonary inhalation devices developed or manufactured using the TriVair technology under a five-year intellectual property right and product development agreement. In return, the Company is entitled to receive 37% of any upfront fees, payments, or milestone payments on the first partnering transaction entered into by this third party (and 25% on any subsequent partnering transactions) and 15% of all revenues received by this third party in connection with the sale of products developed using the technology to other parties. The third party has the option to extend this agreement by a further five years from the expiry of the term if the total amounts received by the Company during the initial term are at least $2,500. No revenues have been received to date. Management is required to assess at the end of each reporting period whether there is any indication that this intangible asset may be impaired. If any such indication exists, management is required to estimate the recoverable amount of the intangible asset. Where an impairment exists, the asset is written down to its recoverable amount. This requires a significant amount of management judgment. In management's view, based on the potential pipeline of applications being developed by the third party, no indicators of impairment have been identified during the current year with respect to this intangible asset.

Derecognition of Estrace product right intangible asset and related accrued receivable

The Company reported an anticipated shortage of Estrace in January 2019 due to supply issues with its contract manufacturer (note 5c and note 23) and has since identified an alternative manufacturer and is continuing to work to transfer the manufacture of Estrace® to the new contract manufacturer which is expected to be completed in the first half of 2021. The Company entered into an asset purchase agreement to sell all of its Estrace® assets (excluding accounts receivable and inventory), effective November 30, 2020, to a third party in exchange for consideration in the form of royalties ranging from 10% to 15% on future Estrace product sales made by the third party over a period of approximately five years ending May 31 2026. If the Company is not able to meet certain "launch conditions" including the transfer of the manufacturing process to the new contract manufacturer by June 30, 2021, the third party is under no obligation to relaunch the product. If the Company completes the launch conditions by June 30, 2021, the third party is required to relaunch the product within six months of the launch conditions being met otherwise the Company has the option to buy back the acquired assets for $100.

Derecognizing the acquired assets occurs when the buyer obtains control of the assets and has the ability to direct the use of and obtain substantially all of the remaining benefits from the assets which required the use of significant judgement by management. In management's view, based on the facts and circumstances surrounding this transaction, control of

4. CRITICAL ACCOUNTING JUDGEMENTS AND KEY SOURCES OF ESTIMATION UNCERTAINTY (continued)

the acquired assets transferred to the third party on November 30, 2020, notwithstanding the additional performance obligations the Company is required to complete to fulfil the launch conditions specified in the agreement. As a result, the acquired assets have been derecognized and a loss of $1,629 recorded on their disposal, assuming disposal proceeds of $691 and after providing for $288 of costs expected to be incurred in order to complete the transfer of the manufacturing process to the new contract manufacturer as laid out in the proposed manufacturing transfer agreement between the Company, the third party and the new contract manufacturer.

The future royalties receivable represents variable consideration and is only included in the disposal proceeds to the extent that it is highly probable that a significant reversal in the amount of cumulative consideration will not occur when the uncertainty associated with the variable consideration is subsequently resolved. Determining the amount of variable consideration to record requires significant judgment and involves significant estimation uncertainty. The company applied the expected value method using a probability weighted approach modeling multiple scenarios and assigning probability factors to each scenario to determine this amount, resulting in disposal proceeds of $691 being recorded which are included in contract assets (note 7). A +/- 10% change in estimated future sales by the third party using the probability weightings in the model would change the estimated disposal proceeds by $69. Changes to the probabilities assigned to various scenarios in the model could also impact the resulting disposal proceeds recorded. See note 12 for further details.

5. PRODUCT RIGHTS AND ASSET ACQUISITIONS

(a) Bio-adhesive gel technology

In May 2009 (and in accordance with certain subsequent contractual amendments), ABI acquired certain rights from M&P Patent AG (since renamed Mattern Pharma) to use certain technology to develop, apply for and obtain regulatory approval, and to manufacture and sell four product candidates pursuant to an Intellectual Property Rights and Product Development Agreement ("IP Agreement") in exchange for milestones, royalties based on the Company's gross margin, and other payments depending on the achievement of specified goals for Natesto® and Tefina™.

On May 17, 2018, the Company entered into an agreement with Mattern Pharma AG (Mattern) to buy out all of its obligations (the "Buyout") under the Amended and Restated Intellectual Property Rights and Product Development Agreement, dated December 21, 2013 (as amended) ("License Agreement"), including all of its future royalty payment obligations.

Under the License Agreement, Acerus owed royalties on upfronts, milestones and revenues from products, including Natesto®, covered by the License Agreement, including minimum annual royalties of $5,000 if gross product sales are $75,000 or greater or $2,500 if gross product sales are below $75,000 starting in fiscal 2018 and ending in 2024. Pursuant to the Buyout, with the payment of $7,500, all of Acerus' material obligations owed to Mattern are suspended, but Mattern's obligations to Acerus remain in force. Under the Buyout, among other rights, Acerus receives a perpetual, fully-paid, irrevocable license to all of Mattern's patents and know-how for the products covered by the License Agreement.

Acerus paid the balance of the $7,500 Buyout payment during 2020. The terms of the Buyout are now in full force and effect, including a covenant not to sue and the waiver from Mattern for the entirety of the License Agreement.

(b) Pulmonary and nasal dry powder delivery technology

On November 30, 2009, ABI entered into an asset purchase agreement with Keldmann Healthcare A/S ("Keldmann"), a privately-held Denmark-based technology company.

Pursuant to the terms of the asset purchase agreement, ABI paid $4,500 to Keldmann to acquire the Direct Haler technology platform (TriVair) for pulmonary and nasal delivery of pharmaceutical medications. This acquisition was accounted for as a purchase of identifiable intangible and tangible assets.

As part of this transaction with Keldmann, and pursuant to an Amended Product Development Agreement dated December 30, 2009, ABI may collaborate with Keldmann on the development of certain product candidates in exchange

5. PRODUCT RIGHTS AND ASSET ACQUISITIONS (continued)

for consulting fees and will make milestone, royalty and other payments depending on achievement of specified development and other goals.

There is a milestone payment of $2,000 due upon Food and Drug Administration ("FDA") approval for each product to a maximum of $8,000 for products ABI files itself. As well, there is a cap on royalty payments of $25,000 per product.

In October 2015, the Company entered into a five-year intellectual property right and product development agreement with a third party to exclusive worldwide rights to develop, manufacture and market nasal and pulmonary inhalation devices developed or manufactured using the TriVair technology. In return the Company was to receive 25% of any upfront fees, payments, or milestone payments on partnering transactions entered into by this third party and 15% of all revenues received by this third party in connection with the sale of products developed using the technology to other parties. The third party has the option to extend this agreement by a further five years from the expiry of the term if the total amounts received by the Company during the initial term are at least $500.

In February 2020 this agreement was amended to change the amount that the Company will receive to 37% of any upfront fees, payments, or milestone payments on the first partnering transaction entered into by this third party in connection with the sale of products developed using the technology to other parties and to receive 20% of all revenues received by this third party in connection with the sale of products developed using the technology to other parties. The term of the agreement was also extended to September 2025 and the contract extension option was amended to make it conditional on the Company receiving at least $2,500 during the initial term.

(c) Estrace®

The Company acquired the Canadian rights to Estrace® from affiliates of Shire plc in July 2014. The acquisition was accounted for as a business combination. On January 11, 2019, the Company reported an anticipated shortage of certain doses of Estrace® on the Drug Shortages Canada website in relation to supply issues arising from the Corporation's contract manufacturer. Since that time, the Company has curtailed the supply of its limited inventory into the Canadian market until a replacement contract manufacturer is approved. The shortage of Estrace®, as well as the presence of a third-party generic, has accelerated the erosion of Estrace® sales in Canada. The Company is working with another contract manufacturer to facilitate the re-introduction of Estrace® into the Canadian market which is expected to resume in 2021. See note 23 *Recipharm Litigation* for more information.

On November 30, 2020, the Company entered into an asset purchase agreement with a third party to sell the Company's Canadian rights to Estrace®. Under the terms of the arrangement, the Company will receive variable consideration computed as a royalty on gross sales for a period of up to 5 years ending May 31, 2026. See note 12 for more information.

(d) Gynoflor™

The Company entered into a license and supply agreement with Medinova AG ("Medinova"), a Swiss pharmaceutical company, granting the Company the exclusive rights to commercialize Gynoflor™ in Canada. On January 24, 2019 the Company received a Notice of Deficiency-Withdrawal Letter ("Notice") for its Gynoflor™ New Drug Submission.

On June 17, 2019, the Company terminated the license and supply agreement with Medinova.

(e) Elegant™ franchise

On December 20, 2017, the Company entered into a license, development and supply agreement with Viramal Limited ("Viramal"), a London-based specialty pharmaceutical company, granting the Company exclusive rights to commercialize the Elegant™ franchise in Canada. Under the terms of the license, development and supply agreement, the Company was to pay Viramal a regulatory milestone payment upon the Company receiving marketing approval in Canada, as well as milestone payments based on achieving sales targets. Viramal was to oversee the manufacturing of

5. PRODUCT RIGHTS AND ASSET ACQUISITIONS (continued)

Elegant™ and receive a supply price for the product. On September 8, 2020, the Company and Viramel mutually agreed to terminate the agreement.

(f) *UriVarx®*

On January 8, 2018 the Company entered into an exclusive distributor and license agreement with Innovus Pharmaceuticals, Inc. (“Innovus”), which granted Acerus the exclusive rights to commercialize UriVarx® in Canada. Under the terms of the exclusive distributor and license agreement, the Company paid an upfront payment at signing and paid milestone payments based on the Company achieving certain sales targets. Innovus oversaw the manufacturing of UriVarx® and received a supply price for the product.

The Company reached a mutual agreement with Innovus to terminate the exclusive distributor and license agreement effective June 1, 2019.

(g) avanafil (formerly identified as Stendra ®*)*

On March 27, 2018 the Company entered into an exclusive distributor and license agreement with Metuchen Pharmaceuticals LLC (“Metuchen”), a privately-held specialty pharmaceutical company, granting Acerus the exclusive rights to commercialize avanafil in Canada. Avanfil is a new chemical entity targeting the large and growing Erectile Dysfunction (“ED”) market and is available in the U.S. under the brand name Stendra®. Under the terms of the sublicense agreement, Metuchen will receive regulatory milestone payments upon Acerus filing a New Drug Submission (“NDS”) with Health Canada and upon the Company receiving marketing approval in Canada. Metuchen will also receive milestone payments based on Acerus achieving sales targets. Metuchen will oversee the manufacturing of avanafil and will receive a supply price for the product comprised of a transfer price and royalties on net sales of the product. On March 4, 2019, the Company announced it filed a NDS for avanafil with Health Canada. The initial screening process by Health Canada was completed in June 2019.

On April 15, 2020, the Company received a Notice of Deficiency (“NOD”) for its avanafil New Drug Submission. Health Canada has requested the provision of additional quality information related to the avanafil drug substance in alignment with International Council for Harmonization (ICH) technical guidance adopted by Health Canada. Until this information is provided to Health Canada, the avanafil review process has been halted. Acerus responded to the NOD on November 11, 2020. On December 11, 2020, Health Canada confirmed that the submission had passed screening and was accepted into review. This process may take up to an additional 300 days to complete.

On July 7, 2020, VIVUS, Inc. (“VIVUS”), the licensor of avanafil to Metuchen, announced that it has completed the solicitation of an in-court prepackaged plan of reorganization, under which IEH Biopharma LLC (“IEH”) will take 100% ownership of VIVUS ahead of its July 7, 2020 chapter 11 filing. The Company has communicated with Metuchen and received assurances that the chapter 11 filing will not impact the supply chain for avanafil or access to the intellectual property it has licensed.

(h) Lidbree™

On May 29, 2018 the Company entered into an exclusive agreement with Pharmanest AB (“Pharmanest”) to commercialize Short Acting Lidocaine Product (“Lidbree™” formerly referred to as “Shact™”), a pain relief drug device combination, in Canada. Under the terms of the license agreement, Pharmanest will receive an upfront and regulatory milestone payments upon the Company receiving marketing approval in Canada. Pharmanest will also receive milestone payments based on the Company achieving sales targets. Pharmanest will oversee the manufacturing of Lidbree™ and will receive a tiered supply price for the product comprised of a percentage on net sales of the product.

(All amounts expressed in thousands of U.S. dollars except per share amounts
and unless otherwise stated)

6. TRADE AND OTHER RECEIVABLES

		December 31, 2020		December 31, 2019
Trade receivables	$	441	$	81
Commodity tax receivable		87		90
Total trade and other receivables	$	528	$	171

Allowance for doubtful accounts are recognized based on estimated irrecoverable amounts determined by reference historical default experience of the counterparty and an analysis of the counterparty's current financial position. As at December 31, 2020, the Company has recognized $nil in allowance for doubtful accounts ($nil as at December 31, 2019).

Trade and other receivables disclosed above include amounts that are past due at the end of the reporting period for which the Company has not recognized an allowance for doubtful accounts as there has not been a significant change in credit quality and the amounts are still considered recoverable.

Age of receivables that are past due but not impaired:

		December 31, 2020		December 31, 2019
60 - 90 days	$	8	$	1
Greater than 90 days		43		40
	$	51	$	41

The maximum exposure to credit risk at the reporting date is the carrying value of each class of receivables mentioned above. The Company does not hold any collateral as security. Of the amount past due at year end, $nil was collected subsequent to year end.

7. CONTRACT ASSET

(i) Natesto product revenue

Historically, the Company recognized revenue for certain partners in two steps: 1) at a contractual supply price when the product is delivered to the marketing partner; and 2) an additional top-up amount is earned based on a pricing schedule when the marketing partner recognizes sales of the product. Variable additional top-up amounts are calculated based on the partners' reported net sales for the period. The Company previously only recognized the top-up revenue when the partner sold the product as it was unable to reliably estimate its portion of revenue due to limited historical experience and uncertainty in estimating the amount of its partners' gross to net revenue deductions. While the Company still does this for its South Korean partner, the Company now believes there are sufficient stable historical results to estimate the top-up revenue earned per unit that is highly probable of not resulting in a significant reversal of cumulative revenue in the future for its U.S. partner. As of January 1, 2019, the Company commenced recognizing revenue for this partner on delivery of the product as the sum of two items: 1) the contractual supply price when the product is delivered; 2) an estimate of the top-up revenue that is highly probable will be earned when the marketing partner recognizes sale of the product. An adjustment is made, if required, to the actual top-up revenue earned when the marketing partner recognizes the sale of the product.

As this change was done in 2019 the Company made a one-time adjustment to revenue of $694 in March 2019 to recognize top-up revenue for the units the marketing partner currently had on hand, which is include in the $1,202 top-up revenues recognized relating to products delivered in prior years for the year ended December 31, 2019.

(All amounts expressed in thousands of U.S. dollars except per share amounts
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7. CONTRACT ASSET (continued)

Included in the $366 estimated top-up revenue recognized for the year ended December 31, 2020 is $nil relating to products delivered in prior years. Included in the $1,202 estimated top-up revenue recognized for the year ended December 31, 2019 is $729 relating to products delivered in prior years.

	December 31, 2020	December 31, 2019
Balance, January 1	$ 473	$ -
Estimated top-up revenue recognized on inventory previously sold	366	1,202
One time adjustment for sales subsequently returned due to expiration	(206)	-
Adjustment for inventory previously sold repurposed as samples	(92)	-
Recognition of top up revenue from actual units sold by marketing partner	(296)	(729)
Balance	$ 245	$ 473

(ii) Estrace sale proceeds

Contract assets also includes an accrued receivable in the amount of $691 for proceeds on the sale of its Estrace assets (note 12).

8. INVENTORY

	December 31, 2020	December 31, 2019
Raw materials	$ 1,732	$ 1,332
Work in progress	581	133
Finished goods	-	29
Total inventory	$ 2,313	$ 1,494

The cost of finished goods recognized as an expense and included in cost of sales amounted to $523 for the year ended December 31, 2020 ($514 for the year ended December 31, 2019).

9. PREPAIDS AND OTHER ASSETS

	December 31, 2020	December 31, 2019
Deposits with vendors	$ 505	$ -
Other	599	1,237
Total prepaid and other assets	$ 1,104	$ 1,237

(All amounts expressed in thousands of U.S. dollars except per share amounts
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10. PROPERTY AND EQUIPMENT

Property and equipment consist of the following:

	Computers	Office, furniture and fixtures	Manufacturing and laboratory equipment	Leasehold improvements	Total
Costs					
Balance, January 1, 2019	$ -	$ 122	$ 3,139	$ 738	$ 3,999
Additions	-	-	-	-	-
Disposals	-	-	-	-	-
Balance, December 31, 2020	$ -	$ 122	$ 3,139	$ 738	$ 3,999
Accumulated depreciation					
Balance, January 1, 2019	$ -	$ 108	$ 2,504	$ 336	$ 2,948
Depreciation	-	10	159	76	245
Disposals	-	-	-	-	-
Balance, December 31, 2020	$ -	$ 118	$ 2,663	$ 412	$ 3,193
Net book value					
December 31, 2020	$ -	$ 4	$ 476	$ 326	$ 806

	Computers	Office, furniture and fixtures	Manufacturing and laboratory equipment	Leasehold improvements	Total
Costs					
Balance, January 1, 2019	$ -	$ 116	$ 3,048	$ 703	$ 3,867
Additions	-	-	13	-	13
Disposals	-	-	-	-	-
Effect of foreign currency exchange difference	-	6	78	35	119
Balance, December 31, 2019	$ -	$ 122	$ 3,139	$ 738	$ 3,999
Accumulated depreciation					
Balance, January 1, 2019	$ -	$ 83	$ 2,269	$ 248	$ 2,600
Depreciation	-	21	158	75	254
Disposals	-	-	-	-	-
Effect of foreign currency exchange difference	-	4	77	13	94
Balance, December 31, 2019	$ -	$ 108	$ 2,504	$ 336	$ 2,948
Net book value					
December 31, 2019	$ -	$ 14	$ 635	$ 402	$ 1,051

At December 31, 2020, manufacturing equipment with a net book value of $432 was held off-site with a third party ($570 at December 31, 2019). During the year, $nil of depreciation was capitalized to inventory ($nil at December 31, 2019).

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11. LEASES

In December 2020, the Company exercised its option to terminate the current premises lease effective June 30, 2021. The previous expected maturity date of June 30, 2025. A termination payment of $204 is due to the landlord, payable June 30, 2021, computed based upon the unamortized value of prepaid landlord inducements plus certain other termination costs. The lease liability was remeasured based upon the remaining lease term and considering the termination payment. The liability was reduced by $290, of which $215 was offset against the remaining carrying value of the Right-of-use asset and $75 was recorded as a gain in the statement of loss. The balance sheet shows the following amounts related to the premises lease:

Right-of-use asset:	December 31, 2020	December 31, 2019
Balance, January 1	$ 263	$ 296
Depreciation of right of use asset	(48)	(47)
Remeasurement of lease liability	(215)	-
Effect of foreign currency exchange difference	-	14
Balance	$ -	$ 263

Lease liability:	December 31, 2020	December 31, 2019
Balance, January 1	$ 611	$ 660
Payments	(91)	(79)
Remeasurement due to lease amendment	(290)	-
Foreign exchange effect	(1)	30
Balance	229	611
Current lease liabilities	229	101
Non-current lease liabilities	$ -	$ 510

The consolidated statement of loss and comprehensive loss shows the following amounts relating to leases for the year ended December 31, 2020:

	December 31, 2020	December 31, 2019
Depreciation of right of use asset	$ 48	$ 47
Interest expenses (included in interest on long-term debt and other financing costs)	32	38
Expense relating to leases of low-value assets (included in administrative expenses)	5	11
Expenses relating to variable lease payments not included in lease liabilities (included in administrative expenses)	53	60

As at December 31, 2020, future payments related to lease liabilities amounts to $236, all of which is current.

(All amounts expressed in thousands of U.S. dollars except per share amounts and unless otherwise stated)

12. INTANGIBLE ASSETS

	Technology and patents	Product rights	Total
Costs			
Balance, January 1, 2020	$ 4,400	$ 30,887	$ 35,287
Addition	-	-	-
Disposal	-	(30,410)	(30,410)
Balance, December 31, 2020	$ 4,400	$ 477	$ 4,877
Accumulated depreciation			
Balance, January 1, 2020	$ 2,525	$ 27,871	$ 30,396
Amortization	110	607	717
Disposal	-	(28,378)	(28,378)
Balance, December 31, 2020	$ 2,635	$ 100	$ 2,735
Net book value			
December 30, 2020	$ 1,765	$ 377	$ 2,142

	Technology and patents	Product rights	Total
Costs			
Balance, January 1, 2019	$ 4,400	$ 29,382	$ 33,782
Addition	-	100	100
Disposal	-	(73)	(73)
Effect of foreign currency exchange difference	-	1,478	1,478
Balance, December 31, 2019	$ 4,400	$ 30,887	$ 35,287
Accumulated depreciation			
Balance, January 1, 2019	$ 2,415	$ 23,434	$ 25,849
Amortization	110	708	818
Disposal	-	(73)	(73)
Impairment charges	-	2,536	2,536
Effect of foreign currency exchange difference	-	1,266	1,266
Balance, December 31, 2019	$ 2,525	$ 27,871	$ 30,396
Net book value			
December 31, 2019	$ 1,875	$ 3,016	$ 4,891

Amortization expense related to the technology and patents is computed based on the life of the existing patents and is included in the research and development expense on the consolidated statement of loss/income and comprehensive loss/income. The remaining life of the TriVair patents and patent applications is 16 years and 1 month.

Amortization of $110 has been recorded for the year ended December 31, 2020 ($110 for the year ended December 31, 2019).

Product rights include rights for Estrace®, Lidbree™, UriVarx® and Stendra®. Of the product acquisition costs, $300 was accrued but not payable as of December 31, 2020. Amortization of $568 has been recorded in cost of goods sold and $39 in research and development costs for the year ending December 31, 2020 ($670 in cost of goods sold and $38 in research and development for the year ending December 31, 2019).

The Company reached a mutual agreement with Innovus to terminate the exclusive distributor and license agreement for UriVarx effective June 1, 2019. As such the Company recorded an impairment charge of $65 representing the remaining

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12. INTANGIBLE ASSETS (continued)

balance of the UriVarx intangible asset ($73 of cost and $8 of accumulated depreciation as at that date) and recorded a disposal of this intangible asset.

On November 30, 2020, the Company sold all of its Estrace® assets to a third party. The Company will receive purchase consideration computed as a royalty on sales for a period of approximately five years ending May 31 2026. An amount of $691 has been accrued as a contract asset (note 7) for the portion of the estimated future royalties receivable being the amount management considered was highly probable of not being subject to a significant reversal when the uncertainty associated with this variable consideration is subsequently resolved. The Company recorded the disposal of the Estrace® assets and derecognized the intangible asset. The Company also accrued $288 for costs it has agreed to pay related to completing the manufacturing transfer of the product to a new contract manufacturer resulting in a loss on sale of $1,629.

In estimating the contract asset for the variable consideration, the company applied the expected value method using a probability weighted approach modeling multiple scenarios and assigning probability factors to each scenario. A +/- 10% change in estimated future sales by the third party using the probability weightings in the model would change the estimated disposal proceeds by $69. Changes to the probabilities assigned to various scenarios in the model could also impact the resulting disposal proceeds recorded.

13. ACCOUNTS PAYABLE AND ACCRUED LIABILITIES

	December 31, 2020	December 31, 2019
Accounts payable	$ 1,088	$ 1,012
Employee salaries and benefits payable	398	239
Buyout payable (note 5a)	-	2,486
Accrual to complete manufacturing transfer (note 12)	288	-
Interest and financing fees payable (note 14)	136	457
Accrued liabilities	1,092	1,220
Payables related to Natesto® US co-promote	2,072	1,060
Provision for returns and discounts	361	934
Total accounts payable and accrued liabilities	$ 5,435	$ 7,408

On August 2, 2019, the Company announced that it would voluntarily replace certain Natesto® lots released in the Canadian and South Korean markets that were found to be non-conforming during long-term stability studies, even though such lots were fully in-specification at the time of release. This post-release non-conformity is not harmful to the patient, but may result in difficulties in dispensing.

The Company initially made minor modifications to the manufacturing process that appeared to have resolved the previously identified issues and produced a batch of Natesto® (the “Revised Batch”). However, on November 1, 2019, the Company announced that Health Canada had indicated that the minor modifications made to the manufacturing process that was attempted on the same batch of testosterone active pharmaceutical ingredient (“API”) to address the earlier non-conforming issue required a supplemental new drug submission. As an alternative solution, the Company procured a new batch of API as soon as it became available from its supplier and successfully produced Natesto® using the new batch of API and the currently approved manufacturing process. On July 28, 2020, the Company announced the commercial production of Natesto® has been resumed. New batches of Natesto® have been manufactured utilizing the approved manufacturing process and new batches of API. Multiple shipments of this new commercial product have been delivered to the United States, Taiwan and South Korea with supply to Canada expected to resume in 2021. The voluntary recall of product in Canada was closed in December 2020. The provision for returns and discounts includes remaining

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13. ACCOUNTS PAYABLE AND ACCRUED LIABILITIES (continued)

costs associated with the Canadian recall; notably, product destruction costs, as well as the cost of replacement product for the South Korea market.

In December 2019, the amended and restated licensing agreement with Aytu BioScience Inc. ("Aytu") became effective. This moved the partnership from an out-license model to a co-promotion arrangement. Under the terms of the new agreement, Aytu returns the NDA for Natesto® in the U.S. back to the Company. Going forward, the Company will assume all regulatory and clinical responsibilities and costs for the product in the U.S. The Company will take on a more expansive role in matters such as U.S. marketing, reimbursement and medical strategy as part of the companies' joint commercialization committee, and in July 2020, through Syneos Health, has launched a specialist sales force focused on urologists and endocrinologists (Acerus Sales Channel). Aytu will retain its primary care sales force (Aytu Sales Channel) and will continue to book all product net revenue while serving as the exclusive U.S. supplier of Natesto® to wholesalers, pharmacies and other customers that receive a direct shipment. Financial payments will be based upon a tiered level of net revenue, post cost of goods sold (COGS), based on annual sales performance in the respective the Company and Aytu Sales Channels. Payables related to Natesto® US co-promote in the table above are for expenses related to the Company's more expansive role in the U.S.

14. LONG-TERM DEBT

	SWK Facility	First Generation Loan	Total
Balance, January 1, 2019	$ 8,287	$ -	$ 8,287
Amortization of deferred financing costs	353	-	353
Transaction costs	15	-	15
Warrant modification/issuance	(109)	-	(109)
Debt issuance	-	11,500	11,500
Effect of foreign currency exchange difference	(56)	-	(56)
Balance, December 31, 2019	$ 8,490	$ 11,500	$ 19,990
Current portion at December 31, 2019	-	-	-
Long-term portion as at December 31, 2019	$ 8,490	$ 11,500	$ 19,990
Balance, January 1, 2020	$ 8,490	$ 11,500	$ 19,990
Amortization of deferred financing costs	374	-	374
Transaction costs	(88)	-	(88)
Gain on modification	(7)	-	(7)
Debt conversion to common shares	-	(11,500)	(11,500)
Repayment of principal	(750)	-	(750)
Balance, December 31, 2020	$ 8,019	$ -	$ 8,019
Current portion at December 31, 2020	1,439	-	1,439
Long-term portion as at December 31, 2020	$ 6,580	$ -	$ 6,580

SWK credit facility

On October 12, 2018, the Company entered into a senior secured term loan credit facility with SWK Funding LLC ("SWK") for up to $11,000 ("New Facility"). Security for the loan comprises a General Security Agreement on all assets, including intellectual property, of Acerus and its wholly-owned subsidiaries. An initial tranche of $9,000 of the New Facility was received at closing, with the remaining $2,000 of the New Facility becoming available on or before March 31, 2019, upon satisfaction of certain future conditions. As the conditions were not satisfied, the Company was not able to draw on the additional $2,000 on March 31, 2019.

14. LONG-TERM DEBT (continued)

The New Facility bears interest at a rate per annum equal to the greater of (a) the three- LIBOR, or (b) 1.50%, with such base rate being capped at no greater than 4.25%, plus an applicable margin of 10.50%. The New Facility matures on October 11, 2023 and is interest-only for the first two years of the term. Principal payments thereafter will be based on a tiered percentage of net revenue with a cap of $600 per quarter.

As part of the transaction, SWK received an origination fee representing a low single digit percentage of the maximum facility amount, and will receive a final payment on maturity representing a single digit percentage of the principal amount actually advanced under the facility. The Company has also issued 5,331,563 common share purchase warrants (the "Original Warrants") to SWK as partial consideration for the New Facility. Each Warrant entitles SWK to purchase one common share of the Company stock at an exercise price of CDN$0.40 per common share, expires on October 11, 2023 and has a cashless exercise feature. Following the second anniversary of the issuance of the Warrants, the Company can cause SWK to exercise the Warrants prior to their expiry date if the closing price of the Company's common shares on the TSX trades at or above CDN$0.80 per share for a period of at least 21 consecutive trading days.

The proceeds from the New Facility was used primarily to (i) repay the amount outstanding under the Quantius Facility, including a prepayment penalty and royalty retirement fee; (ii) retire the Endo promissory note; and (iii) for ongoing general working capital.

Under the terms of the agreement, the Company will have the option to prepay the loan prior to the maturity date subject to the payment of certain prepayment fees. The terms of the agreement also contain customary financial covenants some of which were amended in fiscal 2019 and 2020.

The Company also amended the debt agreement in September 2019 to set the minimum threshold for Consolidated Unencumbered Liquid Assets required to be maintained by the Company. This amount is defined in the agreement as cash adjusted for a certain portion of accounts receivable and payable. This level was set at (i) $1,000 at September 30, 2019; (ii) $5,000 at December 15, 2019; (iii) $4,000 at December 31, 2019; (iv) $2,000 at January 31, 2020, and (v) $1,000 at all times after January 31, 2020.

In connection with the amendment, the Company agreed to reprice the 5,331,563 Original Warrants from CDN$0.40 to CDN$0.11. In addition, the Original Warrants' expiry date was extended from October 11, 2023 to September 30, 2024. No other changes were made to the term of the Original Warrants. On October 3, 2019, the Company issued 1,361,544 common share purchase warrants (the "new Warrants") to SWK in connection with the amendment. Each New Warrant entitled SWK to purchase one common share at an exercise price of CDN$0.11 per common share and expired on September 30, 2024. The terms of the New Warrants were otherwise identical to those of the Original Warrants. As such, in certain circumstances, the Company can cause SWK to exercise the New Warrants prior to their expiry date if the closing price of the Company's common shares on the TSX exceeds CDN$0.80 per share for a period of at least 21 consecutive trading days. The obligation to issue these share purchase warrants are recorded as a warrant derivative liability on the balance sheet (note 15).

On December 16, 2019, the Company received a waiver letter from SWK ("SWK Waiver") waiving the requirement to comply with the Adjusted EBITDA and Aggregate Revenue covenants as at December 31, 2019 contained in the credit agreement. The amendment agreement also changed the set minimum threshold for Consolidated Unencumbered Liquid Assets required to be maintained by the Company from $1,000 at all times after January 31, 2020 to $2,000.

The waiver of the covenants was contingent on the Company raising an additional $6,500 prior to December 23, 2019. In connection therewith, the Company obtained a commitment letter from First Generation Capital Inc. ("First Generation" or "FGC"), a company affiliated with the Chairman of the Board of Directors of the Company, to amend and restate the $5,000 subordinated secured term loan facility previously entered into on July 19, 2019 between the Company and First Generation to (i) increase the borrowed amount to $11,500, (ii) extend the maturity date to June 30, 2021 and (iii) cap the total amount of interest payable to First Generation under the amended loan (including interest paid from the closing of the original $5,000 subordinated secured term loan facility) to an amount equal to 9.99% of the market capitalization of the Company at the time of closing.

14. LONG-TERM DEBT (continued)

On February 12, 2020, the Company announced that it had entered into an agreement with SWK in respect of an amendment to the New Facility (the "February 2020 SWK Amendment"). The amendment to the New Facility which would, among other things, (i) set the minimum threshold for consolidated unencumbered liquid assets required to be maintained by the Company at $1,500; (ii) reset the revenue and EBITDA covenants to better reflect the nature of the Company's business at this time compared to the time the New Facility was entered into; (iii) require pre-payment of $750 of principal in three instalments during 2020 and a commensurate reduction in the amount used to calculate exits fees; (iv) delay the date on which the Company must begin repaying principal from Q1-2021 to Q2-2021; and (v) provide flexibility to the Company to dispose of non-core assets and retain some of the proceeds of such dispositions for working capital.

As consideration for and in connection with the February 2020 SWK Amendment, the Company paid SWK an amendment fee of $80 and amended the exercise price of the 6,693,107 outstanding SWK Warrants and New Warrants, which expire on September 30, 2024, from CDN$0.11 to CDN$0.053269. The Company also made $750 of principal prepayments to SWK in fiscal 2020.

On September 29, 2020, the Company received a waiver with regards to the minimum aggregate revenue required for the three-month period ending September 30, 2020. On December 23, 2020, the Company received a waiver with regards to the minimum aggregate revenue required for the three-month period ending December 31, 2020. In addition, management expect that the Company will breach its minimum revenue and EBITDA financial covenants as at March 31, 2021 unless a waiver is obtained from its lender.

As of December 31, 2020, the Company had $8,250 outstanding on the credit facility.

First Generation Loan

On July 18, 2019, the Company entered into a $5,000 subordinated secured term loan facility ("the Loan") with First Generation.

The Loan is subordinated to the existing $9,000 facility with SWK and bears interest at a rate per annum equal to the three-month LIBOR, plus an applicable margin of 10.50%. Subject to the terms of the subordination and intercreditor agreement between First Generation and SWK, the Loan is repayable in full on December 31, 2020, is interest-only until maturity with regularly scheduled payments of interest to First Generation being permitted subject to certain conditions related to the Companys' market capitalization and aggregate annual revenue, and can be prepaid in full or in part without penalty following repayment in full of indebtedness owing to SWK.

On December 18, 2019 the Company announced that it had amended the Loan to (i) increase the borrowed amount to $11,500 ("the A&R Loan"), (ii) extend the maturity date to June 30, 2021 and (iii) cap the total amount of interest payable to First Generation under the A&R Loan (including interest paid from the closing of the original $5,000 subordinated secured term loan facility) to an amount equal to CDN$1,696.

On February 12, 2020 the Company announced that it had entered into an agreement with First Generation in respect of an equity financing and debt-to-equity conversion by First Generation. The agreement included the conversion of the Company's outstanding $11,500 (plus accrued interest of $526) owing to First Generation under the A&R Loan into 300,081,885 Common Shares at a conversion price of CDN$0.053269 per Common Share (the "Debt Conversion"). The debt conversion is presented net of financing costs of $94.

As of December 31, 2020, the Company had $nil outstanding on the loan.

Canadian credit facility

With SWKs consent, the Company also has a Canadian Credit facility of $750, with no expiration date for use only as letters of credit and bank guarantees. At December 31, 2020, $nil was drawn as standby letters of credit and bank guarantees.

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14. LONG-TERM DEBT (continued)

Interest and financing costs

Interest and finance expense on long-term debt was $1,361 for the year ended December 31, 2020 ($1,656 for December 31, 2019).

Accrued interest & financing costs		
Balance, January 1, 2019	$	317
Interest and financing fees		2,532
Transaction costs		(15)
Amortization of deferred financing fees		(353)
Accretion of Buyout payable		(485)
Interest and financing fees paid		(1,157)
Interest and financing fees paid related to 2018 accruals		(317)
SWK warrant modification and issuance		(79)
Effect of foreign currency exchange difference		14
Balance, December 31, 2019	$	457
Balance, January 1, 2020	$	457
Interest and financing fees expense		1,975
Transaction costs		88
Amortization of deferred financing fees		(374)
Accretion of Buyout payable		(14)
Warrant modification		(43)
Gain on debt modification		7
Interest and financing fees paid		(1,202)
Interest and financing fees paid related to 2019 accruals		(144)
Transaction costs paid		(88)
Interest accrued converted into common shares		(526)
Balance, December 31, 2020	$	136

Future principal and interest payments

The Company has the following future payments of principal and interest concerning the debt:

	December 31, 2020
No later than 1 year	2,741
Later than 1 year and no later than 5 years	7,912
	10,653
Interest and exit fee	2,403
Total princiapl protion of debt	8,250

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15. DERIVATIVE FINANCIAL INSTRUMENT

The change in the Company's derivative financial instrument can be summarized as follows:

	December 31, 2020	December 31, 2019
Balance of warrants, January 1,	262	227
Addition/modification of derivative liability	43	79
Change in fair value of the derivative financial instruments	(182)	(54)
Effect of foreign currency exchange difference	16	10
Balance of warrants	$ 139	$ 262

MidCap Financial V, LLC warrants

In accordance with the senior financing with MidCap entered into on July 16, 2014, the lenders have been issued warrants exercisable for an aggregate of 3,034,814 common shares of the Company. The warrants are exercisable for a period of seven years at an exercise price of CDN$0.7095, which was calculated using the volume weighted average trading price of the Company's common shares on the Toronto Stock Exchange for the period of five days ending immediately prior to the closing date of the senior financing. The warrant holder may also choose a cashless exercise, in which case the settlement price will then be calculated using the volume weighted average trading price of the Company's common shares on the Toronto Stock Exchange for the period of five days ending immediately prior to the date of exercise.

A pricing model with observable market-based inputs was used to estimate the fair value of the warrants issued. The variables used to compute the values as at December 31, 2020 were as follows: a share price of CDN$0.04; an expected life of 0.5 years; a risk-free rate of 0.15%; a volatility of 81.9%; and an exercise price of CDN$0.7095 (a share price of CDN$0.08; an expected life of 1.5 years; a risk-free rate of 1.69%; a volatility of 72%; an exercise price of CDN$0.7095 was used to compute the values at December 31, 2019). At December 31, 2020, the warrants had an average fair value of CDN$0.00 per warrant (CDN$0.01 per warrant at December 31, 2019).

SWK warrants

The Company has also issued 5,331,563 Original Warrants to SWK as partial consideration for the New Facility. Each Warrant entitles SWK to purchase one common share at an exercise price of CDN$0.40 per common share, expires on October 11, 2023 and has a cashless exercise feature. Following the second anniversary of the issuance of the Warrants, the Company can cause SWK to exercise the Warrants prior to their expiry date if the closing price of the Company's common shares on the TSX trades at or above CDN$0.80 per share for a period of at least 21 consecutive trading days.

As part of the September 2019 debt agreement amendment, the Company agreed to reprice the 5,331,563 Original Warrants from CDN$0.40 to CDN$0.11. In addition, the Original Warrants' expiry date was extended from October 11, 2023 to September 30, 2024. No other changes were made to the term of the Original Warrants. On October 3, 2019, the Company issued 1,361,544 common share purchase warrants (the "New Warrants") to SWK in connection with the amendment. Each New Warrant will entitle SWK to purchase one common share of the Company at an exercise price of CDN$0.11 per common share and will expire on September 30, 2024. The terms of the New Warrants will otherwise be identical to those of the Original Warrants. As such, in certain circumstances, the Company may cause SWK to exercise the New Warrants prior to their expiry date if the closing price of the Company's common shares on the TSX exceeds CDN$0.80 per share for a period of at least 21 consecutive trading days. As part of the February 2020 amendment to the debt agreement described in note 14, the Company agreed to reprice both the 5,331,563 Original Warrants and the 1,361,544 New Warrants from CDN$0.11 to CDN$0.053269 with no other changes to the term and features described above.

SWK became entitled to an increase in the exchange basis of each warrant to prevent dilution of its interest as a result of the November 2020 Rights Offering. The exchange basis was determined at 1.16 to 1. Accordingly, the allotment of the Original Warrants and New Warrants was increased to 6,184,613 and 1,579,391 respectively.

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and unless otherwise stated)

15. DERIVATIVE FINANCIAL INSTRUMENT (continued)

A pricing model with observable market-based inputs was used to estimate the fair value of the warrants issued. The variables used to compute the values as at December 31, 2020 were as follows: a share price of CDN$0.04; an expected life of 3.8 years; a risk-free rate of 0.36%; a volatility of 88.3%; and an exercise price of CDN$0.053269 for 7,764,004 warrants (a share price of CDN$0.08; an expected life of 4.8 years; a risk-free rate of 1.64%; a volatility of 89.6%; an exercise price of CDN$0.11 was used to compute the values at December 31, 2019). At December 31, 2020, the warrants had an average fair value of CDN$0.02 per warrant (CDN$0.05 per warrant as of December 31, 2019).

Pre-payment option

As per note 14, under terms of the SWK Credit Facility, the Company will have the option to prepay the facility. The prepayment penalties vary depending on the time frame. The prepayment option is considered to be an embedded derivative with a fair value of nil at the date of issuance and at December 31, 2020.

16. SHARE CAPITAL AND WARRANTS

Shares Issued and Outstanding

	Number of Common shares	Number of Warrants	Common shares	Warrants	Total
Balance as at January 1, 2019	235,384,262	23,584,624	$ 154,737	$ 1,420	$ 156,157
Issuance of shares, March 2019	23,230,772	-	3,350	-	3,350
Exercise of options	2,610,256	-	315	-	315
Balance as at December 31, 2019	261,225,290	23,584,624	$ 158,402	$ 1,420	$ 159,822
Balance as at January 1, 2020	261,225,290	23,584,624	$ 158,402	$ 1,420	$ 159,822
Private placement, February 2020	449,148,891	-	17,799	-	17,799
Debt conversion, February 2020	300,081,885	-	11,932	-	11,932
Expiry of warrants, June 2020	-	(23,584,624)	-	(1,420)	(1,420)
Private placement, August 2020	532,015		21	-	21
Rights Offering, November 24, 2020	526,600,000	-	10,009	-	10,009
Balance as at December 31, 2020	1,537,588,081	-	$ 198,163	$ -	$ 198,163

The Company is authorized to issue an unlimited number of common shares with no par value.

On March 29, 2019 the Company closed a non-brokered private placement of 23,230,772 common shares to certain directors and officers at a price of CDN$0.195 per common share for gross proceeds of CDN$4,530.

On February 12, 2020 the Company announced that it had entered into an agreement with First Generation in respect of an equity financing and debt-to-equity conversion by First Generation. A private placement to First Generation of 449,148,891 Common Shares at an offering price of CDN$0.053269 per FGC Common Share, being a 25% discount to the five-day volume weighted average price of the FGC Common Shares on the TSX as at January 31, 2020, for aggregate gross proceeds to the Company of $18,000 (the "FGC Private Placement"). The private placement is presented net of $201 of financing costs. The agreement also included the conversion of the Company's outstanding $11,500 (plus accrued interest of $526) owing to First Generation under the A&R Loan into approximately 300,081,885 Common Shares at a conversion price of CDN$0.053269 per Common Share (the "Debt Conversion"). The debt conversion is presented net of financing costs of $94.

On June 28, 2020, 23,584,624 warrants issued in relation to a 2018 bought deal transaction expired. The value of the warrants, $1,420 was transferred to contributed surplus.

On August 28, 2020, the Company issued 532,015 common shares at CDN$0.0531 per share to a vendor in lieu of cash payment.

On November 24, 2020, the Company issued 526,600,000 Common Shares, pursuant to the Rights Offering announced on October 20, 2020, for gross proceeds of CDN$13.165 million. SWK also became entitled to an increase in the exchange basis of each warrant to prevent dilution of its interest as a result of the Rights Offering. The exchange basis

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16. SHARE CAPITAL AND WARRANTS (continued)

was determined as 1.16 to 1. Accordingly, the allotment of the Original Warrants and New Warrants was increased by 853.050 and 217,817 respectively.

In addition to the warrants in the table above, there are 7,764.004 (December 31, 2019 – 9,727,921) warrants issued that have been classified as a derivative financial instrument and classified under long-term liabilities.

No options were exercised during 2020. During 2019, 5,225,000 options were exercised using the cashless exercise feature resulting in the Company issuing 2,610,256 new shares.

17. NATURE OF EXPENSES

	For the year ended December 31, 2020			
	Cost of goods sold	R&D	SG&A	Total
Cost of finished goods	$ 501	$ -	$ -	$ 501
Salaries and benefits	-	481	2,053	2,534
Canada Emergency Wage Subsidy	-	(15)	(171)	(186)
Amortization of intangible assets	567	150	-	717
Depreciation of property and equipment	135	67	43	245
Depreciation of right of use asset	-	-	48	48
Inventory obsolescence	676	-	-	676
Share-based compensation	-	60	594	654
Research & development	-	1,783	-	1,783
Selling and marketing	-	-	12,270	12,270
General and administrative	-	-	2,964	2,964
Loss on sale of intangible asset	-	-	1,629	1,629
Other	135	-	-	135
	$ 2,014	$ 2,526	$ 19,430	$ 23,970

	For the year ended December 31, 2019			
	Cost of sales	R&D	SG&A	Total
Cost of finished goods	$ 514	$ -	$ -	$ 514
Salaries and benefits	-	732	2,554	3,286
Amortization of intangible assets	670	148	-	818
Depreciation of property and equipment	135	58	61	254
Depreciation of right of use asset	-	-	47	47
Inventory impairment	316	-	-	316
Share-based compensation	-	(9)	185	176
Research & development	-	1,900	-	1,900
Selling and marketing	-	-	4,781	4,781
General and administrative	-	-	2,612	2,612
Impairment of intangible asset	-	-	2,536	2,536
Other	564	-	-	564
	$ 2,199	$ 2,829	$ 12,776	$ 17,804

During the year, $nil of depreciation was capitalized to inventory ($nil at December 31, 2019).

(All amounts expressed in thousands of U.S. dollars except per share amounts
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18. INTEREST AND OTHER FINANCING COSTS

	December 31, 2020	December 31, 2019
Interest expense on long-term debt	$ 1,325	$ 1,577
Interest expense on lease liability	32	38
Interest charged by inventory supplier	44	-
Warrant modification and issuance	43	79
Gain on debt modification	(7)	-
Buy-out interest paid (note 5a)	150	-
Accretion of buy-out (note 5a)	14	485
Amortization of deferred financing fees (note 14)	374	353
	$ 1,975	$ 2,532

(All amounts expressed in thousands of U.S. dollars except per share amounts
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19. INCOME TAXES

The difference between the amount of the provision for income taxes and the amount computed by multiplying loss/income before taxes by the statutory Canadian rates are reconciled as follows:

	For the year ended December 31,	
	2020	2019
Loss before income taxes	$ (24,424)	$ (16,129)
Tax recovery at the Canadian corporate tax rate of 26.5% (2015 - 26.5%)	(6,472)	(4,274)
Benefit of previously unrecognized deferred tax asset		
Tax effect of permanent differences (Canada)	142	(57)
Unrecognized deferred tax benefit	3,583	4,404
Effect of acquisition of control	2,749	-
Other	(2)	(73)
Tax (recovery) recognized for the year	$ -	$ -

At each balance sheet date, the Company assesses whether the realization of future tax benefits is sufficiently probable to recognize a deferred tax asset. This assessment requires the exercise of judgment, which includes a review of projected taxable income. The Company has not recognized the deferred tax assets, arising from accumulated losses carried forward from previous years, and the corresponding deferred tax recovery on the statements of loss and comprehensive loss.

Acquisition of control for Canadian Income tax purposes

The First Generation equity issuance and debt conversion in February 2020 described in note 16 results in an acquisition of control for Canadian income tax purposes. An acquisition of control triggers a tax year end, requires adjustments, if any, to the tax carrying value of tangible and intangible assets where the fair value is less than tax carrying value, and disallows the carry forward of unused capital losses and certain non-capital losses. Generally, adjustments to reduce the tax carrying value of such assets to fair value may be added to the Company's non-capital loss carryforwards for the period preceding the acquisition of control. The Company has non-capital loss carry forwards of $114,208 that will expire by 2040 ($3,539 in 2035, $25,423 in 2036, $18,545 in 2037, $23,157 in 2038, $19,530 in 2039 and $24,014 in 2040). The non-capital loss carry forward of $19,530 expiring in 2039 includes $18.5 million for fair value adjustments described above.

In addition, the Company has the following deferred tax assets that are not recognized:

	As at December 31,	
	2020	2019
Property and equipment	$ 25	$ 44
Intangible assets	666	7,893
Financing costs	178	151
R&D pools	593	554
Investment tax credits	716	722
Accruals	110	825
Unrealized foreign exchange	-	(17)
Capital loss carryforwards	-	2,749
Loss Carry forwards	25,012	13,679
Total	$ 27,300	$ 26,600

20. LOSS PER SHARE

The following table sets forth the computing of basic and diluted loss per share (share and per share amounts below are not in thousands):

	For the year ended December 31, 2020	2019
Numerator for basic and diluted loss per share available to common shareholders	$ (24,424)	$ (16,129)
Denominator for basic and diluted loss per share	975,848,903	255,002,276
Basic and diluted loss per share	$ (0.03)	$ (0.06)

Weighted Average Common Shares Outstanding

	Total issued	Weighted Average Shares Basic	Diluted
Balance, January 1, 2019	235,384,262	235,384,262	235,384,262
Private Placement, March 2019	23,230,772	17,629,928	17,629,928
Exercise of stock options	2,610,256	1,988,086	1,988,086
Balance, December 31, 2019	261,225,290	255,002,276	255,002,276
Balance, January 1, 2020	261,225,290	261,225,290	261,225,290
Private Placement, February 2020	449,148,891	396,380,032	396,380,032
Debt conversion, February 2020	300,081,885	264,826,363	264,826,363
Private Placement, August 2020	532,015	181,699	181,699
Rights Offering, November 2020	526,600,000	53,235,519	53,235,519
Balance, December 31, 2020	1,537,588,081	975,848,903	975,848,903

21. SHARE BASED COMPENSATION

Under the Omnibus Incentive Plan adopted in 2020, the Company may issue stock options, RSUs and PSUs to employees, officers, consultants and others as determined by the Board of Directors. Stock options were previously issued under the Company's Amended and Restated Stock Option Plan. The Company may issue stock options and DSUs to directors.

At the time of approval of the Omnibus Incentive Plan, 60,914,974 stock options were outstanding under the Amended and Restated Stock Option Plan. No further stock options may be issued under the Amended and Restated Stock Option Plan.

The Omnibus Incentive Plan is also subject to the following limitations: (i) no more than 10% of the outstanding Shares may be issued under the plan or pursuant to any other security-based compensation arrangements of the Company during any one year period; (ii) no more than 5% of the outstanding Shares may be issued under the plan or pursuant to any other security-based compensation arrangements of the Company to any one person; (iii) no more than 10% of the outstanding Shares may be issued to insiders under the plan or under any other security-based compensation arrangements of the Company within any one year period or be issuable to insiders at any time; and (iv) the aggregate number of Shares reserved for issue to any one service provider of the Company shall not exceed 2% of the total number of Shares then outstanding, excluding Shares issued to such service provider upon the exercise of stock options over the preceding 12-month period.

With respect to awards made under the Omnibus Incentive Plan, if for any reason shares subject to issuance on the exercise of stock options granted under the plan are not issued, or are re-acquired by the Company, for reasons including a termination, expiration or cancellation, such shares will become available for additional grants under the plan. If any RSUs, PSUs or DSUs granted under the plan expire, terminate or are cancelled for any reason without being settled in the form of Shares issued from treasury, such Shares will become available for additional grants under the plan.

(All amounts expressed in thousands of U.S. dollars except per share amounts
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21. SHARE BASED COMPENSATION (continued)

Stock options

The Board may grant stock options to any participant under the Omnibus Incentive Plan at any time. The exercise price for stock options will be determined by the Board, but may not be less than the market value of a Share (being, on any particular day, the volume weighted average trading price of a Share on the TSX for the five (5) preceding days on which Shares were traded, or on any other stock exchange as selected by the Board for these purposes, and, in the event such Shares are not listed and posted for trading on any stock exchange, the fair market value of such Shares as determined by the Board in its discretion) (the "Market Value") on the date the stock option is granted, except in circumstances where the stock option is granted in exchange for another stock option, subject to TSX approval if required. It is anticipated that stock options will vest and become exercisable as to one third of the stock option on each of the anniversary of the date of grant for the three years following the date of grant, unless otherwise determined by the Board and specified in such participant's option agreement. Stock options must be exercised within a period fixed by the Board that may not exceed five years from the date of grant, except in a case where the expiry period falls during a blackout period, in which case the expiry period will be automatically extended until ten business days after the end of the blackout period. The Omnibus Incentive Plan also provides for earlier termination of stock options on the occurrence of certain events, including but not limited to, termination of a participant's employment.

The Omnibus Incentive Plan also provides for a holder of a stock option to elect a cashless exercise of such option equaling the amount by which the value of the underlying share at that time exceeds the exercise price of such option.

The Company uses the Black-Scholes option pricing model to price its options, which requires certain assumptions including the stock price volatility for a publicly held corporation. Details of the stock options issued in 2019 and 2020 are set out below:

						Black-Scholes model variables			
Grant date	Number granted	Granted to	Exercise price (CDN$)	Life (years)	Vesting periods (years)	Risk-free rate	Expected volatility	Expected dividend rate	Fair value per options (CDN$)
Mar 06, 2019	1,050,000	Directors & employee	$0.13	5	1-3	1.8%	86.4%	nil	$0.090
Aug 08, 2019	1,965,686	Employees	$0.13	5	3	1.5%	86.9%	nil	$0.080
Mar 30, 2020	11,575,860	Directors	$0.0452	5	1	0.6%	91.6%	nil	$0.027
Mar 30, 2020	37,706,216	Employees	$0.0452	5	3	0.6%	91.6%	nil	$0.027
Mar 30, 2020	1,481,710	Consultant	$0.0452	3	1	0.5%	87.7%	nil	$0.021
Aug 12, 2020	5,123,617	Employee	$0.0593	5	3	0.3%	97.0%	nil	$0.040
Sep 09, 2020	1,319,098	Employee	$0.0520	5	3	0.4%	97.1%	nil	$0.036
Dec 02, 2020	2,510,597	Supplier	$0.0345	5	1	0.5%	94.9%	nil	$0.025
Dec 16, 2020	1,143,218	Employee	$0.0361	5	3	0.4%	94.7%	nil	$0.025
Dec 16, 2020	6,277,164	Directors	$0.0361	5	1	0.4%	94.7%	nil	$0.025

A forfeiture rate of 3% was used to estimate option expenses during the year. The Company recognized stock option compensation expense of $649 for the year ended December 31, 2020 ($176 for the year ended December 31, 2019).

21. SHARE BASED COMPENSATION (continued)

The following table summarizes the activity under the Company's stock option plan (amounts in chart below are not in thousands):

	December 31,					
	2020			2019		
	Number		Weighted average exercise price (CDN)	Number		Weighted average exercise price (CDN)
Balance at January 1,	12,866,992	$	0.18	17,763,346	$	0.18
Granted	67,137,480		0.05	3,015,686		0.13
Exercised	-		-	(5,225,000)		0.11
Forfeited	(6,409,965)		0.10	(2,252,040)		0.16
Expired	(1,085,000)		0.34	(435,000)		0.82
Balance at December 31,	72,509,507	$	0.06	12,866,992	$	0.17
Options exercisable at December 31,	6,404,695	$	0.16	8,165,392	$	0.18

	Canadian Dollar Options outstanding as at December 31, 2020		
Exercise prices	Number outstanding	Weighted average remaining life in years	Number excercisable
$0.0345 to $0.0499	58,258,047	4.3	0
$0.05 to $0.10	7,549,382	4.0	1,106,667
$0.11 to $0.17	4,487,520	2.6	3,491,895
$0.21 to $0.36	2,214,558	2.1	1,806,133
	72,509,507	4.1	6,404,695

Restricted Share Units ("RSU")

An RSU is equivalent in value to a common share of the Company and are settled by the issuance of Company shares. RSUs vest one to three years from the date of grant. The cost of the RSU's is charged to selling, general and administrative expenses using the cliff vesting method. The fair value of each grant of RSUs is the fair value of the Company's share price on the date of the grant. The resulting compensation expense is charged to income over the period the employees unconditionally become entitled to the award, with a corresponding increase in contributed surplus.

A summary of the Company's RSU activity is as follows:

	December 31, 2020
Balance, January 1	-
Issuance, December 2020	3,961,218
Balance	3,961,218

The Company recognized RSU compensation expense of $5 for the year ended December 31, 2020 ($nil for the year ended December 31, 2019).

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22. RELATED PARTY TRANSACTIONS

Details of the transactions between the Company, key management and other related parties are disclosed below:

Key management includes the Company's directors and executive officers. The remuneration of directors and key members of management and professional fees paid or payable to firms affiliated with the current directors and interim CEO for the year ended December 31, 2020 and 2019 were as follows:

	For the year ended December 31, 2020	December 31, 2019
Short-term compensation of key management and directors	$ 1,527	$ 909
Termination benefits	-	363
Share-based compensation	628	155
Interest expense (note 14)	212	314
	$ 2,367	$ 1,741

These transactions are in the normal course of operations.

Executive employment agreements allow for total additional payments of approximately $1,899 if all are terminated as a result of a change in control, $1,852 if all are terminated without cause, and $nil if all are terminated with cause.

See note 14 and 16 for the details on an equity financing and debt-to-equity conversion by First Generation, a company affiliated with the Chairman of the Board of Directors of the Company. As a result of these transactions, First Generation's share ownership increased from 45.1% to 85.8%.

23. COMMITMENTS AND CONTINGENCIES

(a) Milestone payments

Under certain research and development agreements, the Company may be required to make payments contingent upon the achievement of specific development, regulatory or commercial milestones on or before specific dates.

The Company may be required to make further milestone payments for TriVair™ products. Milestone payments of $2,000 are due upon FDA approval per new product up to a maximum of $8,000 for products submitted by ABI only. In addition, subsequent royalty payments are due capped at $25,000 per product.

The Company may be required to make certain regulatory or sales-based milestone payments as disclosed in notes 5(g) and (h).

23. COMMITMENTS AND CONTINGENCIES (continued)

(b) Guarantees

All directors and/or officers of the Company, and each of its various subsidiary entities, are indemnified by the Company for various items including, but not limited to, all costs to settle lawsuits or actions due to their association with the Company, subject to certain restrictions. The Company has purchased directors' and officers' liability insurance to mitigate the cost of any potential future lawsuits or actions to the directors and officers. The term of the indemnification is not explicitly defined but is limited to events for the period during which the indemnified party served as a director or officer of the applicable Acerus entity. The maximum amount of any potential future payment required to be made by the Company cannot be reasonably estimated but could have a material adverse effect on the Company.

In the normal course of business, the Company has entered into agreements that include indemnities in favour of third parties, such as purchase and sale agreements, confidentiality agreements, engagement letters with advisors and consultants, leasing contracts, license agreements, information technology agreements and various product and service agreements. These indemnification arrangements may require the applicable Acerus entity to compensate counterparties for losses incurred by the counterparties as a result of breaches in representations, covenants and warranties provided by the particular Acerus entity or as a result of litigation or other third-party claims or statutory sanctions that may be suffered by the counterparties as a consequence of the relevant transaction. In some instances, the terms of these indemnities are not explicitly defined. The applicable Acerus entity, whenever possible, tries to limit this potential liability within the particular agreement or contract, but due to the unpredictability of future events the maximum amount of any potential reimbursement required to be made by the Company or its subsidiary entities cannot be reasonably estimated, but could have a material adverse effect on the Company.

(c) Litigation

Schenk Litigation

Valeant Pharmaceuticals International, Inc. and Valeant International Bermuda ("Valeant") are defendants in Ontario Superior Court of Justice Action No. CV-11-438382, which claims a declaration that Valeant is contractually obligated to compensate the plaintiff, Reiner Schenk ("Schenk") pursuant to the terms of a contract between Schenk and Biovail Corporation. The main action was commenced by Notice of Action issued on October 31, 2011 and a Statement of Claim was issued on December 14, 2011. Acerus Pharmaceuticals Corporation was named as one of the defendants in the main action, but the action was discontinued as against the Company on December 14, 2011. On October 29, 2013, Valeant commenced a third-party claim against the Company (among others) claiming contribution, indemnity and other relief over to the full extent that Valeant may be held liable to Schenk, and damages for breach of fiduciary duty, breach of contract and intentional interference with economic relations in any amount for which Valeant is found liable to Schenk. The Company has defended the third-party claim, denying any liability to Valeant. The parties have concluded examinations for discovery and attended a pre-trial conference in February 2020. The trial was scheduled to commence in April 2020 and was anticipated to be two weeks long. However, in an effort to reduce the transmission of COVID-19, the Ontario

Superior Court suspended all regular operations in March 2020. Accordingly, the trial was adjourned to a later date. The trial is expected to take place in 2021. As of December 31, 2020, the Company has not accrued for any potential claims.

Recipharm Litigation

On June 18, 2020, the Company commenced litigation against Recipharm Limited ("Recipharm"), a wholly-owned subsidiary of Recipharm AB (RECI-B.ST), in the Commercial Court of London. The Company alleges that the suspension of Recipharm's manufacturing license in August 2018, in contravention of its contractual obligations to the Company, led to a shortage of Estrace® in Canada. Due to the shortage, Estrace® revenues and the Company's market share has decreased substantially each year since the shortage began. Consequently,

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23. COMMITMENTS AND CONTINGENCIES (continued)

(c) Litigation (continued)

the Company has sued Recipharm for, among other things, its loss of profits and loss of market share caused by the shortage. The Company and Recipharm have exchanged pleadings and attended a Case Management Conference on November 20, 2020. The Company anticipates participating in a motion in the first half of 2021 to determine legal issues ahead of trial. As of December 31, 2020, the Company has not accrued for any potential claims.

In the normal course of business, the Company may be the subject of litigation claims. While management assesses the merits of each lawsuit and defends itself accordingly, the Company may be required to incur significant expenses or devote significant resources to defending itself against such litigation.

24. FINANCIAL INSTRUMENTS

(a) Classification of financial instruments

Financial assets (liabilities) as at December 31, 2020 and 2019 are presented below:

December 31, 2020	Financial assets at amortized cost	Assets/ (liabilities) at FVTPL	Financial liabilities at amortized cost	Total
Cash	$ 9,153	$ -	$ -	$ 9,153
Trade and other receivables	528	-	-	528
Contract asset	936	-	-	936
Accounts payable and accrued liabilities	-	-	(5,435)	(5,435)
Long-term debt payable	-	-	(8,019)	(8,019)
Derivative financial instrument	-	(139)	-	(139)
	$ 10,617	$ (139)	$ (13,454)	$ (2,976)

December 31, 2019	Financial assets at amortized costs	Assets/ (liabilities) at FVTPL	Financial liabilities at amortized costs	Total
Cash	$ 5,860	$ -	$ -	$ 5,860
Trade and other receivables	171	-	-	171
Contract asset	473	-	-	473
Accounts payable and accrued liabilities	-	-	(7,408)	(7,408)
Long-term debt payable	-	-	(19,990)	(19,990)
Derivative financial instrument	-	(262)	-	(262)
	$ 6,504	$ (262)	$ (27,398)	$ (21,156)

(b) Fair value of financial instruments

Fair value is defined as the price that would be received from the sale of an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The best evidence of fair value is quoted bid or ask prices in an active market. Quoted prices are not always available for over-the-counter transactions, as well as transactions in inactive or illiquid markets. In these instances, pricing models, normally with observable market-based inputs, are used to estimate fair value. Financial instruments traded in a less active market have been valued using indicative market prices, present value or other valuation techniques. Where financial instruments trade in inactive markets or when using models where observable parameters do not exist, greater management judgement is required for valuation purposes. In addition, the calculation of estimated fair value is based on market conditions at a specific point in time and therefore may not be reflective of future fair values.

At December 31, 2020 and December 31, 2019, the Company's financial instruments consisted of cash, trade and other receivables, contract assets, accounts payable and accrued liabilities, long-term debt, and derivative

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24. FINANCIAL INSTRUMENTS (continued)

(b) Fair value of financial instruments (continued)

financial instruments. Cash, trade and other receivables, contract assets and accounts payable and accrued liabilities are measured at amortized cost and their fair values approximate carrying values due to their short-term nature. The derivative financial instruments are measured at fair value with any changes recognized through the consolidated statement of loss and comprehensive loss and are classified as Level 2. The fair value of the derivative financial instrument is estimated using a Black-Scholes pricing model.

The long-term debt is measured at amortized cost. At December 31, 2020, the fair value of the long-term debt approximates its face value of $8,250.

(c) Financial risk management

The Company's financial instruments are exposed to certain financial risks, including currency risk, interest rate risk, credit risk, market risk and liquidity risk.

(i) Currency risk

The Company is exposed to currency risk related to the fluctuation of foreign exchange rates. The Company operates primarily in U.S. and Canadian dollars. The Company, however, is exposed to currency risk through its net financial assets denominated in Canadian dollars, Euros and Great British Pounds of the parent whose functional currency is the US dollar.

	December 31, 2020		
	CDN	EUR	GBP
Cash	$ 10,263	$ -	$ -
Trade and other receivables	216	55	-
Accounts payable and accrued liabilities	(1,533)	(76)	(65)
Lease liability	292	-	-
	$ 9,238	$ (21)	$ (65)

Based on the above net exposure at December 31, 2020, and assuming that all other variables remain constant, a 5% appreciation or depreciation of the US dollar against the other currencies would have resulted in the following impact on net income:

Net income effect:	US Dollar			
	CDN	EUR	GBP	Total
Appreciate 5%	$ (346)	$ (1)	$ (5)	$ (352)
Depreciate 5%	382	1	5	388

(ii) Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates. Refer to note 14 for details on the interest rate applicability to the SWK and First Generation credit facility.

A 0.5% appreciation in the present LIBOR rate would lead to an increase of $77 of interest payments for the life of the outstanding loans. A 0.5% depreciation in the present LIBOR rate would lead to a decrease of $77 of interest payments required for the life of the loans.

(iii) Credit risk

Credit risk is the risk of a financial loss to the Company if a customer or counterparty to a financial instrument fails to meet its contractual obligation. Financial instruments that potentially expose the

24. FINANCIAL INSTRUMENTS (continued)

(c) Financial risk management (continued)

(iii) Credit risk (continued)

Company to significant concentrations of credit risk consist of cash, trade and other receivables and licensing fee receivable. The Company's investment policies are designed to mitigate the possibility of deterioration of principal, enhance the Company's ability to meet its liquidity needs and provide high returns within those parameters. Cash is on deposit with a Canadian chartered bank located in Canada and Barbados.

Management monitors the collectability of trade and other receivable and estimates an allowance for doubtful accounts. The Company has concentration risk with revenues earned from its U.S. out-licensing partner comprising 58% of revenues for the year and 53% of its trade receivables at year end.

As at December 31, 2020, the allowance for doubtful accounts was $nil. Management has not recognized an allowance for doubtful accounts because there has not been a significant change in credit quality and all amounts are considered recoverable.

(iv) Market risk

The change in fair value of the Company's derivative liability, which is measured at FVTPL, results from the periodic "mark-to-market" revaluation. The valuation is impacted, among other inputs, by the market price of the Company's common shares. As a result, the change in fair value of the derivative liability, which is reported through the consolidated statement of loss and comprehensive loss, has been and may continue in future periods to be materially affected most notably by changes in the Company's common share price.

Assuming that all other variables remain constant, a 5% appreciation or depreciation of the Company's share price would have resulted in an $12 decrease and $12 increase in current year net loss respectively ($17 increase and $17 decrease in net income at December 31, 2019).

(v) Liquidity risk

Liquidity risk is the risk that the Company will encounter difficulties in meeting its financial liability obligations as they become due. The Company has a planning and budgeting process in place to help determine the funds required to support normal operating requirements on an ongoing basis. Since inception, the Company has financed its cash requirements primarily through issuances of securities, short-term borrowings, issuances of long-term debt (including convertible debt) and interest income and upfront licensing fees.

The Company controls liquidity risk through management of working capital, cash flows and the availability and sourcing of financing. See also note 1 (Going concern).

(All amounts expressed in thousands of U.S. dollars except per share amounts and unless otherwise stated)

24. FINANCIAL INSTRUMENTS (continued)

(c) Financial risk management (continued)

(v) Liquidity risk (continued)

The following table summarizes the Company's significant contractual undiscounted cash flows as at December 31, 2020 (excluding future milestones and royalties):

	Less than 3 months	3-6 months	6 months - 1 year	Between 1 and 2 years	Between 2 and 5 years	Total
Accounts payable and accrued liabilities	$ 5,011	$ 129	$ 295	$ -	$ -	$ 5,435
Purchase commitments	4,510	4,273	5,878	4,865	-	$ 19,526
Lease liability (principal and interest)	34	238	-	-	-	$ 272
Long-term debt (principal and interest)	249	847	1,645	3,062	4,849	10,652
As at December 31, 2020	9,804	5,487	7,818	7,927	4,849	35,885

25. CAPITAL MANAGEMENT

The Company's capital management objectives are to safeguard its ability to continue as a going concern and to provide returns for shareholders and benefits for other stakeholders. The Company does this by ensuring it has sufficient cash resources to fund its research and development activities, to pursue its eventual commercialization efforts and to maintain its ongoing operations. The Company includes the long-term debt and shareholders' equity in the definition of capital.

A summary of the Company's capital structure is as follows:

	December 31, 2020	December 31, 2019
Long-term debt	$ 8,019	$ 19,990
Shareholders' equity	3,160	(12,831)
	$ 11,179	$ 7,159

The Company continually evaluates alternatives to raise additional capital. These alternatives include seeking additional capital from existing shareholders and new shareholders, from the issuance of debt and by way of monetizing its technologies or development programs through commercial or partnering arrangements.

26. SEGMENT REPORTING

The Chief Executive Officer and Chief Financial Officer are the Company's chief operating decision-makers (CODM). Management has determined that there is one operating segment based on the information reviewed by the CODM for the purposes of allocating resources and assessing performance.

At December 31, 2020, the Company has inventory in Germany, Canada, UK and Taiwan in the amounts of $1,942, $nil, $352 and $19 respectively ($1,465, $29, $nil and $nil respectively for the year ended December 31, 2019). At December 31, 2020, the Company has total long-term assets in Canada and Germany in the amounts of $2,516 and $432 respectively ($5,635 and $570 respectively in Canada and Germany at December 31, 2019).

For the year ended December 31, 2020 the Company had revenues of $209, $810 and $66 from customers located in Canada, U.S. and rest of world respectively ($2,373, $1,202 and $193 from customers located in Canada, U.S. and rest of world respectively for the year ended December 31, 2019).

This is Exhibit "F" referred to in the Affidavit of Naveed Z. Manzoor
sworn by Naveed Z. Manzoor of the Town of Oakville,
in the Province of Ontario, before me at the City of Toronto,
in the Province of Ontario, on January 25, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

DocuSigned by:

Philip Y

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Commissioner for Taking Affidavits

Acerus Pharmaceuticals Corporation

Audited Consolidated Financial Statements

December 31, 2021

(expressed in thousands of U.S. dollars except per share amounts and unless otherwise stated)

Independent auditor's report

To the Shareholders of Acerus Pharmaceuticals Corporation

Our opinion

In our opinion, the accompanying consolidated financial statements present fairly, in all material respects, the financial position of Acerus Pharmaceuticals Corporation and its subsidiaries (together, the Company) as at December 31, 2021 and 2020, and its financial performance and its cash flows for the years then ended in accordance with International Financial Reporting Standards (IFRS).

What we have audited
The Company's consolidated financial statements comprise:

- the consolidated statements of financial position as at December 31, 2021 and 2020;
- the consolidated statements of loss and comprehensive loss for the years then ended;
- the consolidated statements of changes in shareholders' equity (deficit) for the years then ended;
- the consolidated statements of cash flows for the years then ended; and
- the notes to the consolidated financial statements, which include significant accounting policies and other explanatory information.

Basis for opinion

We conducted our audit in accordance with Canadian generally accepted auditing standards. Our responsibilities under those standards are further described in the *Auditor's responsibilities for the audit of the consolidated financial statements* section of our report.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Independence
We are independent of the Company in accordance with the ethical requirements that are relevant to our audit of the consolidated financial statements in Canada. We have fulfilled our other ethical responsibilities in accordance with these requirements.

Material uncertainty related to going concern

We draw attention to Note 1 in the consolidated financial statements, which describes events or conditions that indicate the existence of a material uncertainty that may cast significant doubt about the Company's ability to continue as a going concern. Our opinion is not modified in respect of this matter.

PricewaterhouseCoopers LLP
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pwc

Key audit matters

Key audit matters are those matters that, in our professional judgment, were of most significance in our audit of the consolidated financial statements for the year ended December 31, 2021. These matters were addressed in the context of our audit of the consolidated financial statements as a whole, and in forming our opinion thereon, and we do not provide a separate opinion on these matters. In addition to the matter described in the *Material uncertainty related to going concern* section, we have determined the matters described below to be the key audit matters to be communicated in our report.

Key audit matter	How our audit addressed the key audit matter
Revenue recognition – Rebates and Co-Pay related to Natesto® *Refer to note 3 – Significant accounting policies, note 4 – Critical accounting judgments and key sources of estimation uncertainty, and note 13 – Accounts payable and accrued liabilities to the consolidated financial statements* Product revenues from sales to wholesalers in North America are recorded net of deductions for early pay discounts, rebates, co-pay, distribution fees, chargebacks and returns. The accrual for rebates and co-pay is a significant and complex estimate used in the recognition of product revenue and represents variable consideration. The variable consideration deducted from product revenues was $2,099 thousand for rebates and co-pay for Natesto® and the related variable consideration accrual recognized within accounts payable and accrued liabilities was $29 thousand as at December 31, 2021. Management estimates the accrual for rebates and co-pay based on current contractual terms, historical claims experience and forward-looking projected prescription forecasts of shipments from wholesalers that will be dispensed for eligible benefit plan participants.	Our approach to addressing the matter included the following procedures, among others: • Tested the accrual for rebates and co-pay related to Natesto® by: – Developing an independent point estimate of the rebate and co-pay deductions from product revenue which were applied to the rebate and co-pay accrual during the year by: o Estimating Pharmacy Benefit Managers (PBM) rebates based on third party information on prescriptions by PBM and the terms of PBM rebate contracts to develop a weighted average rebate rate. o Estimating co-pay and government administered benefit plan rebates based on the historical rebate deduction experience of the Company's previous U.S. marketing partner. o Comparing the independent point estimate to management's estimate to evaluate the reasonableness of management's estimate.

Key audit matter	How our audit addressed the key audit matter
We determined that this is a key audit matter due to the significant judgment by management when estimating the accrual for rebates and co-pay, based on current contractual terms, historical claims experience and forward-looking projected prescription forecasts of shipments from wholesalers that will be dispensed for eligible benefit plan participants. This in turn led to a high degree of auditor judgment, subjectivity and effort in performing procedures and evaluating evidence related to this estimate.	– Testing on a sample basis rebate and co-pay claims settlements that were applied against the rebate and co-pay accrual during the year by tracing them to third party invoices and payments made.

Other information

Management is responsible for the other information. The other information comprises the Management's Discussion and Analysis.

Our opinion on the consolidated financial statements does not cover the other information and we do not express any form of assurance conclusion thereon.

In connection with our audit of the consolidated financial statements, our responsibility is to read the other information identified above and, in doing so, consider whether the other information is materially inconsistent with the consolidated financial statements or our knowledge obtained in the audit, or otherwise appears to be materially misstated.

If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

Responsibilities of management and those charged with governance for the consolidated financial statements

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with IFRS, and for such internal control as management determines is necessary to enable the preparation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is responsible for assessing the Company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Company or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Company's financial reporting process.

Auditor's responsibilities for the audit of the consolidated financial statements

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these consolidated financial statements.

As part of an audit in accordance with Canadian generally accepted auditing standards, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the consolidated financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Company's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the consolidated financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Company to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the consolidated financial statements, including the disclosures, and whether the consolidated financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information of the entities or business activities within the Company to express an opinion on the consolidated financial statements. We are responsible for the direction, supervision and performance of the group audit. We remain solely responsible for our audit opinion.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

We also provide those charged with governance with a statement that we have complied with relevant ethical requirements regarding independence, and to communicate with them all relationships and other matters that may reasonably be thought to bear on our independence, and where applicable, related safeguards.

From the matters communicated with those charged with governance, we determine those matters that were of most significance in the audit of the consolidated financial statements of the current period and are therefore the key audit matters. We describe these matters in our auditor's report unless law or regulation precludes public disclosure about the matter or when, in extremely rare circumstances, we determine that a matter should not be communicated in our report because the adverse consequences of doing so would reasonably be expected to outweigh the public interest benefits of such communication.

The engagement partner on the audit resulting in this independent auditor's report is Simon Kent.

/s/PricewaterhouseCoopers LLP

Chartered Professional Accountants, Licensed Public Accountants

Oakville, Ontario
March 14, 2022

Acerus Pharmaceuticals Corporation

Consolidated Statements of Financial Position

As at December 31, 2021 and December 31, 2020

(expressed in thousands of U.S. dollars)

	Notes		December 31, 2021		December 31, 2020
ASSETS					
Current assets					
Cash		$	2,159	$	9,153
Trade and other receivables	6		422		528
Contract asset	7		-		936
Inventory	8		4,605		2,313
Prepaid and other assets	9		1,463		1,104
Total current assets			8,649		14,034
Property and equipment, net	10		365		806
Right of use asset	11		302		-
Intangible assets, net	12		336		2,142
Total assets		$	9,652	$	16,982
LIABILITIES AND SHAREHOLDERS' EQUITY (DEFICIT)					
Current liabilities					
Accounts payable and accrued liabilities	13	$	7,448	$	5,435
Termination fee payable	7		2,456		-
Current portion of long-term debt	14		2,153		1,439
Current portion of lease liability	11		16		229
Total current liabilities			12,073		7,103
Termination fee payable	7		2,101		-
Lease liability	11		300		-
Long-term debt	14		21,137		6,580
Derivative financial instruments	15		55		139
Total liabilities			35,666		13,822
Shareholders' equity (deficit)					
Share capital	16	$	198,163	$	198,163
Contributed surplus			18,078		13,435
Accumulated other comprehensive loss			(13,949)		(13,949)
Deficit			(228,306)		(194,489)
Total shareholders' equity (deficit)			(26,014)		3,160
Total liabilities & shareholders' equity (deficit)		$	9,652	$	16,982

The accompanying notes are an integral part of these consolidated financial statements.

Going concern (note 1)

Commitments and contingencies (note 23) and subsequent events (note 27)

These consolidated financial statements were authorized by the Board of Directors on March 14, 2022.

Acerus Pharmaceuticals Corporation

Consolidated Statements of Loss and Comprehensive Loss
For the years ended December 31, 2021 and 2020
(expressed in thousands of U.S. dollars, except per share and share data)

	Notes		For the year ended December 31, 2021		2020
Revenue					
Product revenue		$	2,121	$	1,085
Termination Fees	7		(6,254)		-
			(4,133)		1,085
Cost of goods sold	17		1,118		2,014
Gross loss			(5,251)		(929)
Expenses					
Research and development	17		6,563		2,526
Selling, general and administrative	17		21,852		19,430
Total operating expenses			28,415		21,956
Operating loss			(33,666)		(22,885)
Other expenses (income)					
Interest on long-term debt and other financing costs	14,18		2,570		1,975
Litigation settlement proceeds	23		(2,328)		-
Interest income			(8)		(67)
Foreign exchange (gain) loss			(63)		(112)
Change in fair value of derivative financial instruments	15		(84)		(182)
Gain on remeasurement of lease liability	11		-		(75)
Loss on modification of debt	14		64		-
Total other expenses (income)			151		1,539
Loss for the year before income taxes			(33,817)		(24,424)
Income tax expense			-		-
Net loss and comprehensive loss for the year		$	(33,817)	$	(24,424)
Loss per common share					
Basic and diluted net loss per common share	20	$	(0.02)	$	(0.03)
Weighted average common shares outstanding					
Basic and diluted	20		1,537,588,081		975,848,903

The accompanying notes are an integral part of these consolidated financial statements.

Acerus Pharmaceuticals Corporation

Consolidated Statements of Changes in Shareholders' Equity (Deficit)
For the years ended December 31, 2021 and 2020
(expressed in thousands of U.S. dollars)

	Note	Share capital	Warrants	Contributed surplus	Accumulated other comprehensive loss	Deficit	Total
Balance, January 1, 2020		$ 158,402	$ 1,420	$ 11,361	$ (13,949)	$ (170,065)	$ (12,831)
Net loss and comprehensive loss for the year		-	-	-	-	(24,424)	(24,424)
Issuance of common shares, net of costs	16	27,829	-	-	-	-	27,829
Debt and interest accrued conversion, net of costs	16	11,932		-	-	-	11,932
Warrant expiry	16		(1,420)	1,420			-
Share based compensation	21	-	-	654	-	-	654
Balance as at December 31, 2020		$ 198,163	$ -	$ 13,435	$ (13,949)	$ (194,489)	$ 3,160
Balance as at January 1, 2021		198,163	-	13,435	(13,949)	(194,489)	3,160
Net loss and comprehensive loss for the year		-	-	-	-	(33,817)	(33,817)
Fair value adjustment on subordinated loan facility	14	-	-	3,548	-	-	3,548
Share based compensation	21	-	-	1,095	-	-	1,095
Balance as at December 31, 2021		$ 198,163	$ -	$ 18,078	$ (13,949)	$ (228,306)	$ (26,014)

The accompanying notes are an integral part of these consolidated financial statements.

Acerus Pharmaceuticals Corporation
Consolidated Statements of Cash Flows
For the years ended December 31, 2021 and 2020
(expressed in thousands of U.S. dollars)

	Note	December 31, 2021	December 31, 2020
Operating activities:			
Net loss for the period		$ (33,817)	$ (24,424)
Items not affecting cash:			
Adjustment for unrealized foreign exchange loss		16	15
Amortization of intangible assets	12	150	717
Depreciation of property and equipment	10	513	245
Depreciation of right of use asset	11	18	48
Interest expense and other financing costs	18	2,570	1,975
Change in fair value of derivative financial instruments	15	(84)	(182)
Share based compensation	21	1,095	654
Termination fee	7	6,204	-
Gain on disposal of property and equipment		(56)	-
Impairment loss on intangible asset	12	1,656	-
Loss on sale of intangible asset	12	-	1,629
Loss on modification of debt	14	64	-
Gain on remeasurement of lease liability	11	-	(75)
Net changes in non-cash working capital items related to operating activities:			
Trade and other receivables	6	106	(357)
Contract asset	7	936	228
Inventory	8	(2,292)	(819)
Prepaids and other assets	9	(359)	133
Accounts payable and accrued liabilities	13	2,013	(1,954)
Termination fee paid	7	(2,250)	-
Net cash used in operating activities		(23,517)	(22,167)
Financing activities			
Interest, financing fees and transactions costs paid	14	(932)	(1,434)
Proceeds from issuance of common shares, net of financing costs	16	-	27,829
Financing costs from debt conversion	16	-	(94)
Payment of long-term debt	14	(2,300)	(750)
Principal elements of lease payments	11	(229)	(91)
Proceeds from subordinated loan	14	20,000	-
Net cash provided by financing activities		16,539	25,460
Investing activities			
Proceeds from disposition of property and equipment		56	-
Acquisition of property and equipment	10	(72)	-
Net cash provided by investing activities		(16)	-
Net decrease in cash for the period		(6,994)	3,293
Cash, beginning of the year		9,153	5,860
Cash, end of the year		$ 2,159	$ 9,153

The accompanying notes are an integral part of these consolidated financial statements.

1. GOING CONCERN

These audited consolidated financial statements have been prepared using International Financial Reporting Standards applicable to a going concern, which contemplates the realization of assets and settlement of liabilities in the normal course of business as they come due for the foreseeable future.

The ability of Acerus Pharmaceuticals Corporation ("Acerus") and its subsidiaries (together, the "Company") to realize its assets and meet its obligations as they come due is dependent on successfully commercializing its existing products, bringing new products and technologies to market and achieving future profitable operations, the outcome of which cannot be predicted at this time. Furthermore, the Company will require additional funding, either from commercial sales of its existing products, or commercial transactions with lenders or investors, to continue the development and commercialization of additional products as well as fund the contemplated $6 million up-front fee on the indirect acquisition of Serenity LLC described in note 27 *Subsequent events*. These circumstances cast significant doubt as to the ability of the Company to meet its obligations as they come due and, accordingly, the ultimate appropriateness of the use of accounting principles applicable to a going concern.

Management has assessed the Company's ability to continue as a going concern and concluded that in order to complete its planned product development and commercialization programs and meet the amended minimum threshold for consolidated unencumbered liquid assets required to be maintained by the Company, additional capital will be required within the next quarter. The Company's ability to accomplish its strategic plans is dependent upon earning sufficient revenues from existing products, bringing new products and technologies to market, achieving future profitable operations, obtaining additional financing, and executing other strategic initiatives that could provide cash flows, or alternatively curtailing expenditures. There are no assurances that any of these initiatives will be successful. Delays in reintroducing Natesto® to the Canadian market as planned in 2022, or unsuccessfully executing its US market strategy, could result in the Company failing to meet projected revenues or other budgeted targets which could result in the Company violating its debt covenants. In addition, factors within and outside the Company's control could have a significant bearing on its ability to obtain additional financing.

These consolidated financial statements do not reflect the adjustments to the carrying values of assets and liabilities and the reported expenses and statement of financial position classifications that would be necessary if the Company were unable to realize its assets and settle its liabilities as a going concern in the normal course of operations. Such adjustments could be material.

2. DESCRIPTION OF BUSINESS

These audited consolidated financial statements represent the consolidated accounts of Acerus Pharmaceuticals Corporation ("Acerus") (incorporated in Ontario, Canada) and its wholly-owned subsidiaries, Acerus Labs Inc. ("ALI") (incorporated in Ontario) and Acerus Biopharma Inc. ("ABI") (incorporated in Ontario). The head office, principal address and records office of the Company are located in Mississauga, Ontario, Canada. The Company's registered address is Suite 205, 7025 Langer Drive, Mississauga, Ontario, L5N 0E8.

Acerus is a Canadian-based specialty pharmaceutical company focused on the development, manufacture, marketing and distribution of branded products that improve patient experience, with a primary focus in the field of men's health. The Company commercializes its products within North America through Third Party Logistics providers ("3PLs") and outside of North America through a global network of licensed distributors. Within the U.S. market, the Company has also contracted commercial providers Syneos Health Inc. ("Syneos") and Amneal Pharmaceuticals Inc ("Amneal") to augment sales, marketing and medical science liaison capacity.

Effective March 31, 2021, the Company terminated its previous license and supply contract with Aytu BioScience Inc. ("Aytu") for Natesto® in the U.S. market. From April 1st, 2021 the Company assumed 100% of the risk and reward of products sales of Natesto® and, following a transition period that ended on July 31, 2021, assumed all responsibilities within the U.S. market for services previously contracted to them effective August 1, 2021.

3. SIGNIFICANT ACCOUNTING POLICIES

(a) Basis of presentation

These consolidated financial statements have been prepared in accordance with International Financial Reporting Standards ("IFRS") and International Financial Reporting Interpretations Committee ("IFRIC") interpretations assessed by the International Accounting Standards Board. The consolidated financial statements have been prepared under the historical cost convention, except for certain financial instruments (warrants) that are measured at fair value, as explained in the accounting policies below. The accounting policies have been consistently applied to the years presented unless otherwise stated.

The preparation of the consolidated financial statements in conformity with IFRS requires the use of certain critical accounting estimates. It also requires management to exercise its judgment in the process of applying the Company's accounting policies. The areas involving a higher degree of judgment or complexity, or areas where assumptions and estimates are significant to the consolidated financial statements, are disclosed in note 4.

(b) Changes in accounting policy and disclosures

At the date of authorization of these financial statements, several new, but not yet effective Standards and amendments to existing Standards, and Interpretations have been published by the IASB. None of these Standards or amendments to existing Standards have been adopted early by the Company. The Company anticipates that all relevant pronouncements will be adopted for the first period beginning on or after the effective date of the pronouncement. New Standards, amendments and Interpretations not adopted in the current year have not been disclosed as they are not expected to have a material impact on the Company's consolidated financial statements.

IBOR reform

In recent years, global regulators have prioritized the reform and replacement of benchmark interest rates such as LIBOR and other interbank offered rates (IBORs). As a result, public authorities and other market participants are selecting new benchmark interest rates in key currencies with the objective that such rates will be based on liquid underlying market transactions. With this reform, the IASB have provided amendments to IFRS 9 - Financial Instruments, IFRS 7 - Financial Instruments: Disclosures and IAS 39 - Financial Instruments: Recognition and Measurement. The amendments were adopted effective January 1, 2021 and did not have a material impact on the Company's consolidated financial statements.

(c) Consolidation

The wholly-owned subsidiaries of the Company are consolidated to produce the financial results for the consolidated Company. All intercompany transactions, balances, income and expenses on transactions between subsidiaries are fully eliminated. Profits and losses resulting from intercompany transactions that were recognized are also fully eliminated.

(d) Segment reporting

Operating segments are reported in a manner consistent with the internal reporting provided to the chief operating decision-makers. The chief operating decision-makers, who are responsible for allocating resources and assessing performance of the operating segments, have been identified as the Chief Executive Officer and the Chief Financial Officer.

3. SIGNIFICANT ACCOUNTING POLICIES (continued)

(e) Foreign currency translation

Presentation currency & financial statements

The consolidated financial statements are presented in United States dollars, which in the opinion of management, is the most appropriate presentation currency as the United States dollar is used to significant effect in, or has a significant impact on, the operations of the Company and reflects the economic substance of a majority of the underlying events and circumstances relevant to the Company.

Transactions and balances

Foreign currency transactions are translated into the functional currency of the relevant entity using the exchange rates prevailing at the date of the transactions. Foreign exchange gains and losses resulting from the settlement of such transactions and from the translation at period-end exchange rates of monetary assets and liabilities denominated in foreign currencies are recognized in other income (expense) costs in the consolidated statement of loss and comprehensive loss.

(f) Trade receivables

Trade receivables are amounts due from customers for inventory sold in the ordinary course of business. If collection is expected in one year or less, they are classified as current assets. If not, they are presented as non-current assets.

Trade receivables are recognized initially at fair value and subsequently measured at amortized cost using the effective interest method, less provision for impairment. Provisions for doubtful trade receivables are established using an expected credit loss model (ECL). The provisions are based on a forward-looking ECL, which includes possible default events on the trade receivables over the entire holding period of the trade receivable, considering the occurrence of a significant increase in credit risk. Significant financial difficulties of a customer, such as probability of bankruptcy, financial reorganization, default or delinquency in payments are considered indicators that recovery of the trade receivable is doubtful. These provisions represent the difference between the trade receivable’s carrying amount in the consolidated statement of financial position and the estimated net collectible amount. Charges for doubtful trade receivables are recorded as marketing and selling costs recognized in the consolidated statement of loss within “Selling, general & administration” expenses. As at December 31, 2021 and 2020, management determined that no provision for impairment was required.

(g) Inventory

Inventories consist of raw materials, work-in-process and finished goods. Inventories are stated at the lower of cost based on first-in-first-out (“FIFO”) and net realizable value. Net realizable value is the estimated selling price in the ordinary course of business, less applicable variable selling expenses.

3. SIGNIFICANT ACCOUNTING POLICIES (continued)

(h) Property and equipment

Property and equipment are stated at cost less accumulated depreciation and impairment losses. Depreciation is recorded as follows:

Office, furniture and fixtures	- straight-line over 3 to 5 years;
Laboratory equipment	- straight-line over 5 to 10 years;
Manufacturing equipment	- straight-line over 3 to 10 years;
Leasehold improvements	- straight-line over the expected term of the lease.

Expenditures that extend the useful life of the asset are capitalized and minor repair and maintenance costs are expensed as incurred to the consolidated statement of loss and comprehensive loss. The assets' residual values and useful lives are reviewed, and adjusted if appropriate, at the end of each reporting period. An asset's carrying amount is written down immediately to its recoverable amount if the asset's carrying amount is greater than its estimated recoverable amount. Gains and losses on disposals are determined by comparing the proceeds with the carrying amount and are recognized within the consolidated statement of loss and comprehensive loss.

(i) Leases

Leases are recognized as a right-of-use asset and a corresponding liability at the date at which the leased asset is available for use by the Company. Each lease payment is allocated between the liability and finance cost. The finance cost is charged to comprehensive loss over the lease term so as to produce a constant periodic rate of interest on the remaining balance of the liability for each period. The right-of-use asset is depreciated over the shorter of the asset's useful life and the lease term on a straight-line basis.

Assets and liabilities arising from a lease are initially measured on a present value basis. Lease liabilities include the net present value of fixed lease payments.

The lease payments over the lease term are discounted using the interest rate implicit in the lease. If that rate cannot be determined, the lessee's incremental borrowing rate is used, being the rate that the lessee would have to pay to borrow the funds necessary to obtain an asset of similar value in a similar economic environment with similar terms and conditions. Subsequent to initial measurement, the liability will be reduced for payments made and increased for interest. It is remeasured to reflect any reassessment or modification, or if there are changes in in-substance fixed payments. When the lease liability is remeasured, the corresponding adjustment is reflected in the right-of-use asset, or comprehensive loss if the right-of-use asset is already reduced to zero.

In determining the lease term, management considers all the facts and circumstances that create an economic incentive to exercise an extension option, or not exercise a termination option. The extension option is only included in the lease term if the lease is reasonably certain to be extended. The assessment is reviewed if a significant event or a significant change in circumstances occurs which affects this assessment and that is within management's control.

Right-of-use assets are measured at cost comprising the following:

- The amount of the initial measurement of lease liability
- Any lease payments made at or before the commencement date less any lease incentives received
- Any initial direct costs, and
- Any restoration costs

Payments associated with short-term leases and leases of low-value assets are recognized on a straight-line basis as an expense in comprehensive loss. Short-term leases are leases with a lease term of 12 months or less. Low-value assets comprise IT-equipment.

3. SIGNIFICANT ACCOUNTING POLICIES (continued)

(j) Intangible assets

Intangible assets acquired separately

Intangible assets with determinable lives are stated at cost less accumulated amortization and impairment losses. Such intangible assets are amortized over their estimated useful lives using the straight-line method. Intangible assets held by the Company currently hold estimated useful lives between eight and twenty years.

Derecognition of intangible assets

An intangible asset is derecognized on disposal once control has transferred to another party, or when no future economic benefits are expected from use or disposal. Gains or losses arising from derecognition of an intangible asset, measured as the difference between the net disposal proceeds and the carrying amount of the asset, are recognized in the consolidated statement of loss and comprehensive loss when the asset is derecognized. Where the disposal proceeds consist of variable consideration (e.g. future royalty payments), the estimated disposal proceeds are only recorded to the extent that it is highly probable that a significant reversal in the amount of cumulative consideration will not occur when the uncertainty associated with the variable consideration is subsequently resolved.

(k) Impairment of non-financial assets

The Company reviews assets such as property and equipment and intangible assets with finite useful lives for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. For the purpose of measuring recoverable amounts, assets are grouped at the lowest levels for which there are separately identifiable cash flows (cash generating units or "CGUs"). Recoverable amount is the higher of an asset's fair value less the cost of disposal and value in use (being the present value of the expected future cash flows of the relevant asset or CGU) as determined by management.

Any impairment losses are recognized immediately in the consolidated statement of loss and comprehensive loss. Non-financial assets other than goodwill that suffered impairment are reviewed for possible reversal of the impairment at each reporting date.

(l) Income taxes

Income taxes are accounted for using the liability method. Deferred tax assets and liabilities are recognized for the differences between the tax basis and carrying amounts of assets and liabilities, for operating losses and for tax credit carry-forwards. Deferred tax assets are recognized to the extent that it is probable that future taxable profit will be available against which temporary differences can be utilized. Deferred tax assets and liabilities are measured using enacted or substantially enacted tax rates and laws.

Management makes estimates and takes tax filing positions and where it is uncertain whether certain estimates and tax filing positions will be sustained upon examination by applicable tax authorities, provisions for uncertain tax positions are recorded based on management's estimate of the most likely outcome. Where the final tax outcome of these matters is different from the amounts that were initially recorded, such differences will impact the current and deferred income tax assets and liabilities in the period in which such determination is made.

3. SIGNIFICANT ACCOUNTING POLICIES (continued)

(m) Financial instruments (excluding hedging instruments)

Financial assets and financial liabilities are recognized when the Company becomes a party to the contractual provisions of the instruments.

(i) Classification

The Company classifies its financial instruments in the following categories: at fair value through profit and loss ("FVPL"), at fair value through other comprehensive income (loss) ("FVOCI") or at amortized cost. The Company determines the classification of financial assets and liabilities at initial recognition. The classification of the Company's financial assets and liabilities is disclosed in note 24.

(ii) Measurement

Amortized cost

Financial assets and liabilities at amortized cost are initially recognized at fair value (except for trade receivables that do not contain a significant financing component which are measured at the transaction price) plus or minus transaction costs and subsequently carried at amortized cost less any impairment.

Fair value through profit and loss

Financial assets and liabilities carried at FVPL are initially recorded at fair value and transaction costs are expensed in the consolidated statements of operations and comprehensive loss. Derivatives are included in this category unless designated as hedges. Realized and unrealized gains and losses arising from changes in the fair value of the financial assets and liabilities held at FVPL are included in the consolidated statements of loss and comprehensive loss within other gains and losses in the period in which they arise.

Fair value through other comprehensive income

Financial assets carried at FVOCI are measured at fair value. Interest, dividends and impairment gains and losses are recognized in the consolidated statement of operations on the same basis as for amortized cost assets. Changes in fair value are recognized initially in other comprehensive income. When the assets are derecognized or reclassified the cumulative changes in fair value are reclassified to the consolidated statement of loss (except where they relate to investments in equity instruments). The Company has no financial instruments measured at fair value through other comprehensive loss.

(iii) Impairment of financial assets at amortized cost

For trade receivables and contract assets, the Company applies the simplified approach to providing for expected credit losses prescribed by IFRS 9, which requires the use of the lifetime expected loss provision for all trade receivables and contract assets based on the Company's historical default rates over the expected life of the trade receivables adjusted for forward-looking estimates (see notes 6, 7 and 24).

3. SIGNIFICANT ACCOUNTING POLICIES (continued)

(m) Financial instruments (excluding hedging instruments) (continued)

(iv) Derecognition

i. Financial assets - The Company derecognizes financial assets only when the contractual rights to cash flows from the financial assets expire, or when it transfers the financial assets and substantially all of the associated risks and rewards of ownership to another entity. Gains and losses on derecognition are recognized in the consolidated statements of loss and comprehensive loss.
ii. Financial liabilities - The Company derecognizes financial liabilities only when its obligations under the financial liabilities are discharged, cancelled or expired. Generally, the difference between the carrying amount of the financial liability derecognized and the consideration paid and payable, including any non-cash assets transferred or liabilities assumed, is recognized in the consolidated statements of loss and comprehensive loss.

Financial liabilities and equity instruments

Classification as debt or equity

Instruments issued by the Company are classified as either financial liabilities or as equity in accordance with the substance of the contractual arrangements and the definitions of a financial liability and an equity instrument.

Equity instruments

An equity instrument is any contract that evidences a residual interest in the assets of an entity after deducting all of its liabilities. Equity instruments issued by the Company are recognized at the proceeds received, net of direct issue costs. Proceeds received on issuance of units, consisting of common shares and warrants, are allocated to those two instruments based on their relative fair values. Transaction costs are also allocated to the common shares and warrants in proportion to the allocation of proceeds.

Repurchase of the Company's own equity instruments is recognized and deducted directly in equity. No gain or loss is recognized in profit or loss on the purchase, sale, issue or cancellation of the Company's own equity instruments.

Compound financial instruments

Compound financial instruments contain both a liability and an embedded derivative in accordance with the substance of the contractual arrangement. At the date of issue, the fair value of the liability component is estimated using the interest rate applied by the market for similar debt instruments. The liability is subsequently measured on an amortized cost basis using the effective interest method over the expected life. The embedded derivative is initially recorded at fair value using pricing model techniques. It is recognized and presented together with the liability in the consolidated statement of financial position and is subsequently re-measured at fair value through profit and loss.

(n) Derivative financial instruments

Warrants issued as part of a financing arrangement and not in exchange for goods or services are accounted for within the scope of IAS 32 and IFRS9. The accounting under IAS 32, depends on the terms and conditions of the warrants and whether the warrants have characteristics of: (i) a derivative financial liability ("financial liability") that is measured at fair value, with changes in value recorded in profit or loss; or (ii) an equity instrument. Equity classification applies to instruments where a fixed amount of cash (or liability), denominated in the issuer's functional currency, is exchanged for a fixed number of shares. Warrants that fail to meet equity classification are accounted for as financial liabilities.

Acerus has issued warrants as part of financing arrangement that have a cashless exercise option. These are treated as a derivative liability and therefore measured at fair value. Gains and losses on re-measurement are presented separately in the consolidated statement of loss and comprehensive loss. These instruments are classified as non-current based on their expected life.

3. SIGNIFICANT ACCOUNTING POLICIES (continued)

(n) Derivative financial instruments (continued)

Transaction costs that are directly attributable to the long-term debt and the joint issuance of these warrants have been allocated to long term debt and to the warrants based on their relative fair value.

In addition to the above, the Company also has an embedded derivative of nominal value related to long-term debt (interest floor and prepayment option).

Derivatives embedded in non-derivative host contracts are separated from the host contract when their economic risk and characteristics are not closely related to those of the host contract and the compound instrument is not measured at FVTPL.

(o) Revenue

Revenue is derived from two customer groups, those being wholesalers in North America and licensed distributors for international markets. Revenue from the sale of goods to both groups, is recorded as "Product revenue" in the consolidated statement of loss and is recognized when a contractual promise to a customer (the performance obligation) has been fulfilled by transferring control over the promised goods and services to the customer. The amount of revenue to be recognized is based on the consideration the Company expects to receive in exchange for its goods and services.

Revenue is recognized from licensed distributors at the time of sale as this is the point of transferring control over the promised goods to the customer, based upon the following; i) the licensed partner is responsible for managing their customers including setting the sales price and collecting their receivables; ii) the costs associated with the sale have been incurred at the time the product is sold to the licensed distributor; and iii) the Company can reliably measure the amount of revenue to be recognized.

Revenue is recognized from wholesalers at the time of sale as this is the point of transferring control over the promised goods to the customer, based upon the following; i) the wholesaler is responsible for managing their customers and collecting their receivables; ii) the costs associated with the sale have been incurred at the time the product is sold to the wholesaler; and iii) the Company can reliably measure the amount of revenue to be recognized (including the impacts of gross to net adjustments; notably, early pay discounts, rebates, co-pay, distribution fees, chargebacks and returns).

Product revenue from sales to wholesalers in North America is recorded net of deductions for early pay discounts, rebates, co-pay, distribution fees, chargebacks and returns (collectively known as gross to net adjustments). A description of these adjustments is as follows:

- Early pay discounts are granted for payment on mutually agreed terms.
- Rebates represent discounts off the wholesale acquisition cost ("WAC") of product negotiated between the Company and individual Pharmacy Benefit Managers ("PBMs") in return for listing on the PBMs health plan formularies as well as pricing discounts applicable to government administered benefit plans.
- Co-Pay represents the Company's cash discount offered to patients directly to cover the remaining out of pocket costs for the Company's products.
- Distribution fees represent the costs charged by wholesalers for distributing the Company's product throughout North America.
- Charge backs represent discounts off the wholesale acquisition cost of product negotiated between the Company and select wholesalers and large pharmacy chains.
- Returns represents products previously sold subsequently returned to the Company due to product expiry (i.e. short-dated product). The Company's wholesaler agreements provide for an 18-month period for the return of short dated product commencing 6 months before the products expiry date.

Amounts accrued for individual gross to net items are included in Accounts payable and accrued liabilities within current liabilities. These estimates are subject to regular review and adjustment as appropriate based upon the most recent data available to Management. Refer to notes 4 & 13 for further details.

3. SIGNIFICANT ACCOUNTING POLICIES (continued)

(o) Revenue (continued)

Prior to the termination of the license and supply agreement with Aytu Biosciences ("Aytu") on March 31, 2021, the Company recognized revenue on delivery of the product to this marketing partner as the sum of two items: 1) the contractual supply price when the product is delivered; and 2) an estimate of the top-up revenue that is highly probably will not result in a significant reversal in the amount of cumulative revenue earned when the marketing partner recognizes the sale of the product. An adjustment is made, if required, to the actual top-up revenue earned when the marketing partner recognizes the sale of the product. The initial estimate of the top-up revenue, and subsequent adjustments if required, is reflected as a contract asset until it is earned (note 7).

License and other revenue mainly consist of upfront payments and milestone payments received from license and supply agreements. License and supply agreements may contain multiple elements. The individual elements of each agreement are divided into separate units of accounting if certain criteria are met. The applicable revenue recognition approach is then applied to each unit. Otherwise, the applicable revenue recognition criteria are applied to combined elements as a single unit of accounting.

Upfront payments are considerations received for the right to use the Company's intellectual property. Revenues from upfront payments in license and supply agreements are recognized when control transfers to the licensee and the license period begins. Milestone income is recognized at the point in time when it is highly probable that the respective milestone event criteria is met, and the risk of reversal of revenue recognition is remote.

(p) Cost of sales

Costs of sales comprise the cost of inventory sold during the year, spoilage, royalty expenses, depreciation, amortization charges and distribution costs.

(q) Share-based compensation

The Company has an Omnibus Incentive Plan ("Plan") as described in note 21. The Plan provides for the issuance of stock options, restricted share units and performance share units to employees, officers, consultants and others as determined by the Board of Directors. The Plan also provides for the issuance of deferred share units to the directors.

Stock options

Each option installment is treated as a separate option grant with graded-vesting features, forfeitures are estimated at the time of grant and revised if actual forfeitures are likely to differ from previous estimates, and options granted to parties other than employees are measured at their fair value on the date goods or services are received. The fair value of the goods and services received are determined indirectly by reference to the fair value of the instrument granted, unless the fair value of the goods and services received is readily apparent.

Options generally vest over a period of up to three years. Over the vesting period of the option grants, the fair value is recognized as compensation expense with a corresponding increase in contributed surplus. The contributed surplus is reduced as options are exercised through a credit to share capital. The consideration paid by option holders is credited to share capital when the options are exercised.

Restricted share units ("RSUs")

RSUs will be settled by the issuance of Company shares. RSUs vest one to three years from the date of grant. The cost of the RSU is charged to selling, general and administrative expenses using the cliff vesting method. The fair value of each grant of RSUs is the fair value of the Company's share price on the date of the grant. The resulting compensation expense is charged to income over the period the participants unconditionally become entitled to the award, with a corresponding increase in contributed surplus.

3. SIGNIFICANT ACCOUNTING POLICIES (continued)

(q) Share-based compensation (continued)

The compensation expense related to stock option and RSU share-based payments is determined using the Black-Scholes option pricing model. The significant variables and estimates used in the model are the volatility, dividend yield, expected option life, and risk-free interest rate. In addition, management also applies an estimated forfeiture rate. Additional information is disclosed in note 21.

Performance share units ("PSUs")

PSUs will be settled by the issuance of Company shares. PSUs vest one to three years from the date of grant. The cost of the PSU is charged to selling, general and administrative expenses using the graded vesting method. The fair value of each grant of PSUs is the fair value of the Company's share price on the date of the grant. The resulting compensation expense is charged to income over the period the participants unconditionally become entitled to the award, with a corresponding increase in contributed surplus. Non-market vesting conditions are considered in making assumptions about the number of awards that are expected to vest. At each reporting date, the Company reassesses its estimates of the number of awards that are expected to vest and recognizes the impact of any revision as a charge to income with a corresponding increase in contributed surplus. No PSUs have been issued as at December 31, 2021.

Deferred share units ("DSUs")

DSUs vest upon grant and are settled in cash. The vested DSUs are marked-to-market at the end of each reporting period based upon the closing price of the Company's shares with the change in fair value recorded in selling, general and administrative expenses. No DSUs have been issued as at December 31, 2021.

(r) Investment tax credits

Investment tax credits, which are earned as a result of incurring qualifying research and development expenditures, are treated either as a reduction of the relevant asset account or research and development expenses in the period that the credits become available and there is reasonable assurance that they will be realized.

(s) Loss per share

Basic loss per share is calculated by dividing the net loss by the weighted average number of common shares outstanding during the year. Diluted loss per share is calculated by dividing the applicable net loss/income by the sum of the weighted average number of shares outstanding during the year and all additional common shares that would have been outstanding if potentially dilutive common shares had been issued during the year.

(t) Clinical trial expenses

Clinical trial expenses are accrued based on estimates of the services received and efforts expended pursuant to contracts with clinical research organizations (CROs), consultants and other vendors. In the normal course of business, the Company contracts third parties to perform various clinical trial activities in the ongoing development of potential products. The financial terms of these agreements vary from contract to contract, are subject to negotiation and may result in uneven payment flows. Payments under the contracts depend on factors such as the achievement of certain events, the successful enrolment of patients or the completion of portions of the clinical trial or similar conditions. The Company accrues and expenses clinical trial activities based upon estimates of the proportion of work completed over the life of the individual clinical trial and patient enrolment rates in accordance with agreements established with CROs and clinical trial sites

4. CRITICAL ACCOUNTING JUDGEMENTS AND KEY SOURCES OF ESTIMATION UNCERTAINTY

When preparing the consolidated financial statements, management undertakes a number of judgments, estimates and assumptions regarding recognition and measurement of assets, liabilities, income and expenses. Information about the judgments, estimates and assumptions that have the most significant effect on the recognition and measurement of assets, liabilities, income and expenses are discussed below.

Critical accounting estimates and judgments

Revenue recognition

Following the termination of the agreement with our previous U.S. marketing partner (note 7), effective April 1, 2021, Natesto® product revenue from sales in North America is recorded at the invoiced amount less estimated accruals for gross to net adjustments; namely, early pay discounts, rebates, co-pay, distribution fees, chargebacks and returns. Information about the judgments, estimates and assumptions that have the most significant effect on the recognition and measurement of product revenue are discussed below.

Rebates & Co-Pay

The accrual for rebates and co-pay is a significant and complex estimate used in the recognition of product revenue and represents variable consideration under IFRS 15. Rebates are negotiated with individual PBMs as a percentage off of WAC pursuant to agreements signed with the Company. In return, the PBM agrees to list the Company's drug on its health plan formulary typically in a preferential priority to other drug therapy alternatives. Rebates are invoiced by and paid directly to the PBMs for products subsequently prescribed under the health plans administered by them. Co-Pay represents the Company's cash discount offered to patients directly to cover the remaining out of pocket costs for the Company's products after rebates are applied. The cash rebate is claimed using a Co-Pay card issued to the patient, which is administered by a third party vendor. In its' assessment, the Company estimates its accrual for rebates & co-pay based on current contractual terms, historical claims experience and forward looking projected prescription forecasts of shipments from wholesalers that will be dispensed for eligible benefit plan participants. While such experience has allowed for reasonable estimates in the past, historical claims and forward looking forecasts may not always be an accurate indicator of future rebate & co-pay liabilities. The Company continually monitors the accrual for rebates and co-pay and makes adjustments when it believes that actuals may differ from established accruals. Rebates and co-pay charges are recognized as a reduction of sales revenue in the period in which the underlying sales are recognized.

Returns

The accrual for returns is a significant and complex estimate used in the recognition of product revenue and represents variable consideration under IFRS 15. The Company's wholesaler agreements provide for an 18-month window for the return of short dated product which commences 6 months before the products expiry date. Accruals for returns are recognized in the period the underlying product revenue is recognized. The Company estimates accruals for returns based on assumptions of the inventory of its products in the wholesale distribution channel that remain subject to returns, developed using existing return policies with customers, product expiry dates, data from wholesalers and large pharmacy chains of their inventory levels, external prescription data, historical returns experience and projected future returns. During the six months prior to the termination of the Aytu agreement, Aytu experienced higher than previously expected returns of Natesto. History may not always be an accurate indicator of future returns. The key estimates used to calculate the returns accrual include an assumed return rate of 1% and an assumed inventory in the retail channel equal to approximately one months' sales. If the assumed returns rate was to increase or decrease by 100% (i.e. 1% to 2%), the return accrual would increase or decrease by $50 respectively. The Company continually monitors accruals for returns and makes adjustments when it believes that actual product returns may differ from established reserves. While such experience has allowed for reasonable estimations in the past, history may not always be an accurate indicator of future returns.

4. CRITICAL ACCOUNTING JUDGEMENTS AND KEY SOURCES OF ESTIMATION UNCERTAINTY (continued)

Impairment of non-financial assets

The Company has an intangible asset which has a carrying value of $1,656 relating to a technology platform ("TriVair") for pulmonary and nasal delivery of pharmaceutical medication that was acquired in 2009 (notes 5 and 12). The recoverability of this intangible asset is dependent on successful development and subsequent commercialization of the related products or entering into a potential transaction to license or sell the technology. The Company has granted a third party exclusive worldwide rights to develop, manufacture and market nasal and pulmonary inhalation devices developed or manufactured using the TriVair technology under a five-year intellectual property right and product development agreement. In return, the Company is entitled to receive 37% of any upfront fees, payments, or milestone payments on the first partnering transaction entered into by this third party (and 25% on any subsequent partnering transactions) and 15% of all revenues received by this third party in connection with the sale of products developed using the technology to other parties. The third party has the option to extend this agreement by a further five years from the expiry of the term if the total amounts received by the Company during the initial term are at least $2,500. No revenues have been received to date. Management is required to assess at the end of each reporting period whether there is any indication that this intangible asset may be impaired. If any such indication exists, management is required to estimate the recoverable amount of the intangible asset. Where an impairment exists, the asset is written down to its recoverable amount. This requires a significant amount of management judgment.

During December 2021, the Company was informed that the application to prosecute a patent for TriVair for the US market was rejected for a second time. This decision culminates several years of effort with the US regulator. Although a Request for Rehearing has been filed to support a third submission, the likelihood of the existing design being patented for the US market without either a significant design modification, or a limitation in therapy application regarding pulmonary and/or nasal delivery, is unlikely. Accordingly, management has determined that an impairment has occurred.

The recoverability of this intangible asset is dependent on successful technology development and subsequent commercialization of related products. Despite successfully prosecuting the TriVair patent in other non-US markets, the absence of success in the US market has impeded any significant commercial success to date. In the absence of a US market patent prosecution, and in the absence of any commercial opportunities to date for the existing technology in non-US markets, the recoverable amount of the intangible asset has been reduced to $nil at December 31, 2021. Accordingly, a charge of $1,656 has been recorded in research and development expense. See note 12 for further details.

Derecognition of Estrace product right intangible asset and related accrued receivable

The Company entered into an asset purchase agreement to sell all of its Estrace® assets (excluding accounts receivable and inventory), effective November 30, 2020, to a third party in exchange for consideration in the form of royalties ranging from 10% to 15% on future Estrace product sales made by the third party over a period of approximately five years ending May 31, 2026. However, as the Company was not able to meet certain "launch conditions", including the transfer of the manufacturing process to the new contract manufacturer by June 30, 2021, the third party is under no obligation to relaunch the product.

Derecognizing the acquired assets occurs when the buyer obtains control of the assets and has the ability to direct the use of and obtain substantially all of the remaining benefits from the assets which required the use of significant judgement by management. In management's view, based on the facts and circumstances surrounding this transaction, control of the acquired assets was considered to have transferred to the third party on November 30, 2020, notwithstanding the additional performance obligations the Company is required to complete to fulfil the launch conditions specified in the agreement. As a result, the acquired assets were derecognized and a loss of $1,629 recorded on their disposal in the year ended December 31, 2020, assuming disposal proceeds of $691 and after providing for $288 of costs expected to be incurred to complete the transfer of the manufacturing process to the new contract manufacturer as laid out in the proposed manufacturing transfer agreement between the Company, the third party and the new contract manufacturer.

The future royalties receivable represents variable consideration and is only included in the disposal proceeds to the extent that it is highly probable that a significant reversal in the amount of cumulative consideration will not occur when the uncertainty associated with the variable consideration is subsequently resolved. Determining the amount of variable consideration to record requires significant judgment and involves significant estimation uncertainty. The Company

4. CRITICAL ACCOUNTING JUDGEMENTS AND KEY SOURCES OF ESTIMATION UNCERTAINTY (continued)

applied the expected value method using a probability weighted approach modeling multiple scenarios and assigning probability factors to each scenario to determine this amount, resulting in disposal proceeds of $691 being recorded in the year ended December 31, 2020, which was included in contract assets (note 7). As certain launch conditions were not met by June 30, 2021 (and have still not been met), including the successful transfer of the manufacturing process by the Company to a new contract manufacturer, the third party is under no obligation to relaunch the product. Taking into account the Company's confidence level in being able to complete the launch conditions, and timing thereof, and the impact this may have on the third party's decision to relaunch the product, the carrying value has been reduced to $nil to reflect management's estimate of the amount highly probable of not being subject to a significant reversal if/when these uncertainties are resolved. No additional costs are considered necessary for expenses associated with delays to date. A launch, assuming launch conditions can be met, is currently indeterminate. A charge of $150 was recorded in cost of goods sold to reflect the Company's estimate of the net realizable value of raw materials currently held at the new contract manufacturer.

5. PRODUCT RIGHTS AND ASSET ACQUISITIONS

(a) Bio-adhesive gel technology

In May 2009 (and in accordance with certain subsequent contractual amendments), ABI acquired certain rights from M&P Patent AG (since renamed Mattern Pharma) to use certain technology to develop, apply for and obtain regulatory approval, and to manufacture and sell four product candidates pursuant to an Intellectual Property Rights and Product Development Agreement ("IP Agreement") in exchange for milestones, royalties based on the Company's gross margin, and other payments depending on the achievement of specified goals for Natesto® and Tefina™.

On May 17, 2018, the Company entered into an agreement with Mattern Pharma AG (Mattern) to buy out all of its obligations (the "Buyout") under the Amended and Restated Intellectual Property Rights and Product Development Agreement, dated December 21, 2013 (as amended) ("License Agreement"), including all of its future royalty payment obligations. Under the License Agreement, Acerus owed royalties on upfronts, milestones and revenues from products, including Natesto®, covered by the License Agreement, including minimum annual royalties of $5,000 if gross product sales are $75,000 or greater or $2,500 if gross product sales are below $75,000 starting in fiscal 2018 and ending in 2024. Pursuant to the Buyout, with the payment of $7,500, all of Acerus' material obligations owed to Mattern are suspended, but Mattern's obligations to Acerus remain in force. Under the Buyout, among other rights, Acerus receives a perpetual, fully-paid, irrevocable license to all of Mattern's patents and know-how for the products covered by the License Agreement. Acerus paid the balance of the $7,500 Buyout payment during 2020. The terms of the Buyout are now in full force and effect, including a covenant not to sue and the waiver from Mattern for the entirety of the License Agreement.

(b) Pulmonary and nasal dry powder delivery technology

On November 30, 2009, ABI entered into an asset purchase agreement with Keldmann Healthcare A/S ("Keldmann"), a privately-held Denmark-based technology company.

Pursuant to the terms of the asset purchase agreement, ABI paid $4,500 to Keldmann to acquire the Direct Haler technology platform (TriVair) for pulmonary and nasal delivery of pharmaceutical medications. This acquisition was accounted for as a purchase of identifiable intangible and tangible assets.

As part of this transaction with Keldmann, and pursuant to an Amended Product Development Agreement dated December 30, 2009, ABI may collaborate with Keldmann on the development of certain product candidates in exchange for consulting fees and will make milestone, royalty and other payments depending on achievement of specified development and other goals.

There is a milestone payment of $2,000 due upon Food and Drug Administration ("FDA") approval for each product to a maximum of $8,000 for products ABI files itself. As well, there is a cap on royalty payments of $25,000 per product.

In October 2015, the Company entered into a five-year intellectual property right and product development agreement with a third party to exclusive worldwide rights to develop, manufacture and market nasal and pulmonary inhalation devices developed or manufactured using the TriVair technology. In return the Company was to receive 25% of any upfront fees, payments, or milestone payments on partnering transactions entered into by this third party and 15% of all

5. PRODUCT RIGHTS AND ASSET ACQUISITIONS (continued)

(b) Pulmonary and nasal dry powder delivery technology (continued)

revenues received by this third party in connection with the sale of products developed using the technology to other parties. The third party has the option to extend this agreement by a further five years from the expiry of the term if the total amounts received by the Company during the initial term are at least $500.

In February 2020 this agreement was amended to change the amount that the Company will receive to 37% of any upfront fees, payments, or milestone payments on the first partnering transaction entered into by this third party in connection with the sale of products developed using the technology to other parties and to receive 20% of all revenues received by this third party in connection with the sale of products developed using the technology to other parties. The term of the agreement was also extended to September 2025 and the contract extension option was amended to make it conditional on the Company receiving at least $2,500 during the initial term. On October 20, 2021, consent was granted to assign the agreement to a wholly-owned subsidiary of the third party to facilitate future commercialization efforts.

(c) Estrace®

The Company acquired the Canadian rights to Estrace® from affiliates of Shire plc in July 2014. The acquisition was accounted for as a business combination. On January 11, 2019, the Company reported an anticipated shortage of certain doses of Estrace® on the Drug Shortages Canada website in relation to supply issues arising from the Corporation's contract manufacturer. Since that time, the Company has curtailed the supply of its limited inventory into the Canadian market until a replacement contract manufacturer is approved. The shortage of Estrace®, as well as the presence of a third-party generic, has accelerated the erosion of Estrace® sales in Canada. The Company is working with another contract manufacturer to facilitate the re-introduction of Estrace® into the Canadian market which is expected to resume in 2021. See note 23 *Recipharm Litigation* for more information.

On November 30, 2020, the Company entered into an asset purchase agreement with a third party to sell the Company's Canadian rights to Estrace®. Under the terms of the arrangement, the Company will receive variable consideration computed as a royalty on gross sales for a period of up to 5 years ending May 31, 2026. See note 7 and 12 for more information.

(d) avanafil (formerly identified as Stendra®*)*

On April 15, 2020, the Company received a NOD for its avanafil New Drug Submission. Health Canada requested the provision of additional quality information related to the avanafil drug substance in alignment with International Council for Harmonization (ICH) technical guidance adopted by Health Canada. The Company submitted a response to the NOD on November 11, 2020. On December 11, 2020, Health Canada confirmed that the submission had passed screening and was accepted into review. In October, 2021, the Company received a Notice of Deficiency from Health Canada related to its avanafil New Drug Submission ("NDS"). Health Canada had previously requested the provision of additional pre-clinical and toxicology data related to the avanafil active pharmaceutical ingredient (API) from the API manufacturer, Sanofi. Sanofi did not provide the available data in a format requested by Health Canada as per the timeline prescribed. As a result, the Company had to withdraw the avanafil dossier from the review process. The Company is working with Petros Pharmaceuticals, the licensor of avanafil to Acerus, and Sanofi to ensure that the information will be provided in a timely manner and to discuss how to apportion the additional regulatory costs incurred as a result of the failure of Sanofi to supply the information to Health Canada. A resubmission is expected to be made to Health Canada during the first quarter of 2022, with the expected introduction of avanafil to the Canadian market occurring in late 2023.

On December 11, 2020, VIVUS, Inc. ("VIVUS"), the licensor of avanafil to Metuchen, announced that it had received approval of its plan of reorganization, under which IEH Biopharma LLC ("IEH") now holds 100% ownership of VIVUS. As set forth in the plan of reorganization, VIVUS will continue to fulfill its supply chain obligations for avanafil and provide access to the intellectual property it has licensed.

(All amounts expressed in thousands of U.S. dollars except per share amounts and unless otherwise stated)

5. PRODUCT RIGHTS AND ASSET ACQUISITIONS (continued)

(d) avanafil (formerly identified as Stendra®) (continued)

On April 15, 2020, the Company received a Notice of Deficiency ("NOD") for its avanafil New Drug Submission. Health Canada has requested the provision of additional quality information related to the avanafil drug substance in alignment with International Council for Harmonization (ICH) technical guidance adopted by Health Canada. Until this information is provided to Health Canada, the avanafil review process has been halted. Acerus responded to the NOD on November 11, 2020. On December 11, 2020, Health Canada confirmed that the submission had passed screening and was accepted into review. In October 2021, the Company received a Notice of Deficiency from Health Canada related to its avanafil New Drug Submission ("NDS"). Health Canada had previously requested the provision of additional pre-clinical and toxicology data related to the avanafil active pharmaceutical ingredient (API) from the API manufacturer, Sanofi. Sanofi did not provide the available data in a format requested by Health Canada as per the timeline prescribed. As a result, Acerus has had to withdraw the avanafil dossier from the review process. Acerus is working with Petros Pharmaceuticals, the licensor of avanafil to Acerus, and Sanofi to ensure that the information will be provided in a timely manner and to discuss how to apportion the additional regulatory costs incurred as a result of the failure of Sanofi to supply the information to Health Canada. A resubmission is expected to be made to Health Canada during the first quarter of 2022, with the expected introduction of avanafil to the Canadian market occurring in late 2023.

(e) Lidbree™

On May 29, 2018, the Company entered into an exclusive agreement with Pharmanest AB ("Pharmanest") to commercialize Short Acting Lidocaine Product ("Lidbree™" formerly referred to as "Shact™"), a pain relief drug device combination, in Canada. Under the terms of the license agreement, Pharmanest will receive an upfront and regulatory milestone payments upon the Company receiving marketing approval in Canada. Pharmanest will also receive milestone payments based on the Company achieving sales targets. Pharmanest will oversee the manufacturing of Lidbree™ and will receive a tiered supply price for the product comprised of a percentage on net sales of the product.

6. TRADE AND OTHER RECEIVABLES

		December 31, 2021		December 31, 2020
Trade receivables	$	311	$	441
Commodity tax receivable		111		87
Total trade and other receivables	$	422	$	528

Allowance for doubtful accounts are recognized based on estimated irrecoverable amounts determined by reference to historical default experience of the counterparty and an analysis of the counterparty's current financial position. As at December 31, 2021, the Company has recognized $nil in allowance for doubtful accounts ($nil as at December 31, 2020).

Trade and other receivables disclosed above include amounts that are past due at the end of the reporting period for which the Company has not recognized an allowance for doubtful accounts as there has not been a significant change in credit quality and the amounts are still considered recoverable.

Age of receivables that are past due but not impaired:

		December 31, 2021		December 31, 2020
60 - 90 days	$	8	$	8
Greater than 90 days		30		43
	$	38	$	51

6. TRADE AND OTHER RECEIVABLES (continued)

The maximum exposure to credit risk at the reporting date is the carrying value of each class of receivables mentioned above. The Company does not hold any collateral as security. Of the amount past due at year end, $36 has so far been collected subsequent to year end.

7. CONTRACT ASSET

(i) Natesto® product revenue

Natesto® product revenues from Aytu Bioscience Inc (Aytu), our U.S. marketing partner through March 31, 2021, was earned in two steps: 1) at a contractual supply price when the product was delivered to the marketing partner; and 2) an additional top-up amount was earned based on the gross profit recognized when the U.S. marketing partner recognized sales of the product. In estimating the total transaction price to be recorded as revenue at the time control passes (on shipment of the products to the marketing partner), management was required to estimate the portion of the additional top-up amount (variable consideration) that was considered to be highly probable would not result in a significant reversal in the amount of cumulative revenue once the marketing partner has sold the product and the gross profit realized by the U.S. marketing partner was known. The Company recorded this as a contract asset. Management's assessment of the estimated future gross profit per unit of its U.S. marketing partner took into consideration both historical gross revenues, gross to net revenue deductions and gross margin experience as reported by the U.S. marketing partner, as well as expectations of the future selling price, gross to net revenue deductions and gross margins per unit of our U.S. marketing partner in order to commercialize the sale of our products to meet our collective strategic objectives.

The agreement with Aytu was terminated effective March 31, 2021. As part of the termination agreement, the Company agreed to repurchase $116 of Aytu's unsold inventory on hand at March 31, 2021 and pay a $7,500 termination fee in equal installments of $250 over 30 months, beginning April 15, 2021. The Company recorded an expense (included in the termination fee within revenue) of $6,204 for the year ended December 31, 2021, representing the fair value of the $7,500 termination fee. The fair value was estimated by discounting the payments using a discount rate of 17%. A +/- 10% change in the discount rate would change the estimated fair value by +/- $106. The Company also derecognized $163 of the remaining balance of the contract asset at March 31, 2021.

Payments of $2,250 were made for the year ended December 31, 2021. Payments to date include accreted interest expense of $603.The remaining liability of $4,557 at December 31, 2021 has been reflected as a current liability amounting to $2,456 and a non-current liability amounting to $2,101 on the consolidated statements of financial position.

(ii) Estrace sale proceeds

On November 30, 2020, the Company sold all of its Estrace® assets to a third party. The Company will receive purchase consideration computed as a royalty on sales for a period of approximately five years ending May 31, 2026. An amount of $691 was initially accrued as a contract asset for the portion of the estimated future royalties receivable being the amount management considered was highly probable of not being subject to a significant reversal when the uncertainty associated with this variable consideration is subsequently resolved. As certain launch conditions were not met by June 30, 2021, including the successful transfer of the manufacturing process by the Company to a new contract manufacturer, the third party is under no obligation to relaunch the product. Taking into account the Company's confidence level in being able to complete the launch conditions, and timing thereof, and the impact this may have on the third party's decision to relaunch the product, in the second quarter of 2021, the carrying value was previously reduced to $nil to reflect management's estimate of the amount highly probable of not being subject to a significant reversal when these uncertainties are resolved. An amount of $288 was accrued at December 31, 2020 to complete the manufacturing transfer of which $205 remains unspent at December 31, 2021. A launch, assuming launch conditions can be met, is currently indeterminate. A charge of $150 was recorded in cost of goods sold to reflect the Company's estimate of the net realizable value of raw materials currently held at the new contract manufacturer.

(All amounts expressed in thousands of U.S. dollars except per share amounts and unless otherwise stated)

7. CONTRACT ASSET (continued)

	December 31, 2021	December 31, 2020
Natesto:		
Balance, January 1	$ 245	$ 473
Estimated top-up revenue recognized on inventory previously sold	-	366
One time adjustment for sales subsequently returned due to expiration	-	(206)
Adjustment for inventory previously sold repurposed as samples	-	(92)
Recognition of top up revenue from actual units sold by marketing partner	(82)	(296)
Derecognition of revenue previously recognized on termination	(163)	-
Balance, December 31	$ -	$ 245
Estrace:		
Balance, January 1	691	-
Accrued purchase consideration	-	691
Adjustments to carrying value (note 17)	(691)	-
Balance, December 31	-	691
Total	$ -	$ 936

8. INVENTORY

	December 31, 2021	December 31, 2020
Raw materials	$ 4,269	$ 1,732
Work in progress	-	581
Finished goods	336	-
Total inventory	$ 4,605	$ 2,313

The cost of finished goods recognized as an expense and included in cost of sales amounted to $307 for the year ended December 31, 2021 ($501 for the year ended December 31, 2020).

9. PREPAIDS AND OTHER ASSETS

	December 31, 2021	December 31, 2020
Deposits with vendors	$ 794	$ 505
Other prepayments	669	599
Total prepaid and other assets	$ 1,463	$ 1,104

(All amounts expressed in thousands of U.S. dollars except per share amounts and unless otherwise stated)

10. PROPERTY AND EQUIPMENT

Property and equipment consist of the following:

	Office, furniture and fixtures	Manufacturing and laboratory equipment	Leasehold improvements	Total
Costs				
Balance, January 1, 2021	$ 122	$ 3,139	$ 738	$ 3,999
Additions	12	60	-	72
Disposals	(122)	(1,642)	(738)	(2,502)
Balance, December 31, 2021	$ 12	$ 1,557	$ -	$ 1,569
Accumulated depreciation				
Balance, January 1, 2021	$ 118	$ 2,663	$ 412	$ 3,193
Depreciation	1	186	326	513
Disposals	(118)	(1,646)	(738)	(2,502)
Balance, December 31, 2021	$ 1	$ 1,203	$ -	$ 1,204
Net book value				
December 31, 2021	$ 11	$ 354	$ -	$ 365

	Office, furniture and fixtures	Manufacturing and laboratory equipment	Leasehold improvements	Total
Costs				
Balance, January 1, 2020	$ 122	$ 3,139	$ 738	$ 3,999
Additions	-	-	-	-
Disposals	-	-	-	-
Balance, December 31, 2020	$ 122	$ 3,139	$ 738	$ 3,999
Accumulated depreciation				
Balance, January 1, 2020	$ 108	$ 2,504	$ 336	$ 2,948
Depreciation	10	159	76	245
Disposals	-	-	-	-
Balance, December 31, 2020	$ 118	$ 2,663	$ 412	$ 3,193
Net book value				
December 31, 2020	$ 4	$ 476	$ 326	$ 806

At December 31, 2021, manufacturing equipment with a net book value of $354 was held off-site with a third party ($432 at December 31, 2020). During the year, $nil of depreciation was capitalized to inventory ($nil at December 31, 2020).

11. LEASES

In December 2020, the Company exercised its option to terminate the prior premises lease effective June 30, 2021. The previous expected maturity date was June 30, 2025. A termination payment of $204 due to the landlord, was paid on June 30, 2021, computed based upon the unamortized value of prepaid landlord inducements plus certain other termination costs. The lease liability was remeasured based upon the remaining lease term and considering the termination payment. The liability was reduced by $290, of which $215 was offset against the remaining carrying value of the Right-of-use asset and $75 was recorded as a gain in the statement of loss.

(All amounts expressed in thousands of U.S. dollars except per share amounts
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11. LEASES (continued)

On June 1st, 2021, the Company entered into a new premises lease. The new lease, including an option to renew at the discretion of the Company, has an expected maturity date of November 30, 2031. The Company recorded a Right of use asset in the amount of $320, net of $22 of lease inducements. The Company recorded a Lease liability in the amount of $311, net of $22 in lease inducements receivable, using a discount rate of 6.50%. The discount rate was derived from publicly available market capitalization reports available for a comparable location and class of lease premises. A +/- 1% change in the discount rate would change the estimated fair value of both the Right of use asset and the Lease liability by +/- $17.The Right of use asset is being amortized on a straight line basis over the term of the expected maturity date of November 30, 2031.

The balance sheet shows the following amounts related to the premises lease:

Right of use asset:	December 31, 2021	December 31, 2020
Balance, January 1	$ -	$ 263
Acquisition of right of use asset	320	-
Depreciation of right of use asset	(18)	(48)
Remeasurement of lease liability	-	(215)
Balance	$ 302	$ -

Lease liability:	December 31, 2021	December 31, 2020
Balance, January 1	$ 229	$ 611
Payments	(229)	(91)
Remeasurement due to lease amendment	-	(290)
Addition of lease liability	311	-
Accrued interest	14	-
Foreign exchange effect	(9)	(1)
Balance	316	229
Current lease liability	16	229
Non-current lease liability	$ 300	$ -

The consolidated statement of loss and comprehensive loss shows the following amounts relating to leases for the year ended December 31, 2021:

	December 31, 2021	December 31, 2020
Depreciation of right of use asset	$ 18	$ 48
Interest expenses (included in interest on long-term debt and other financing costs)	20	32
Expense relating to leases of low-value assets (included in administrative expenses)	12	5
Expenses relating to variable lease payments not included in lease liabilities (included in administrative expenses)	35	53

As at December 31, 2021, future payments related to lease liabilities amounts to $464, of which $29 is current.

(All amounts expressed in thousands of U.S. dollars except per share amounts
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12. INTANGIBLE ASSETS

		Technology and patents		Product rights		Total
Costs						
Balance, January 1, 2021	$	4,400	$	477	$	4,877
Addition		-		-		-
Disposal		-		-		-
Balance, December 31, 2021	$	4,400	$	477	$	4,877
Accumulated depreciation						
Balance, January 1, 2021	$	2,635	$	100	$	2,735
Amortization		109		41		150
Disposal		-		-		-
Impairment charge (note 17)		1,656		-		1,656
Balance, December 31, 2021	$	4,400	$	141	$	4,541
Net book value						
December 31, 2021	$	-	$	336	$	336

		Technology and patents		Product rights		Total
Costs						
Balance, January 1, 2020	$	4,400	$	30,887	$	35,287
Addition		-		-		-
Disposal		-		(30,410)		(30,410)
Balance, December 31, 2020	$	4,400	$	477	$	4,877
Accumulated depreciation						
Balance, January 1, 2020	$	2,525	$	27,871	$	30,396
Amortization		110		607		717
Disposal		-		(28,378)		(28,378)
Balance, December 31, 2020	$	2,635	$	100	$	2,735
Net book value						
December 30, 2020	$	1,765	$	377	$	2,142

On November 30, 2020, the Company sold all of its Estrace® assets to a third party for purchase consideration as described in note 7. A loss on sale of $1,629 was recognized for the year ended December 31, 2020 after factoring in $288 of expected costs to complete the manufacturing transfer process.

During December 2021, the Company was informed that the application to prosecute a patent for TriVair for the US market was rejected for a second time. This decision culminates several years of effort with the US regulator. Although a Request for Rehearing has been filed to support a third submission, the likelihood of the existing design being patented for the US market without either a significant design modification, or a limitation in therapy application regarding pulmonary and/or nasal delivery, is unlikely. Accordingly, management has determined that an impairment has occurred.

The recoverability of this intangible asset is dependent on successful technology development and subsequent commercialization of related products. Despite successfully prosecuting the TriVair patent in other non-US markets, the absence of success in the US market has impeded any significant commercial success to date. In the absence of a US market patent prosecution, and in the absence of any commercial opportunities to date for the existing technology in non-US markets, the recoverable amount of the intangible asset has been reduced to $nil at December 31, 2021. A charge of $1,656 has been recorded in research and development expense.

(All amounts expressed in thousands of U.S. dollars except per share amounts
and unless otherwise stated)

12. INTANGIBLE ASSETS (continued)

Prior to the impairment described above, amortization expense related to the technology and patents was computed based on the life of the existing patents and is included in the research and development expense on the consolidated statement of loss and comprehensive loss. The remaining life of the TriVair patents is 16 years and 1 months. Amortization included in research and development costs of $109 has been recorded for the year ended December 31, 2021 ($110 for the year ended December 31, 2020).

Product rights include rights for Lidbree™ and Stendra®. Of the product acquisition costs, $300 was accrued but not payable as of December 31, 2021. Amortization of $41 has been recorded in research and development costs for the year ending December 31, 2021 ($567 in cost of goods sold and $40 in research and development for the year ending December 31, 2020).

13. ACCOUNTS PAYABLE AND ACCRUED LIABILITIES

	December 31, 2021	December 31, 2020
Accounts payable	$ 3,073	$ 1,088
Employee salaries and benefits payable	703	398
Accrual to complete Estrace manufacturing transfer (note 7)	205	288
Interest and financing fees payable (note 14)	38	136
Accrued liabilities	575	1,092
Natesto® US related payables	2,843	2,072
Provision for returns and discounts	11	361
Total accounts payable and accrued liabilities	$ 7,448	$ 5,435

Payables related to Natesto® US in the table above are for expenses related to the Company's U.S. selling and marketing activities for Natesto®. These activities include services contracted through Syneos Health as well as contracts for rebates and coupons negotiated directly with Pharmacy Benefit Managers and Health Plans. The balance also includes liabilities with other contract partners for rebates, co-pay, distribution fees, product returns, chargebacks, early pay discounts, regulatory support, regulatory compliance and samples management. The following table describes movements in the Company's balances related to Natesto® for rebates / co-pay, distributor fees, sales returns, chargebacks, title fees and early pay discounts accruals:

	Rebates / Co-pay	Distributor Fees	Sales Returns	Chargebacks	Title Fees	Early Pay Discounts	Total
Balance, January 1, 2021	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Additions	2,099	260	66	66	25	56	2,572
Settlements	(2,070)	(238)	(16)	(65)	(25)	(34)	(2,448)
Balance, December 31, 2021	$ 29	$ 22	$ 50	$ 1	$ -	$ 22	$ 124

As explained in note 4, these estimates are recorded as a reduction of product revenue. Payments are expected within 12 months of the balance sheet date, with the exception of returns, not expected until 2023. Invoices for these estimates are shown in accounts payable when received. The accrual is for the uninvoiced portion of these estimates.

(All amounts expressed in thousands of U.S. dollars except per share amounts
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14. LONG-TERM DEBT

	SWK Facility	First Generation Loan	First Generation Subordinated Loan	Total
Balance, January 1, 2020	$ 8,490	$ 11,500	$ -	$ 19,990
Amortization of deferred financing costs	374	-	-	374
Transaction costs	(88)	-	-	(88)
Gain on modification	(7)	-	-	(7)
Debt conversion to common shares	-	(11,500)	-	(11,500)
Repayment of principal	(750)	-	-	(750)
Balance, December 31, 2020	$ 8,019	$ -	$ -	$ 8,019
Current portion at December 31, 2020	1,439	-	-	1,439
Long-term portion as at December 31, 2020	$ 6,580	$ -	$ -	$ 6,580
Balance, January 1, 2021	$ 8,019	$ -	$ -	$ 8,019
Amortization of deferred financing costs	264	-	-	264
Advances on Subordinated Loan Facility	-	-	20,000	20,000
Loss on modification	64	-	-	64
Fair value adjustment	-	-	(3,548)	(3,548)
Capitalized & Accreted Interest	-	-	791	791
Repayment of principal	(2,300)	-	-	(2,300)
Balance, December 31, 2021	$ 6,047	$ -	$ 17,243	$ 23,290
Current portion at December 31, 2021	2,153	-	-	2,153
Long-term portion as at December 31, 2021	$ 3,894	$ -	$ 17,243	$ 21,137

SWK credit facility

On October 12, 2018, the Company entered into a senior secured term loan credit facility with SWK Funding LLC ("SWK") for up to $11,000 ("SWK Facility"). Security for the loan comprises a General Security Agreement on all assets, including intellectual property, of Acerus and its wholly-owned subsidiaries. An initial tranche of $9,000 of the SWK Facility was received at closing, with the remaining $2,000 of the SWK Facility becoming available on or before March 31, 2019, upon satisfaction of certain future conditions. As the conditions were not satisfied, the Company was not able to draw on the additional $2,000 on March 31, 2019.

The SWK Facility bears interest at a rate per annum equal to the greater of (a) the three month LIBOR, or (b) 1.50%, with such base rate being capped at no greater than 4.25%, plus an applicable margin of 10.50%. The SWK Facility matures on October 11, 2023 and is interest-only for the first two years of the term. Principal payments thereafter will be based on a tiered percentage of net revenue with a cap of $600 per quarter.

As part of the transaction, SWK received an origination fee representing a low single digit percentage of the maximum facility amount, and will receive a final payment on maturity representing a single digit percentage of the principal amount actually advanced under the facility. The Company has also issued 5,331,563 common share purchase warrants (the "Original Warrants") to SWK as partial consideration for the SWK Facility. Each Warrant entitles SWK to purchase one common share of the Company stock at an exercise price of CDN$0.40 per common share, expires on October 11, 2023 and has a cashless exercise feature. Following the second anniversary of the issuance of the Warrants, the Company can cause SWK to exercise the Warrants prior to their expiry date if the closing price of the Company's common shares on the TSX trades at or above CDN$0.80 per share for a period of at least 21 consecutive trading days.

Under the terms of the agreement, the Company will have the option to prepay the loan prior to the maturity date subject to the payment of certain prepayment fees. The terms of the agreement also contain customary financial covenants some of which were amended in fiscal 2019 and 2020.

The Company also amended the debt agreement in September 2019 to set the minimum threshold for Consolidated Unencumbered Liquid Assets required to be maintained by the Company. This amount is defined in the agreement as cash adjusted for a certain portion of accounts receivable and payable. This level was set at (i) $1,000 at September 30,

14. LONG-TERM DEBT (continued)

2019; (ii) $5,000 at December 15, 2019; (iii) $4,000 at December 31, 2019; (iv) $2,000 at January 31, 2020, and (v) $1,000 at all times after January 31, 2020.

In connection with the amendment, the Company agreed to reprice the 5,331,563 Original Warrants from CDN$0.40 to CDN$0.11. In addition, the Original Warrants' expiry date was extended from October 11, 2023 to September 30, 2024. No other changes were made to the term of the Original Warrants. On October 3, 2019, the Company issued 1,361,544 common share purchase warrants (the "new Warrants") to SWK in connection with the amendment. Each New Warrant entitled SWK to purchase one common share at an exercise price of CDN$0.11 per common share and expired on September 30, 2024. The terms of the New Warrants were otherwise identical to those of the Original Warrants. As such, in certain circumstances, the Company can cause SWK to exercise the New Warrants prior to their expiry date if the closing price of the Company's common shares on the TSX exceeds CDN$0.80 per share for a period of at least 21 consecutive trading days. The obligation to issue these share purchase warrants are recorded as a warrant derivative liability on the balance sheet (note 15).

On December 16, 2019, the Company received a waiver letter from SWK ("SWK Waiver") waiving the requirement to comply with the Adjusted EBITDA and Aggregate Revenue covenants as at December 31, 2019 contained in the credit agreement. The amendment agreement also changed the set minimum threshold for Consolidated Unencumbered Liquid Assets required to be maintained by the Company from $1,000 at all times after January 31, 2020 to $2,000.

The waiver of the covenants was contingent on the Company raising an additional $6,500 prior to December 23, 2019. In connection therewith, the Company obtained a commitment letter from First Generation Capital Inc. ("First Generation" or "FGC"), a company affiliated with the Chairman of the Board of Directors of the Company, to amend and restate the $5,000 subordinated secured term loan facility previously entered into on July 19, 2019 between the Company and First Generation to (i) increase the borrowed amount to $11,500, (ii) extend the maturity date to June 30, 2021 and (iii) cap the total amount of interest payable to First Generation under the amended loan (including interest paid from the closing of the original $5,000 subordinated secured term loan facility) to an amount equal to 9.99% of the market capitalization of the Company at the time of closing.

On February 12, 2020, the Company announced that it had entered into an agreement with SWK in respect of an amendment to the SWK Facility (the "February 2020 SWK Amendment"). The amendment to the SWK Facility which would, among other things, (i) set the minimum threshold for consolidated unencumbered liquid assets required to be maintained by the Company at $1,500; (ii) reset the revenue and EBITDA covenants to better reflect the nature of the Company's business at this time compared to the time the SWK Facility was entered into; (iii) require pre-payment of $750 of principal in three instalments during 2020 and a commensurate reduction in the amount used to calculate exits fees; (iv) delay the date on which the Company must begin repaying principal from Q1-2021 to Q2-2021; and (v) provide flexibility to the Company to dispose of non-core assets and retain some of the proceeds of such dispositions for working capital.

As consideration for and in connection with the February 2020 SWK Amendment, the Company paid SWK an amendment fee of $80 and amended the exercise price of the 6,693,107 outstanding SWK Warrants and New Warrants, which expire on September 30, 2024, from CDN$0.11 to CDN$0.053269. The Company also made $750 of principal prepayments to SWK in fiscal 2020.

On March 26, 2021, the Company announced that it had entered into an agreement with SWK in respect of an amendment to the SWK Facility (the "Fifth Amendment"). The amendment to the SWK Facility (i) increases the minimum threshold for consolidated unencumbered liquid assets required to be maintained by the Company from $1,500 to $2,000 effective May 15, 2021; (ii) waived the revenue and EBITDA covenants for 2021 and resets them for 2022 to better reflect the nature of the Company's business at this time; (iii) fixes principal repayments at $600 per quarter; and (iv) required a pre-payment of $500 of principal on May 15, 2021. A loss on modification of $64 was recorded against deferred financing fees as a result of this amendment.

On December 13, 2021, the Company announced it had entered into an amending agreement with First Generation to increase the subordinated loan facility from $15 million to $25 million. SWK consented to the $10 million increase as

14. LONG-TERM DEBT (continued)

well as a temporary amendment to reduce the minimum Consolidated Unencumbered Liquid Asset covenant from $2 million to $250 until February 1, 2022.

As of December 31, 2021, the Company had $6,445 outstanding on the credit facility, inclusive of a $495 exit fee due at maturity. See Subsequent Events note 27.

First Generation Loan

On July 18, 2019, the Company entered into a $5,000 subordinated secured term loan facility ("the Loan") with First Generation Capital Inc. ("First Generation").

The Loan is subordinated to the existing $9,000 facility with SWK and bears interest at a rate per annum equal to the three-month LIBOR, plus an applicable margin of 10.50%. Subject to the terms of the subordination and intercreditor agreement between First Generation and SWK, the Loan is repayable in full on December 31, 2020, is interest-only until maturity with regularly scheduled payments of interest to First Generation being permitted subject to certain conditions related to the Companys' market capitalization and aggregate annual revenue, and can be prepaid in full or in part without penalty following repayment in full of indebtedness owing to SWK.

On December 18, 2019 the Company announced that it had amended the Loan to (i) increase the borrowed amount to $11,500 ("the A&R Loan"), (ii) extend the maturity date to June 30, 2021 and (iii) cap the total amount of interest payable to First Generation under the A&R Loan (including interest paid from the closing of the original $5,000 subordinated secured term loan facility) to an amount equal to CDN$1,696.

On February 12, 2020 the Company announced that it had entered into an agreement with First Generation in respect of an equity financing and debt-to-equity conversion by First Generation. The agreement included the conversion of the Company's outstanding $11,500 (plus accrued interest of $526) owing to First Generation under the A&R Loan into 300,081,885 Common Shares at a conversion price of CDN$0.053269 per Common Share (the "Debt Conversion"). The debt conversion is presented net of financing costs of $94.

First Generation subordinated loan

On April 30, 2021, the Company announced closing a $15 million subordinated secured loan facility ("Loan Facility") with First Generation Capital Inc. ("First Generation"), a company affiliated with the Chairman of the Board of Directors of the Company. The loan will be made available to the Company by way of one or more advances under a secured promissory note. The Loan Facility is subordinated to the existing credit facility with SWK and bears interest at a fixed rate of 8% per annum. Subject to the terms of the subordination and intercreditor agreement between First Generation and SWK, the Loan Facility is repayable in full by December 31, 2024. Prior to December 31, 2024, cash payments of interest or principal repayments are subject to certain exceptions related to the Company's market capitalization and the outstanding amount of the senior facility with SWK. The Loan Facility can be repaid in full or in part without limitation following repayment of the full amount owing to SWK.

On December 13, 2021, the Company announced it had entered into an amending agreement with First Generation to increase the subordinated loan facility from $15 million to $25 million. SWK consented to the $10 million increase as well as a temporary amendment to reduce the minimum Consolidated Unencumbered Liquid Asset covenant from $2 million to $250 until February 1, 2022.

In accordance with IFRS 9 - Financial Instruments, loans must be initially measured at fair value. The company has assessed the fair market interest rate attributable to the subordinated loan facility and determined that an interest rate of 14% represents fair value. Accordingly, a fair value adjustment of $3,548 has been recorded on advances to date. As the loan is from a related party who has a controlling interest in the Company, the resultant gain has been recorded as contributed surplus. A +/- 1% change in the discount rate would change the estimated initial fair value of the loan by +/- $541.

At December 31, 2021, $20,000 is outstanding on the Loan Facility. No principal or interest payments are expected over the next twelve months.

(All amounts expressed in thousands of U.S. dollars except per share amounts
and unless otherwise stated)

14. LONG-TERM DEBT (continued)

Canadian credit facility

With SWKs consent, the Company also has a Canadian Credit facility of $750, with no expiration date for use only as letters of credit and bank guarantees. At December 31, 2021, $Nil was drawn as standby letters of credit and bank guarantees.

Interest and financing costs

Interest (including interest capitalized) and finance expense on long-term debt was $1,619 for the year ended December 31, 2021 ($1,325 for December 31, 2020).

Accrued interest & financing costs		
Balance payable, January 1, 2020	$	457
Interest and financing fees		1,975
Transaction costs		88
Amortization of deferred financing fees		(374)
Accretion of buyout payable		(14)
Warrant modification		(43)
Gain on debt modification		7
Interest and financing fees paid		(1,202)
Interest and financing fees paid related to 2019 accruals		(144)
Transaction costs paid		(88)
Interest accrued converted into common shares		(526)
Balance payable, December 31, 2020 (note 13)	$	136
Balance payable, January 1, 2021 (note 13)	$	136
Interest and financing fees expense		2,570
Accretion interest termination fee payable (note 7)		(603)
Accretion interest subordinated loan facility		(243)
Capitalized interest subordinated loan facility		(548)
Accrued interest lease liability (note 11)		(14)
Amortization of deferred financing fees		(264)
Loss on debt modification		(64)
Interest, financing fees and transaction costs paid		(932)
Balance payable, December 31, 2021 (note 13)	$	38

Future principal and interest payments

The Company has the following future payments of principal and interest concerning the debt:

	SWK Facility	First Generation Subordinated Loan	Total
No later than 1 year	$ 2,958	$ -	$ 2,958
Later than 1 year and no later than 5 years	4,292	26,066	30,358
	7,250	26,066	33,316
Interest and exit fees	(1,300)	(6,066)	(7,366)
Total principal portion of debt	5,950	20,000	25,950

(All amounts expressed in thousands of U.S. dollars except per share amounts
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15. DERIVATIVE FINANCIAL INSTRUMENT

The change in the Company's derivative financial instrument can be summarized as follows:

		December 31, 2021		December 31, 2020
Balance of warrants, January 1,		139		262
Addition/modification of derivative liability		-		43
Change in fair value of the derivative financial instruments		(84)		(182)
Effect of foreign currency exchange difference		-		16
Balance of warrants	$	55	$	139

MidCap Financial V, LLC warrants

In accordance with the senior financing with MidCap entered into on July 16, 2014 and repaid on January 6, 2017, the lenders were issued warrants exercisable for an aggregate of 3,034,814 common shares of the Company. The warrants had an exercise price of CDN$0.7095 and expired unexercised on July 16, 2021.

SWK warrants

The Company has also issued 5,331,563 Original Warrants to SWK as partial consideration for the SWK Facility. Each Warrant entitles SWK to purchase one common share at an exercise price of CDN$0.40 per common share, expires on October 11, 2023 and has a cashless exercise feature. Following the second anniversary of the issuance of the Warrants, the Company can cause SWK to exercise the Warrants prior to their expiry date if the closing price of the Company's common shares on the TSX trades at or above CDN$0.80 per share for a period of at least 21 consecutive trading days.

As part of the September 2019 debt agreement amendment, the Company agreed to reprice the 5,331,563 Original Warrants from CDN$0.40 to CDN$0.11. In addition, the Original Warrants' expiry date was extended from October 11, 2023 to September 30, 2024. No other changes were made to the term of the Original Warrants. On October 3, 2019, the Company issued 1,361,544 common share purchase warrants (the "New Warrants") to SWK in connection with the amendment. Each New Warrant will entitle SWK to purchase one common share of the Company at an exercise price of CDN$0.11 per common share and will expire on September 30, 2024. The terms of the New Warrants will otherwise be identical to those of the Original Warrants. As such, in certain circumstances, the Company may cause SWK to exercise the New Warrants prior to their expiry date if the closing price of the Company's common shares on the TSX exceeds CDN$0.80 per share for a period of at least 21 consecutive trading days. As part of the February 2020 amendment to the debt agreement described in note 14, the Company agreed to reprice both the 5,331,563 Original Warrants and the 1,361,544 New Warrants from CDN$0.11 to CDN$0.053269 with no other changes to the term and features described above.

SWK became entitled to an increase in the exchange basis of each warrant to prevent dilution of its interest as a result of the November 2020 Rights Offering. The exchange basis was determined at 1.16 to 1. Accordingly, the allotment of the Original Warrants and New Warrants was increased to 6,184,613 and 1,579,391 respectively.

A pricing model with observable market-based inputs was used to estimate the fair value of the warrants issued. The variables used to compute the values as at December 31, 2021 were as follows: a share price of CDN$0.025; an expected life of 2.8 years; a risk-free rate of 1.10%; a volatility of 86.2%; and an exercise price of CDN$0.053269 for 7,764,004 warrants (a share price of CDN$0.04; an expected life of 3.8 years; a risk-free rate of 0.36%; a volatility of 88.3%; and an exercise price of CDN$0.053269 was used to compute the values at December 31, 2020). At December 31, 2021, the warrants had an average fair value of CDN$0.01 per warrant (CDN$0.02 per warrant as of December 31, 2020).

Pre-payment option

As per note 14, under terms of the SWK Credit Facility, the Company will have the option to prepay the facility. The prepayment penalties vary depending on the time frame. The prepayment option is considered to be an embedded derivative with a fair value of nil at the date of issuance and at December 31, 2021.

(All amounts expressed in thousands of U.S. dollars except per share amounts
and unless otherwise stated)

16. SHARE CAPITAL AND WARRANTS

Shares Issued and Outstanding

	Number of Common shares	Number of Warrants	Common shares	Warrants	Total
Balance as at January 1, 2020	261,225,290	23,584,624	$ 158,402	$ 1,420	$ 159,822
Private placement, February 2020	449,148,891	-	17,799	-	17,799
Debt conversion, February 2020	300,081,885		11,932		11,932
Expiry of warrants, June 2020	-	(23,584,624)		(1,420)	(1,420)
Private placement, August 2020	532,015		21		21
Rights Offering, November 24, 2020	526,600,000	-	10,009	-	10,009
Balance as at December 31, 2020	1,537,588,081	-	$ 198,163	$ -	$ 198,163
Balance as at January 1, 2021	1,537,588,081	-	$ 198,163	$ -	$ 198,163
Balance as at December 31, 2021	1,537,588,081	-	$ 198,163	$ -	$ 198,163

The Company is authorized to issue an unlimited number of common shares with no par value.

On February 12, 2020 the Company announced that it had entered into an agreement with First Generation in respect of an equity financing and debt-to-equity conversion by First Generation. A private placement to First Generation of 449,148,891 Common Shares at an offering price of CDN$0.053269 per FGC Common Share, being a 25% discount to the five-day volume weighted average price of the FGC Common Shares on the TSX as at January 31, 2020, for aggregate gross proceeds to the Company of $18,000 (the "FGC Private Placement"). The private placement is presented net of $201 of financing costs. The agreement also included the conversion of the Company's outstanding $11,500 (plus accrued interest of $526) owing to First Generation under the A&R Loan into approximately 300,081,885 Common Shares at a conversion price of CDN$0.053269 per Common Share (the "Debt Conversion"). The debt conversion is presented net of financing costs of $94.

On June 28, 2020, 23,584,624 warrants issued in relation to a 2018 bought deal transaction expired. The value of the warrants, $1,420 was transferred to contributed surplus.

On August 28, 2020, the Company issued 532,015 common shares at CDN$0.0531 per share to a vendor in lieu of cash payment.

On November 24, 2020, the Company issued 526,600,000 Common Shares, pursuant to the Rights Offering announced on October 20, 2020, for gross proceeds of CDN$13.165 million. SWK also became entitled to an increase in the exchange basis of each warrant to prevent dilution of its interest as a result of the Rights Offering. The exchange basis was determined as 1.16 to 1. Accordingly, the allotment of the Original Warrants and New Warrants was increased by 853,050 and 217,817 respectively.

There are 7,764,004 warrants issued at December 31, 2021 that have been classified as a derivative financial instrument and classified under long-term liabilities (December 31, 2020 – 10,798,818).

(All amounts expressed in thousands of U.S. dollars except per share amounts
and unless otherwise stated)

17. NATURE OF EXPENSES

	For the year ended December 31, 2021			
	Cost of goods sold	R&D	SG&A	Total
Cost of finished goods	$ 307	$ -	$ -	$ 307
Salaries and benefits	-	715	2,375	3,090
Canada Emergency Wage Subsidy	-	(15)	(120)	(135)
Amortization of intangible assets	-	150	-	150
Depreciation of property and equipment	135	89	289	513
Depreciation of right of use asset	-	-	18	18
Inventory obsolescence	462	-	-	462
Share-based compensation	-	119	976	1,095
Research, development & clinical trials	-	3,849	-	3,849
Natesto US sales and marketing	-	-	13,949	13,949
General and administrative	-	-	3,674	3,674
Derecognition of contract asset (note 7)	-	-	691	691
Impairment of intangible asset (note 12)	-	1,656	-	1,656
Other	214	-	-	214
	$ 1,118	$ 6,563	$ 21,852	$ 29,533

	For the year ended December 31, 2020			
	Cost of goods sold	R&D	SG&A	Total
Cost of finished goods	$ 501	$ -	$ -	$ 501
Salaries and benefits	-	481	2,053	2,534
Canada Emergency Wage Subsidy	-	(15)	(171)	(186)
Amortization of intangible assets	567	150	-	717
Depreciation of property and equipment	135	67	43	245
Depreciation of right of use asset	-	-	48	48
Inventory obsolescence	676	-	-	676
Share-based compensation	-	60	594	654
Research, development & clinical trials	-	1,783	-	1,783
Natesto US sales and marketing	-	-	12,270	12,270
General and administrative	-	-	2,964	2,964
Loss on intangible asset	-	-	1,629	1,629
Other	135	-	-	135
	$ 2,014	$ 2,526	$ 19,430	$ 23,970

During the year, $nil of depreciation was capitalized to inventory ($nil at December 31, 2020).

(All amounts expressed in thousands of U.S. dollars except per share amounts
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18. INTEREST AND OTHER FINANCING COSTS

		December 31, 2021		December 31, 2020
Interest expense on long-term debt and other financing costs	$	828	$	1,325
Interest expense on lease liability (note 11)		20		32
Interest charged by inventory supplier		-		44
Warrant modification and issuance		-		43
Loss (gain) on debt modification		64		(7)
Accretion interest Termination fee (note 7)		603		-
Capitalized and accretion interest subordinate loan facility (note 14)		791		-
Buy-out interest paid (note 5a)		-		150
Accretion of buy-out (note 5a)		-		14
Amortization of deferred financing fees (note 14)		264		374
	$	2,570	$	1,975

19. INCOME TAXES

The difference between the amount of the provision for income taxes and the amount computed by multiplying loss/income before taxes by the statutory Canadian rates are reconciled as follows:

	For the year ended December 31,			
		2021		2020
Loss before income taxes	$	(33,817)	$	(24,424)
Tax recovery at the Canadian corporate tax rate of 26.5% (2015 - 26.5%)		(8,962)		(6,472)
Benefit of previously unrecognized deferred tax asset				
Tax effect of permanent differences (Canada)		333		142
Unrecognized deferred tax benefit		9,180		3,583
Effect of acquisition of control		-		2,749
Provision to Return adjustments		106		-
Effects of changes in foreign exchange rates		(657)		(2)
Tax (recovery) recognized for the year	$	-	$	-

At each balance sheet date, the Company assesses whether the realization of future tax benefits is sufficiently probable to recognize a deferred tax asset. This assessment requires the exercise of judgment, which includes a review of projected taxable income. The Company has not recognized the deferred tax assets, arising from accumulated losses carried forward from previous years, and the corresponding deferred tax recovery on the statements of loss and comprehensive loss.

The First Generation equity issuance and debt conversion in February 2020 described in note 16 resulted in an acquisition of control for Canadian income tax purposes. The acquisition of control triggered a tax year end on February 19, 2020, requiring adjustments amounting to $18,500 to the tax carrying value of tangible and intangible assets where the fair value was less than tax carrying value. The $18,500 of fair value adjustments were added to the Company's non-capital loss carryforwards for the period preceding the acquisition of control. Unused capital losses amounting to $10,375 also expired upon the change of control.

The Company has non-capital loss carry forwards of $153,742 that will expire by 2041 ($3,553 in 2035, $25,551 in 2036, $18,843 in 2037, $23,132 in 2038, $21,840 in 2039, $25,510 in 2040 and $35,313 in 2041).

19. INCOME TAXES (continued)

In addition, the Company has the following deferred tax assets that are not recognized:

	As at December 31, 2021	2020
Property and equipment	$ 61	$ 25
Intangible assets	621	666
Financing costs	133	178
R&D pools	606	593
Investment tax credits	717	716
Accruals & Other	166	110
Termination Fee Payable	(184)	-
Loss Carry forwards	34,354	25,012
Total	$ 36,474	$ 27,300

20. LOSS PER SHARE

The following table sets forth the computing of basic and diluted loss per share (share and per share amounts below are not in thousands):

	For the year ended December 31, 2021	2020
Numerator for basic and diluted loss per share available to common shareholders	$ (33,817)	$ (24,424)
Denominator for basic and diluted loss per share	1,537,588,081	975,848,903
Basic and diluted loss per share	$ (0.02)	$ (0.03)

Weighted Average Common Shares Outstanding

	Total issued	Weighted Average Shares Basic	Diluted
Balance, January 1, 2020	261,225,290	261,225,290	261,225,290
Private Placement, February 2020	449,148,891	396,380,032	396,380,032
Debt conversion, February 2020	300,081,885	264,826,363	264,826,363
Private Placement, August 2020	532,015	181,699	181,699
Rights Offering, November 2020	526,600,000	53,235,519	53,235,519
Balance, December 31, 2020	1,537,588,081	975,848,903	975,848,903
Balance, January 1, 2021	1,537,588,081	975,848,903	975,848,903
Balance, December 31, 2021	1,537,588,081	1,537,588,081	1,537,588,081

21. SHARE BASED COMPENSATION

Under the Omnibus Incentive Plan adopted in 2020, the Company may issue stock options, RSUs and PSUs to employees, officers, consultants and others as determined by the Board of Directors. Stock options were previously issued under the Company's Amended and Restated Stock Option Plan. The Company may issue stock options and DSUs to directors.

At the time of approval of the Omnibus Incentive Plan, 60,914,974 stock options were outstanding under the Amended and Restated Stock Option Plan. No further stock options may be issued under the Amended and Restated Stock Option Plan.

The Omnibus Incentive Plan is also subject to the following limitations: (i) no more than 10% of the outstanding Shares may be issued under the plan or pursuant to any other security-based compensation arrangements of the Company during any one year period; (ii) no more than 5% of the outstanding Shares may be issued under the plan or pursuant to any other security-based compensation arrangements of the Company to any one person; (iii) no more than 10% of the outstanding Shares may be issued to insiders under the plan or under any other security-based compensation arrangements of the Company within any one year period or be issuable to insiders at any time; and (iv) the aggregate number of Shares reserved for issue to any one service provider of the Company shall not exceed 2% of the total number of Shares then outstanding, excluding Shares issued to such service provider upon the exercise of stock options over the preceding 12-month period.

With respect to awards made under the Omnibus Incentive Plan, if for any reason shares subject to issuance on the exercise of stock options granted under the plan are not issued, or are re-acquired by the Company, for reasons including a termination, expiration or cancellation, such shares will become available for additional grants under the plan. If any RSUs, PSUs or DSUs granted under the plan expire, terminate or are cancelled for any reason without being settled in the form of Shares issued from treasury, such Shares will become available for additional grants under the plan.

Stock options

The Board may grant stock options to any participant under the Omnibus Incentive Plan at any time. The exercise price for stock options will be determined by the Board, but may not be less than the market value of a Share (being, on any particular day, the volume weighted average trading price of a Share on the TSX for the five (5) preceding days on which Shares were traded, or on any other stock exchange as selected by the Board for these purposes, and, in the event such Shares are not listed and posted for trading on any stock exchange, the fair market value of such Shares as determined by the Board in its discretion) (the "Market Value") on the date the stock option is granted, except in circumstances where the stock option is granted in exchange for another stock option, subject to TSX approval if required. It is anticipated that stock options will vest and become exercisable as to one third of the stock option on each of the anniversary of the date of grant for the three years following the date of grant, unless otherwise determined by the Board and specified in such participant's option agreement. Stock options must be exercised within a period fixed by the Board that may not exceed five years from the date of grant, except in a case where the expiry period falls during a blackout period, in which case the expiry period will be automatically extended until ten business days after the end of the blackout period. The Omnibus Incentive Plan also provides for earlier termination of stock options on the occurrence of certain events, including but not limited to, termination of a participant's employment.

The Omnibus Incentive Plan also provides for a holder of a stock option to elect a cashless exercise of such option equaling the amount by which the value of the underlying share at that time exceeds the exercise price of such option.

21. SHARE BASED COMPENSATION (continued)

The Company uses the Black-Scholes option pricing model to price its options, which requires certain assumptions including the stock price volatility for a publicly held corporation. Details of the stock options issued in 2020 and 2021 are set out below:

Grant date	Number granted	Granted to	Exercise price (CDN$)	Life (years)	Vesting periods (years)	Black-Scholes model variables: Risk-free rate	Expected volatility	Expected dividend rate	Fair value per options (CDN$)
Mar 30, 2020	11,575,860	Directors	$0.0452	5	1	0.6%	91.6%	nil	$0.027
Mar 30, 2020	37,706,216	Employees	$0.0452	5	3	0.6%	91.6%	nil	$0.027
Mar 30, 2020	1,481,710	Consultant	$0.0452	3	1	0.5%	87.7%	nil	$0.021
Aug 12, 2020	5,123,617	Employee	$0.0593	5	3	0.3%	97.0%	nil	$0.040
Sep 09, 2020	1,319,098	Employee	$0.0520	5	3	0.4%	97.1%	nil	$0.036
Dec 02, 2020	2,510,597	Supplier	$0.0345	5	1	0.5%	94.9%	nil	$0.025
Dec 16, 2020	1,143,218	Employee	$0.0361	5	3	0.4%	94.7%	nil	$0.025
Dec 16, 2020	6,277,164	Directors	$0.0361	5	1	0.4%	94.7%	nil	$0.025
Jun 29, 2021	1,170,609	Consultant	$0.0479	5	1	1.0%	88.2%	nil	$0.033
Jun 29, 2021	40,820,109	Employees	$0.0479	5	3	1.0%	88.2%	nil	$0.033

A forfeiture rate of 3% was used to estimate option expenses during the year. The Company recognized stock option compensation expense of $985 for the year ended December 31, 2021 ($649 for the year ended December 31, 2020).

The following table summarizes the activity under the Company's stock option plan (amounts in chart below are not in thousands):

	December 31, 2021 Number		2021 Weighted average exercise price (CDN)	2020 Number		2020 Weighted average exercise price (CDN)
Balance at January 1,	72,509,507	$	0.06	12,866,992	$	0.17
Granted	41,990,718		0.05	67,137,480		0.05
Exercised	-		-	-		-
Forfeited	(351,012)		0.05	(6,409,965)		0.10
Expired	(1,420,953)		0.24	(1,085,000)		0.34
Balance at December 31,	112,728,260	$	0.05	72,509,507	$	0.06
Options exercisable at December 31,	40,512,458	$	0.06	6,404,695	$	0.16

Exercise prices	Canadian Dollar Options outstanding as at December 31, 2021: Number outstanding	Weighted average remaining life in years	Number excercisable
$0.0345 to $0.0452	57,958,452	3.3	32,401,325
$0.0479 to $0.0593	48,433,433	4.4	2,147,571
$0.11 to $0.17	4,436,103	1.6	4,063,290
$0.21 to $0.36	1,900,272	1.4	1,900,272
	112,728,260	3.7	40,512,458

(All amounts expressed in thousands of U.S. dollars except per share amounts
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21. SHARE BASED COMPENSATION (continued)

Restricted Share Units ("RSU")

An RSU is equivalent in value to a common share of the Company and are settled by the issuance of Company shares. RSUs vest one to three years from the date of grant. The cost of the RSU's is charged to selling, general and administrative expenses using the cliff vesting method. The fair value of each grant of RSUs is the fair value of the Company's share price on the date of the grant. The resulting compensation expense is charged to income over the period the employees unconditionally become entitled to the award, with a corresponding increase in contributed surplus.

A summary of the Company's RSU activity is as follows:

	December 31, 2021	December 31, 2020
Balance, January 1	3,961,218	-
Issuance	-	3,961,218
Balance	3,961,218	3,961,218

The Company recognized RSU compensation expense of $110 for the year ended December 31, 2021 ($5 for the year ended December 31, 2020).

22. RELATED PARTY TRANSACTIONS

Details of the transactions between the Company, key management and other related parties are disclosed below:

Key management includes the Company's directors and executive officers. The remuneration of directors and key members of management and professional fees paid or payable to firms affiliated with the current directors for the year ended December 31, 2021 and 2020 were as follows:

	For the year ended December 31, 2021	2020
Short-term compensation of key management and directors	$ 2,100	$ 1,527
Share-based compensation	993	628
Interest expense	548	212
	$ 3,641	$ 2,367

These transactions are in the normal course of operations.

Executive employment agreements allow for total additional payments of approximately $2,374 if all are terminated as a result of a change in control, $2,288 if all are terminated without cause, and $nil if all are terminated with cause.

First Generation owns 89.5% of the outstanding common stock of the Company at December 31, 2021 (89.5% at December 31, 2020).

23. COMMITMENTS AND CONTINGENCIES

(a) Milestone payments

Under certain research and development agreements, the Company may be required to make payments contingent upon the achievement of specific development, regulatory or commercial milestones on or before specific dates.

The Company may be required to make further milestone payments for TriVair™ products. Milestone payments of $2,000 are due upon FDA approval per new product up to a maximum of $8,000 for products submitted by ABI only. In addition, subsequent royalty payments are due capped at $25,000 per product.

The Company may be required to make certain regulatory or sales-based milestone payments as disclosed in notes 5(d) and (e).

(b) Guarantees

All directors and/or officers of the Company, and each of its various subsidiary entities, are indemnified by the Company for various items including, but not limited to, all costs to settle lawsuits or actions due to their association with the Company, subject to certain restrictions. The Company has purchased directors' and officers' liability insurance to mitigate the cost of any potential future lawsuits or actions to the directors and officers. The term of the indemnification is not explicitly defined but is limited to events for the period during which the indemnified party served as a director or officer of the applicable Acerus entity. The maximum amount of any potential future payment required to be made by the Company cannot be reasonably estimated but could have a material adverse effect on the Company.

In the normal course of business, the Company has entered into agreements that include indemnities in favour of third parties, such as purchase and sale agreements, confidentiality agreements, engagement letters with advisors and consultants, leasing contracts, license agreements, information technology agreements and various product and service agreements. These indemnification arrangements may require the applicable Acerus entity to compensate counterparties for losses incurred by the counterparties as a result of breaches in representations, covenants and warranties provided by the particular Acerus entity or as a result of litigation or other third-party claims or statutory sanctions that may be suffered by the counterparties as a consequence of the relevant transaction. In some instances, the terms of these indemnities are not explicitly defined. The applicable Acerus entity, whenever possible, tries to limit this potential liability within the particular agreement or contract, but due to the unpredictability of future events the maximum amount of any potential reimbursement required to be made by the Company or its subsidiary entities cannot be reasonably estimated, but could have a material adverse effect on the Company.

(c) Litigation

Schenk Litigation

Valeant Pharmaceuticals International, Inc. and Valeant International Bermuda ("Valeant") are defendants in Ontario Superior Court of Justice Action No. CV-11-438382, which claims a declaration that Valeant is contractually obligated to compensate the plaintiff, Reiner Schenk ("Schenk") pursuant to the terms of a contract between Schenk and Biovail Corporation. The main action was commenced by Notice of Action issued on October 31, 2011 and a Statement of Claim was issued on December 14, 2011. Acerus Pharmaceuticals Corporation was named as one of the defendants in the main action, but the action was discontinued as against the Company on December 14, 2011. On October 29, 2013, Valeant commenced a third-party claim against the Company (among others) claiming contribution, indemnity and other relief over to the full extent that Valeant may be held liable to Schenk, and damages for breach of fiduciary duty, breach of contract and intentional interference with economic relations in any amount for which Valeant is found liable to Schenk. The Company has defended the third-party claim, denying any liability to Valeant. The parties have concluded examinations for discovery and attended a pre-trial conference in February 2020. The trial was scheduled to

(All amounts expressed in thousands of U.S. dollars except per share amounts
and unless otherwise stated)

23. COMMITMENTS AND CONTINGENCIES (continued)

(c) Litigation (continued)

commence in April 2020 and was anticipated to be two weeks long. However, in an effort to reduce the transmission of COVID-19, the Ontario Superior Court suspended all regular operations in March 2020. Accordingly, the trial was adjourned to a later date. The parties attended a further pre-trial conference in December 2021 and the trial is now expected to take place in January 2023. As of December 31, 2021, the Company has not accrued for any potential claims.

Recipharm Litigation

On June 18, 2020, Acerus announced it had commenced litigation against Recipharm in the Commercial Court of London. Acerus alleged that the suspension of Recipharm's manufacturing license in August 2018 was a violation of its contractual obligations and led to a shortage of Estrace® in Canada. On June 15, 2021, the Company won at a preliminary issue trial in which Recipharm argued unsuccessfully that Acerus' claim for damages was barred by the terms of the companies' manufacturing contract. In agreeing with Acerus that its claim for damages was not barred, the Commercial Court of London directed the matter to proceed to a full trial. On July 6, 2021, Recipharm made an offer to settle pursuant to Part 36 of the English Civil Procedure Rules. On August 3, 2021, Recipharm was granted permission to appeal the Commercial Court's decision, with the main proceedings being stayed pending appeal.

In light of permission to appeal being granted and, amongst other things, the delay to the proceedings and to final judgment this will cause, on August 12, 2021, Acerus announced that it had accepted the Part 36 Offer and received $2.3 million (GBP 1.7 million) from Recipharm as a settlement payment on August 24, 2021. In addition, Acerus was entitled to reimbursement of the majority of its costs of the litigation and received a further payment of $0.4 million on October 14, 2021. This amount was recognized as a reduction of selling, general and administrative expenses.

24. FINANCIAL INSTRUMENTS

(a) Classification of financial instruments

Financial assets (liabilities) as at December 31, 2021 and 2020 are presented below:

December 31, 2021	Financial assets at amortized cost	Assets/ (liabilities) at FVTPL	Financial liabilities at amortized cost	Total
Cash	$ 2,159	$ -	$ -	$ 2,159
Trade and other receivables	422	-	-	422
Accounts payable and accrued liabilities	-	-	(7,448)	(7,448)
Termination fee payable	-	-	(4,557)	(4,557)
Long-term debt payable	-	-	(23,290)	(23,290)
Derivative financial instrument	-	(55)	-	(55)
	$ 2,581	$ (55)	$ (35,295)	$ (32,769)

December 31, 2020	Financial assets at amortized cost	Assets/ (liabilities) at FVTPL	Financial liabilities at amortized cost	Total
Cash	$ 9,153	$ -	$ -	$ 9,153
Trade and other receivables	528	-	-	528
Contract asset	936	-	-	936
Accounts payable and accrued liabilities	-	-	(5,435)	(5,435)
Long-term debt payable	-	-	(8,019)	(8,019)
Derivative financial instrument	-	(139)	-	(139)
	$ 10,617	$ (139)	$ (13,454)	$ (2,976)

(All amounts expressed in thousands of U.S. dollars except per share amounts
and unless otherwise stated)

24. FINANCIAL INSTRUMENTS (continued)

(b) Fair value of financial instruments

Fair value is defined as the price that would be received from the sale of an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The best evidence of fair value is quoted bid or ask prices in an active market. Quoted prices are not always available for over-the-counter transactions, as well as transactions in inactive or illiquid markets. In these instances, pricing models, normally with observable market-based inputs, are used to estimate fair value. Financial instruments traded in a less active market have been valued using indicative market prices, present value or other valuation techniques. Where financial instruments trade in inactive markets or when using models where observable parameters do not exist, greater management judgement is required for valuation purposes. In addition, the calculation of estimated fair value is based on market conditions at a specific point in time and therefore may not be reflective of future fair values.

At December 31, 2021 and December 31, 2020, the Company's financial instruments consisted of cash, trade and other receivables, contract assets, accounts payable, termination fee payable and accrued liabilities, lease liability, long-term debt, and derivative financial instruments. Cash, trade and other receivables, accounts payable and accrued liabilities are measured at amortized cost and their fair values approximate carrying values due to their short-term nature. The fair value of contract assets is estimated to approximate its carrying value and are classified as Level 3 (see note 7).

The derivative financial instruments are measured at fair value with any changes recognized through the consolidated statement of loss and comprehensive loss and are classified as Level 2. The fair value of the derivative financial instrument is estimated using a Black-Scholes pricing model.

The SWK long-term debt is measured at amortized cost. At December 31, 2021, the fair value of the long-term SWK debt, inclusive of exit fees, approximates its face value of $6,445. At December 31, 2021, the fair value of the long-term First Generation debt approximates $17,243.

(c) Financial risk management

The Company's financial instruments are exposed to certain financial risks, including currency risk, interest rate risk, credit risk, market risk and liquidity risk.

(i) Currency risk

The Company is exposed to currency risk related to the fluctuation of foreign exchange rates. The Company operates primarily in U.S. and Canadian dollars. The Company, however, is exposed to currency risk through its net financial assets denominated in Canadian dollars, Euros and Great British Pounds of the parent whose functional currency is the US dollar.

	December 31, 2021		
	CDN	EUR	GBP
Cash	$ 43	$ -	$ -
Accounts payable and accrued liabilities	(1,798)	(816)	(18)
Lease liability	(427)	-	-
	$ (2,182)	$ (816)	$ (18)

(All amounts expressed in thousands of U.S. dollars except per share amounts
and unless otherwise stated)

24. FINANCIAL INSTRUMENTS (continued)

(c) Financial risk management (continued)

(i) Currency risk (continued)

Based on the above net exposure at December 31, 2021, and assuming that all other variables remain constant, a 5% appreciation or depreciation of the US dollar against the other currencies would have resulted in the following impact on net income:

	US Dollar			
Net income effect:	CDN	EUR	GBP	Total
Appreciate 5%	$ 82	$ (46)	$ (2)	$ 34
Depreciate 5%	(91)	46	2	(43)

(ii) Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates. Refer to note 14 for details on the interest rate applicability to the SWK and First Generation credit facilities.

A 0.5% appreciation in the present SWK interest rate would lead to an increase of $34 of interest payments for the life of the outstanding loans. A 0.5% depreciation in the present SWJK interest rate would lead to a decrease of $34 of interest payments required for the life of the loans.

(iii) Credit risk

Credit risk is the risk of a financial loss to the Company if a customer or counterparty to a financial instrument fails to meet its contractual obligation. Financial instruments that potentially expose the Company to significant concentrations of credit risk consist of cash, trade and other receivables. The Company's investment policies are designed to mitigate the possibility of deterioration of principal, enhance the Company's ability to meet its liquidity needs and provide high returns within those parameters. Cash is on deposit with a AA- rated Canadian chartered bank located in Canada and on deposit with its affiliate bank located in the USA.

Management monitors the collectability of trade and other receivable and estimates an allowance for doubtful accounts. As at December 31, 2021, the allowance for doubtful accounts was $nil. Management has not recognized an allowance for doubtful accounts because there has not been a significant change in credit quality and all amounts are considered recoverable.

(iv) Market risk

The change in fair value of the Company's derivative liability, which is measured at FVTPL, results from the periodic "mark-to-market" revaluation. The valuation is impacted, among other inputs, by the market price of the Company's common shares. As a result, the change in fair value of the derivative liability, which is reported through the consolidated statement of loss and comprehensive loss, has been and may continue in future periods to be materially affected most notably by changes in the Company's common share price.

Assuming that all other variables remain constant, a 5% appreciation or depreciation of the Company's share price would have resulted in an $6 decrease and $6 increase in current year net loss respectively ($12 increase and $12 decrease in net income at December 31, 2020).

(All amounts expressed in thousands of U.S. dollars except per share amounts
and unless otherwise stated)

24. FINANCIAL INSTRUMENTS (continued)

(c) Financial risk management (continued)

(v) Liquidity risk

Liquidity risk is the risk that the Company will encounter difficulties in meeting its financial liability obligations as they become due. The Company has a planning and budgeting process in place to help determine the funds required to support normal operating requirements on an ongoing basis. Since inception, the Company has financed its cash requirements primarily through issuances of securities, short-term borrowings, issuances of long-term debt (including convertible debt) and upfront licensing fees.

The Company controls liquidity risk through management of working capital, cash flows and the availability and sourcing of financing. See also note 1 (Going Concern).

The following table summarizes the Company's significant contractual undiscounted cash flows as at December 31, 2021 (excluding future milestones and royalties):

	Less than 3 months	3-6 months	6 months - 1 year	Between 1 and 2 years	Between 2 and 5 years	Total
Accounts payable and accrued liabilities	$ 6,523	$ 575	$ 300	$ 50	$ -	$ 7,448
Purchase commitments	4,363	2,769	1,375	1,694	19	$ 10,220
Termination Fee	750	750	1,500	2,250	-	$ 5,250
Lease liability (principal and interest)	-	7	22	45	143	$ 217
Long-term debt (principal and interest)	765	748	1,445	4,292	-	$ 7,250
Subordinated loan facility (principal and interest)	-	-	-	-	26,066	$ 26,066
As at December 31, 2021	12,401	4,849	4,642	8,331	26,228	$ 56,451

25. CAPITAL MANAGEMENT

The Company's capital management objectives are to safeguard its ability to continue as a going concern and to provide returns for shareholders and benefits for other stakeholders. The Company does this by ensuring it has sufficient cash resources to fund its research and development activities, to pursue its eventual commercialization efforts and to maintain its ongoing operations. The Company includes the long-term debt and shareholders' equity in the definition of capital.

A summary of the Company's capital structure is as follows:

	December 31, 2021	December 31, 2020
Long-term debt	$ 23,290	$ 8,019
Shareholders' equity	(26,014)	3,160
	$ (2,724)	$ 11,179

The Company continually evaluates alternatives to raise additional capital. These alternatives include seeking additional capital from existing shareholders and new shareholders, from the issuance of debt and by way of monetizing its technologies or development programs through commercial or partnering arrangements.

26. SEGMENT REPORTING

The Chief Executive Officer and Chief Financial Officer are the Company's chief operating decision-makers (CODM). Management has determined that there is one operating segment based on the information reviewed by the CODM for the purposes of allocating resources and assessing performance.

At December 31, 2021, the Company has inventory in Germany, USA, UK and Taiwan in the amounts of $4,067, $336, $202 and $nil respectively ($1,942, $nil, $352 and $19 respectively for the year ended December 31, 2020). At December 31, 2021, the Company has total long-term assets in Canada and Germany in the amounts of $649 and $354 respectively ($2,516 and $432 respectively in Canada and Germany at December 31, 2020).

For the year ended December 31, 2021, the Company had revenues of $64, ($4,484) and $287 from customers located in Canada, U.S. and rest of world respectively ($209, $810 and $66 from customers located in Canada, U.S. and rest of world respectively for the year ended December 31, 2020).

27. SUBSEQUENT EVENTS

First Generation advance and settlement of SWL credit facility

On February 18, 2022, the Company announced that it had entered into an amending agreement with First Generation to increase the subordinated loan facility from US$25 million to US$30.845 million. This increase was made available to the Company by way of a single advance under a secured grid promissory note with First Generation. The proceeds from the Loan Facility increase were used on February 17, 2022, to settle all obligations under the SWK credit facility.

Definitive agreement to indirectly acquire Serenity LLC and global rights to Noctiva™

On February 28, 2022, the Company announced it has entered into a definitive agreement (the "Definitive Agreement") to indirectly acquire Serenity LLC ("Serenity") and the global rights to its Noctiva brand in a combined cash and stock transaction. Noctiva™ is prescribed for the treatment of nocturia due to nocturnal polyuria in adults who awaken at least two times per night to void. It is the first US Food and Drug Administration approved therapy for nocturia. The transaction closed on March 7, 2022 following approval of the transaction by the Toronto Stock Exchange.

Within 90 days of the effective date of March 7, 2022, the Company will pay a $6 million up-front fee to Serenity, less certain deductions allowed by the Definitive Agreement. Serenity stockholders will be entitled to receive approximately 804 million common shares ("Common Shares") of Acerus, payable on the earlier of January 10, 2023, if first commercial sale has occurred before then, or the date of the first commercial sale of Noctiva™ (the "First Commercial Sale Shares"), resulting in Serenity stockholders owning approximately 32.6% of the fully diluted Common Shares as calculated as of closing and without taking into account any future financing or other share issuances.

Two additional one-time equity-based sales milestones valued at $5 million USD each, will be paid to Serenity stockholders when aggregate Net Sales of Noctiva™ sold in the United States and Canada combined, first reach the respective thresholds of $100 million and $150 million USD in annual net sales. These equity milestones will be paid in Common Shares and will be valued at the highest of the then current market price or a pre-determined floor price (the "Sales Milestone Shares").

Serenity stockholders will also receive tiered low double-digit Contingent Sales Payments, paid in cash, equal to a percentage of Net Sales of Noctiva™ sold in the United States and Canada during each calendar year. Serenity stockholders will also receive Contingent Sales Payments, paid in cash, equal to a percentage of Net Royalty Profits of Noctiva™ sold outside of the United States and Canada during each calendar year.

This is Exhibit "G" referred to in the Affidavit of Naveed Z. Manzoor
sworn by Naveed Z. Manzoor of the Town of Oakville,
in the Province of Ontario, before me at the City of Toronto,
in the Province of Ontario, on January 25, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

DocuSigned by:

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Commissioner for Taking Affidavits

Acerus Pharmaceuticals Corporation

Unaudited Condensed Interim Consolidated Financial Statements

September 30, 2022

(expressed in thousands of U.S. dollars except per share amounts and unless otherwise stated)

Acerus Pharmaceuticals Corporation
Condensed Interim Consolidated Statements of Financial Positior
As at September 30, 2022 and December 31, 2021
Unaudited
(expressed in thousands of U.S. dollars)

	Notes	September 30, 2022	December 31, 2021
ASSETS			
Current assets			
Cash		$ 3,020	$ 2,159
Trade and other receivables	4	1,131	422
Inventory	5	5,120	4,605
Prepaid and other assets	6	1,145	1,463
Total current assets		10,416	8,649
Property and equipment		338	365
Right of use asset	7	279	302
Intangible assets	8	36,637	336
Total assets		$ 47,670	$ 9,652
LIABILITIES AND SHAREHOLDERS' DEFICIT			
Current liabilities			
Accounts payable and accrued liabilities	9	$ 8,559	$ 7,448
Provisions	8, 14	2,118	-
Deferred cash consideration	8	750	-
Termination fee payable		4,002	2,456
Current portion of long-term debt	10	-	2,153
Current portion of lease liability	7	23	16
Total current liabilities		15,452	12,073
Termination fee payable		-	2,101
Lease liability	7	286	300
Long-term debt	10	43,872	21,137
Promissory note	8	1,950	-
Derivative financial instrument		5	55
Total liabilities		61,565	35,666
Shareholders' deficit			
Share capital		$ 198,346	$ 198,163
Contributed surplus	8, 10	49,072	18,078
Accumulated other comprehensive loss		(13,949)	(13,949)
Deficit		(247,364)	(228,306)
Total shareholders' deficit		(13,895)	(26,014)
Total liabilities & shareholders' deficit		$ 47,670	$ 9,652

The accompanying notes are an integral part of these unaudited condensed interim consolidated financial statements.
Going concern (note 1)
Commitments and contingencies (note 14)
These condensed interim consolidated financial statements were authorized by the Board of Directors on November 14, 2022.

Acerus Pharmaceuticals Corporation
Condensed Interim Consolidated Statements of Loss and Comprehensive Loss
For the three and nine months ended September 30, 2022 and 2021
Unaudited
(expressed in thousands of U.S. dollars, except per share and share data)

	Notes	For the three months ended September 30, 2022	2021	For the nine months ended September 30, 2022	2021
Revenue					
Product revenue		$ 770	$ 587	$ 2,300	$ 1,383
Termination Fees		-	-	-	(6,254)
		770 -	587	2,300	(4,871)
Cost of goods sold		202	489	934	725
Gross margin (loss)		568	98	1,366	(5,596)
Expenses					
Research and development		1,936	1,353	5,460	3,254
Selling, general and administrative		4,320	5,046	13,807	16,618
Total operating expenses		6,256	6,399	19,267	19,872
Operating loss		(5,688)	(6,301)	(17,901)	(25,468)
Other expenses (income)					
Interest on long-term debt and other financing costs	8, 10	1,529	1,007	4,257	1,707
Litigation settlement proceeds		-	(2,328)	-	(2,328)
Interest income		(9)	2	(12)	(5)
Foreign exchange gain		(63)	(31)	(85)	(71)
Change in fair value of derivative financial instruments		(14)	(53)	(45)	(41)
(Gain) loss on debt modification	8	(2,958)	-	(2,958)	64
Total other expenses (income)		(1,515)	(1,403)	1,157	(674)
Loss for the year before income taxes		(4,173)	(4,898)	(19,058)	(24,794)
Income tax expense		-	-	-	-
Net loss and comprehensive loss for the period		$ (4,173)	$ (4,898)	$ (19,058)	$ (24,794)
Loss per common share					
Basic and diluted net loss per common share	11	$ (0.54)	$ (0.64)	$ (2.47)	$ (3.23)
Weighted average common shares outstanding					
Basic and diluted	11	7,702,297	7,687,940	7,702,297	7,687,940

The accompanying notes are an integral part of these unaudited condensed interim consolidated financial statements.

Acerus Pharmaceuticals Corporation

Condensed Interim Consolidated Statements of Changes in Shareholders' Equity (Deficit)
For the nine months ended September 30, 2022 and 2021
Unaudited
(expressed in thousands of U.S. dollars)

	Note	Share capital	Contributed surplus	Accumulated other comprehensive loss	Deficit	Total
Balance, January 1, 2021		$ 198,163	$ 13,435	$ (13,949)	$ (194,489)	$ 3,160
Net loss and comprehensive loss for the period		-	-	-	(24,794)	(24,794)
Fair value adjustment on subordinated loan facility	10		2,228			2,228
Share based compensation	12	-	800	-	-	800
Balance as at September 30, 2021		$ 198,163	$ 16,463	$ (13,949)	$ (219,283)	$ (18,606)
Balance as at January 1, 2022		198,163	18,078	(13,949)	(228,306)	(26,014)
Net loss and comprehensive loss for the year		-	-	-	(19,058)	(19,058)
Issuance of common shares on vesting of restricted share units	12	183	(183)	-	-	-
Contingent share consideration on intangible asset acquisition	8	-	26,046	-	-	26,046
Fair value adjustment on subordinated loan facility	10	-	4,618	-	-	4,618
Share based compensation	12	-	513	-	-	513
Balance as at September 30, 2022		$ 198,346	$ 49,072	$ (13,949)	$ (247,364)	$ (13,895)

The accompanying notes are an integral part of these unaudited condensed interim consolidated financial statements.

Acerus Pharmaceuticals Corporation
Condensed Interim Consolidated Statements of Cash Flows
For the nine months ended September 30, 2022 and 2021
Unaudited
(expressed in thousands of U.S. dollars)

	Note	September 30, 2022	September 30, 2021
Operating activities:			
Net loss for the period		$ (19,058)	$ (24,794)
Items not affecting cash:			
Adjustment for unrealized foreign exchange loss		33	7
Amortization of intangible assets	8	30	112
Depreciation of property and equipment		117	479
Depreciation of right of use asset	7	23	10
Interest expense and other financing costs	8, 10	4,257	1,707
Change in fair value of derivative financial instrument		(50)	(41)
Share based compensation	12	513	800
Termination fee		-	6,204
Gain on disposal of property and equipment		-	(56)
(Gain) loss on modification of debt	8	(2,958)	64
Net changes in non-cash working capital items related to operating activities:			
Trade and other receivables	4	(709)	(1,671)
Contract asset		-	936
Inventory	5	(515)	(3)
Prepaids and other assets	6	318	(777)
Accounts payable and accrued liabilities	9	546	2,261
Provisions	8, 14	(132)	-
Termination fee paid		(1,000)	(1,500)
Net cash used in operating activities		(18,585)	(16,262)
Financing activities			
Interest, financing fees and transactions costs paid	10	(135)	(733)
Payment of long-term debt	10	(6,445)	(1,700)
Principal elements of lease payments	7	(17)	(229)
Proceeds from long-term debt	10	27,945	12,000
Net cash provided by financing activities		21,348	9,338
Investing activities			
Proceeds from disposition of property and equipment		-	56
Acquisition of intangible asset	8	(1,812)	-
Acquisition of property and equipment		(90)	(12)
Net cash provided by (used in) investing activities		(1,902)	44
Net increase (decrease) in cash for the period		861	(6,880)
Cash, beginning of the period		2,159	9,153
Cash, end of the period		$ 3,020	$ 2,273

The accompanying notes are an integral part of these unaudited condensed interim consolidated financial statements.

1. GOING CONCERN

These unaudited condensed interim consolidated financial statements have been prepared using International Financial Reporting Standards applicable to a going concern, which contemplates the realization of assets and settlement of liabilities in the normal course of business as they come due for the foreseeable future.

Acerus Pharmaceuticals Corporation ("Acerus") and its subsidiaries (together, the "Company") continue to incur losses and cash outflows from operating activities and at September 30, 2022, had a working capital deficit of $5,036 and a shareholders' deficit of $13,895. The ability of the Company to realize its assets and meet its obligations as they come due is dependent on successfully commercializing its existing products, bringing new products and technologies to market and achieving future profitable operations, which is not expected within the next twelve months.

On September 21, 2022, the Company announced that the Board of Directors approved a strategic review of capital and business alternatives, including, but not limited to, possible debt or equity financing, asset sale, merger & acquisition or licensing transactions in an effort to generate cash needed to pay the Company's existing obligations. A committee of independent directors was struck to supervise this strategic review process. Ernst & Young Orenda Corporate Finance Inc. have also been engaged as independent financial advisors to the Company in this process. The Company has since received a number of expressions of interest in licensing certain of its products and management are currently reviewing its options. At November 14, 2022, the Company's cash balance stood at $1,385 and the Company will need to curtail expenditures until additional funding can be secured, otherwise management anticipate the Company will run out of cash before the end of December 2022.

These circumstances create material uncertainties that cast significant doubt as to the ability of the Company to meet its obligations as they come due and, accordingly, the ultimate appropriateness of the use of accounting principles applicable to a going concern as the Company will require additional funding from lenders or investors, to pay its current liability obligations and meet its forecast cashflow requirements over the next year.

There can be no assurances that the steps the Company is taking will be successful.

These unaudited condensed interim consolidated financial statements do not reflect the adjustments to the carrying values of assets and liabilities and the reported expenses and statement of financial position classifications that would be necessary if the Company were unable to realize its assets and settle its liabilities as a going concern in the normal course of operations. Such adjustments could be material.

2. DESCRIPTION OF BUSINESS

These unaudited condensed interim consolidated financial statements represent the consolidated accounts of Acerus Pharmaceuticals Corporation ("Acerus") (incorporated in Ontario, Canada) and its wholly-owned subsidiaries, Acerus Labs Inc. ("ALI") (incorporated in Ontario), Acerus Biopharma Inc. ("ABI") (incorporated in Ontario) and Acerus Pharmaceuticals USA, LLC (formerly Serenity Pharmaceuticals LLC) incorporated in Delaware, USA. The head office, principal address and records office of the Company are located in Mississauga, Ontario, Canada. The Company's registered address is Suite 205, 7025 Langer Drive, Mississauga, Ontario, L5N 0E8.

Acerus is a Canadian-based specialty pharmaceutical company focused on the development, manufacture, marketing and distribution of branded products that improve patient experience, with a primary focus in the field of men's health. The Company commercializes its products within North America through Third Party Logistics providers ("3PLs") and outside of North America through a global network of licensed distributors. Within the U.S. market, the Company has also contracted commercial providers Syneos Health Inc. ("Syneos") to augment sales, marketing and medical science liaison capacity.

On March 7, 2022, Acerus announced that it had acquired Serenity Pharmaceuticals LLC, a Miami, FL based pharmaceutical company. Serenity's principal asset is Noctiva™ (desmopressin acetate), a patented prescription treatment for nocturnal polyuria that has received FDA approval. Noctiva™ is clinically indicated for the treatment of nocturia due to nocturnal polyuria in adults who awaken at least two times per night to void. The Company expects to resume manufacturing of Noctiva™ by the end of 2023 and launch Noctiva™ along with Natesto® using the same sales

(All amounts expressed in thousands of U.S. dollars except per share amounts
and unless otherwise stated)

2. DESCRIPTION OF BUSINESS (continued)

force noted above. The Company believes that there is significant synergy between Noctiva™ and Natesto® with similar physician call points in the urology and high prescribing general practitioner segment. See note 8.

3. SIGNIFICANT ACCOUNTING POLICIES

The accounting policies applied to these unaudited condensed interim consolidated financial statements are consistent with the significant accounting policies used in the preparation of the annual audited consolidated financial statements for the year ended December 31, 2021, except as noted below.

(a) Basis of presentation

These unaudited condensed interim consolidated financial statements have been prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB") applicable to the preparation of interim financial statements, including International Accounting Standard ("IAS") 34, Interim Financial Reporting. The unaudited condensed interim consolidated financial statements should be read in conjunction with the annual audited consolidated financial statements for the year ended December 31, 2021, which have been prepared in accordance with IFRS as issued by the IASB.

(b) Changes in accounting policy and disclosures

At the date of authorization of these financial statements, several new, but not yet effective Standards and amendments to existing Standards, and Interpretations have been published by the IASB. None of these Standards or amendments to existing Standards have been adopted early by the Company. The Company anticipates that all relevant pronouncements will be adopted for the first period beginning on or after the effective date of the pronouncement. New Standards, amendments and Interpretations not adopted in the current year have not been disclosed as they are not expected to have a material impact on the Company's consolidated financial statements.

4. TRADE AND OTHER RECEIVABLES

	September 30, 2022	December 31, 2021
Trade receivables	$ 994	$ 311
Due from related party (note 13)	71	-
Commodity tax receivable	66	111
Total trade and other receivables	$ 1,131	$ 422

Allowance for doubtful accounts are recognized based on estimated irrecoverable amounts determined by reference to historical default experience of the counterparty and an analysis of the counterparty's current financial position. As at September 30, 2022, the Company has recognized $nil in allowance for doubtful accounts ($nil as at December 31, 2021).

Trade and other receivables disclosed above include amounts that are past due at the end of the reporting period for which the Company has not recognized an allowance for doubtful accounts as there has not been a significant change in credit quality and the amounts are still considered recoverable.

Age of receivables that are past due but not impaired:

	September 30, 2022	December 31, 2021
60 - 90 days	$ -	$ 8
Greater than 90 days	9	30
	$ 9	$ 38

(All amounts expressed in thousands of U.S. dollars except per share amounts
and unless otherwise stated)

5. INVENTORY

		September 30, 2022		December 31, 2021
Raw materials	$	4,270	$	4,269
Work in progress		78		-
Finished goods		772		336
Total inventory	$	5,120	$	4,605

6. PREPAIDS AND OTHER ASSETS

		September 30, 2022		December 31, 2021
Deposits with vendors	$	603	$	794
Other prepayments		542		669
Total prepaid and other assets	$	1,145	$	1,463

7. LEASES

On June 1, 2021, the Company entered into a new premises lease. The new lease, including an option to renew at the discretion of the Company, has an expected maturity date of November 30, 2031. The Company recorded a Right of use asset in the amount of $320, net of $22 of lease inducements. The Company recorded a Lease liability in the amount of $311, net of $22 in lease inducements receivable, using a discount rate of 6.50%. The discount rate was derived from publicly available market capitalization reports available for a comparable location and class of lease premises. A +/- 1% change in the discount rate would change the estimated fair value of both the Right of use asset and the Lease liability by +/- $17.The Right of use asset is being amortized on a straight line basis over the term of the expected maturity date of November 30, 2031.

The balance sheet shows the following amounts related to the premises lease:

Right of use asset:		September 30, 2022		December 31, 2021
Balance, January 1	$	302	$	-
Acquisition of right of use asset		-		320
Depreciation of right of use asset		(23)		(18)
Balance	$	279	$	302

		September 30, 2022		December 31, 2021
Balance, January 1	$	316	$	229
Payments		(17)		(229)
Addition of lease liability		22		311
Accrued interest		15		14
Foreign exchange effect		(27)		(9)
Balance		309		316
Current lease liability		23		16
Non-current lease liability	$	286	$	300

(All amounts expressed in thousands of U.S. dollars except per share amounts
and unless otherwise stated)

8. INTANGIBLE ASSETS

	Technology rights	Product rights	Trade name	Total
Costs				
Balance, January 1, 2022	$ 4,400	$ 477	$ -	$ 4,877
Addition	-	35,291	1,040	36,331
Balance, September 30, 2022	$ 4,400	$ 35,768	$ 1,040	$ 41,208
Accumulated amortization				
Balance, January 1, 2022	$ 4,400	$ 141	$ -	$ 4,541
Amortization	-	30	-	30
Balance, September 30, 2022	$ 4,400	$ 171	$ -	$ 4,571
Net book value				
September 30, 2022	$ -	$ 35,597	$ 1,040	$ 36,637

	Technology rights	Product rights	Trade name	Total
Costs				
Balance, January 1, 2021	$ 4,400	$ 477	$ -	$ 4,877
Addition	-	-	-	-
Balance, December 31, 2021	$ 4,400	$ 477	$ -	$ 4,877
Accumulated amortization				
Balance, January 1, 2021	$ 2,635	$ 100	$ -	$ 2,735
Amortization	109	41	-	150
Impairment charge	1,656	-	-	1,656
Balance, December 31, 2021	$ 4,400	$ 141	$ -	$ 4,541
Net book value				
December 31, 2021	$ -	$ 336	$ -	$ 336

During December 2021, the Company was informed that the application to prosecute a patent for TriVair for the US market was rejected for a second time. This decision culminated several years of effort with the US regulator. A Request for rehearing was filed in January 2022 to support a third submission, which was also subsequently rejected in February 2022 with a final rejection issued in June 2022. The likelihood of the existing design being patented for the US market without either a significant design modification, or a limitation in therapy application regarding pulmonary and/or nasal delivery, remains unlikely.

The recoverability of this intangible asset is dependent on successful technology development and subsequent commercialization of related products. Despite successfully prosecuting the TriVair patent in other non-US markets, the absence of success in the US market has impeded any significant commercial success to date. In the absence of a US market patent prosecution, and in the absence of any commercial opportunities for the existing technology in non-US markets, the recoverable amount of the intangible asset was reduced to $nil at December 31, 2021. The remaining life of the TriVair patents within other jurisdictions where a patent has been successfully prosecuted; notably, Canada and Japan, is 15 years and 4 months.

Product rights include rights for Lidbree™, Stendra® and Noctiva™ . Of the product acquisition costs for Stendra®, $300 was accrued but not payable as of December 31, 2021.

(All amounts expressed in thousands of U.S. dollars except per share amounts
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8. INTANGIBLE ASSETS (continued)

On March 7, 2022, the Company acquired Serenity Pharmaceuticals LLC ("Serenity"), a Miami, Florida based pharmaceutical company. Serenity's principal asset is Noctiva™ (desmopressin acetate), a patented prescription treatment for nocturnal polyuria that had received FDA approval. Noctiva™ is clinically indicated for the treatment of nocturia due to nocturnal polyuria in adults who awaken at least two times per night to void. Noctiva™ had been commercialized in the past but at the time of acquisition was not for sale. As Noctiva™ represents virtually all of the underlying value of Serenity, the Company has treated the acquisition as an asset acquisition based on the concentration test noted in Paragraph B7B of IFRS3. Accordingly, the acquisition has been treated as the acquisition primarily of an intangible asset as shown below and not as a business combination. As a result, no goodwill or deferred taxes arose on this transaction.

Details of the purchase consideration and net assets acquired are as follows:

i) Purchase consideration:

		September 30, 2022
Cash	$	605
Deferred cash consideration		750
Promissory note		4,908
Contingent share consideration: deferred share issuance		22,601
Contingent share consideration: sales performance milestones		3,445
Closing costs and success fees		1,393
Acquisition cost	$	33,702

The promissory note and deferred cash consideration were originally repayable on June 7, 2022, 90 days after closing. On August 5, 2022, the Company announced that it had amended the promissory note related to the up-front fee owed to former Serenity Pharmaceuticals LLC security holders to extend the original maturity date such that 50% of the balance would be payable on September 30, 2022, and the remainder, including accrued interest, would be payable on December 31, 2022. The deferred cash consideration is due on demand.

On September 30, 2022, the repayment terms of the promissory note owed to former Serenity Pharmaceuticals LLC security holders were once again amended to a repayment schedule commencing the first business day of each calendar quarter following the calendar quarter in which the first commercial sale of Noctiva™ is achieved in the U.S. market. Under the terms of the new promissory note, a total of $7.75 million representing principal and accrued interest shall be paid to the security holders in thirteen quarterly payments commencing from the calendar quarter immediately following the calendar quarter in which the first commercial sale in the USA is achieved. See further discussion below regarding the determination of fair value of the amended promissory note.

The contingent share consideration (and corresponding increase in contributed surplus) has been measured at the estimated fair value of the net assets acquired less the cash and promissory notes paid / payable in accordance with IFRS 2 "Share based payments". The deferred share consideration consists of:

- A deferred share issuance of 803,715,000 shares (4,018,575 shares post consolidation) of the Company. These shares (representing approximately 1/3 of the fully diluted shares of the Company) are issuable upon the later of (i) January 23, 2023; or (ii) 30 days after first commercial sale of Noctiva in the USA or Canada;
- Two contingent share payment tranches of $5 million worth of common shares each if Noctiva™ net annual revenues in the USA and Canada reach:
  - $100 million before December 31, 2026, and
  - $150 million annually on or before December 13, 2028.

(All amounts expressed in thousands of U.S. dollars except per share amounts and unless otherwise stated)

8. INTANGIBLE ASSETS (continued)

ii) Net assets and liabilities acquired:

		September 30, 2022
Intangible assets	$	36,331
Provisions (note 14)		(2,250)
Assumed liabilities		(379)
Net assets and liabilities recognized	$	33,702

Should the Company not achieve a first commercial sale of Noctiva™ in the US market within 24 months, the rescheduled promissory note payments referred to above would continue to be due once a first commercial sale is ultimately achieved. However, a $3 million penalty also becomes payable to the sellers and the IP associated with all pipeline products (which excludes Noctiva™) would revert to the sellers as compensation for late commercialization.

As the renegotiated terms of the promissory note are substantially different from the terms of the original promissory note and this has been accounted for as an extinguishment of the original financial liability and the recognition of a new financial liability at fair value. In the renegotiated terms there are different sets of cash flows depending on when and if Noctiva is commercialized in the U.S., but the minimum amount that the company cannot avoid paying is $3 million. The estimated range of recovery from face value was estimated to be 65% based upon Refinitiv distressed debt market report for the healthcare sector for September 2022, which reflects an implied discount rate of 35% based upon the remaining term to the penalty payment date. Accordingly, a fair value adjustment of $2,958 was recorded as a gain on debt modification in the condensed interim consolidated statements of loss and comprehensive loss. A +/- 1% change in the discount rate would change the estimated initial fair value of the promissory note by +/- $21.

In addition to the purchase consideration described above, the Company has agreed to pay milestone payments in the form of royalties to the vendors. These payments are not reflected in the purchase price of the intangible but are disclosed in contractual obligations and commitments note 14. Amortization of the intangible will begin when the asset is available for use and will continue until patent expiry in 2030. Availability for use is expected by the end of 2023 upon qualification of the prior Noctiva™ contract manufacturer.

(All amounts expressed in thousands of U.S. dollars except per share amounts
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9. ACCOUNTS PAYABLE AND ACCRUED LIABILITIES

	September 30, 2022	December 31, 2021
Accounts payable	$ 2,324	$ 3,073
Employee salaries and benefits payable	137	703
Noctiva™ Intangible asset acquisition assumed liabilities, unpaid closing costs and success fees (note 8)	697	-
Accrual to complete Estrace manufacturing transfer	147	205
Interest and financing fees payable (note 10)	-	38
Accrued liabilities	964	575
Natesto® US related payables	4,099	2,843
Provision for returns and discounts	191	11
Total accounts payable and accrued liabilities	$ 8,559	$ 7,448

The Noctiva™ intangible asset acquisition related liability comprises closing costs, success fees plus assumed liabilities on the acquisition of Serenity LLC. Payables related to Natesto® US in the table above are for expenses related to the Company's U.S. selling and marketing activities for Natesto®. These activities include services contracted through Syneos Health as well as contracts for rebates and coupons negotiated directly with Pharmacy Benefit Managers and Health Plans. The balance also includes liabilities with other contract partners for rebates, co-pay, distribution fees, product returns, chargebacks, early pay discounts, regulatory support, regulatory compliance and samples management.

10. LONG-TERM DEBT

	SWK Facility	First Generation Loan	Total
Balance, January 1, 2021	$ 8,019	$ -	$ 8,019
Amortization of deferred financing costs	264	-	264
Advances on Subordinated Loan Facility	-	20,000	20,000
Loss on modification	64	-	64
Fair value adjustment	-	(3,548)	(3,548)
Capitalized & Accreted Interest	-	791	791
Repayment of principal	(2,300)	-	(2,300)
Balance, December 31, 2021	$ 6,047	$ 17,243	$ 23,290
Current portion at December 31, 2021	2,153	-	2,153
Long-term portion as at December 31, 2021	$ 3,894	$ 17,243	$ 21,137
Balance, January 1, 2022	$ 6,047	$ 17,243	$ 23,290
Amortization of deferred financing costs	398	-	398
Advances on Loan Facilities	-	27,945	27,945
Fair value adjustment	-	(4,618)	(4,618)
Capitalized & Accreted Interest	-	3,302	3,302
Repayment of principal	(6,445)	-	(6,445)
Balance, September 30, 2022	$ -	$ 43,872	$ 43,872
Current portion at September 30, 2022	-	-	-
Long-term portion as at September 30, 2022	$ -	$ 43,872	$ 43,872

SWK credit facility

The SWK credit facility was repaid on February 18, 2022 from the proceeds of the First Generation loan entered into on the same date as discussed below.

10. LONG-TERM DEBT (continued)

First Generation subordinated loan

On April 30, 2021, the Company announced closing a $15 million subordinated secured loan facility ("Loan Facility") with First Generation Capital Inc. ("First Generation"), a company affiliated with the Chairman of the Board of Directors of the Company. The loan is being made available to the Company by way of one or more advances under a secured promissory note. The Loan Facility was subordinated to the existing credit facility with SWK and bears interest at a fixed rate of 8% per annum. The Loan Facility is repayable in full by December 31, 2024, although following the repayment of the SWK credit facility, it can now be repaid in full or in part without limitation at any time at the Company's discretion.

On December 13, 2021, the Company announced it had entered into an amending agreement with First Generation to increase the subordinated loan facility from $15 million to $25 million. SWK consented to the $10 million increase as well as a temporary amendment to reduce the minimum Consolidated Unencumbered Liquid Asset covenant from $2 million to $250 until February 1, 2022.

On February 18, 2022, the Company announced that it had entered into an amending agreement with First Generation to increase the loan facility from US$25 million to US$30.845 million. This increase was made available to the Company by way of a single advance under a secured grid promissory note with First Generation. The proceeds from the Loan Facility increase were used on February 17, 2022, to settle all obligations under the SWK credit facility. SWK subsequently acknowledged the full release and settlement of the Company's obligations.

On March 30, 2022, the Company announced that it had entered into an amending agreement to increase the loan facility from $30.845 million to $35.845 million of which $2.5 million of the increase was advanced on March 31, 2022 and $2.5 million on April 19, 2022. An amendment to the March 30, 2022 agreement was executed on June 23, 2022 for an additional amount of $2.1 million funded on June 23, 2022 increasing the loan facility to $37.945 million.

On August 4, 2022, the Company announced that it had entered into an amending agreement to increase the loan facility from $37.945 million to $47.945 million of which $5.0 million of the increase was advanced on August 5, 2022 and $5.0 million on August 9, 2022.

In accordance with IFRS 9 - Financial Instruments, loans must be initially measured at fair value. The Company has assessed the fair market interest rate attributable to the subordinated loan facilities entered into in 2021 totaling $25 million and determined that an interest rate of 14% represented fair value. Accordingly, a fair value adjustment of $4,343 was recorded in 2021 on advances to December 31, 2021 under this facility. As the loan is from a related party who has a controlling interest in the Company, the resultant gain has been recorded as contributed surplus. A +/- 1% change in the discount rate would change the estimated initial fair value of the loan by +/- $663.

In accordance with IFRS 9 - Financial Instruments, the Company has also assessed the fair market interest rate attributable to the senior secured facility amendments in the first six months of $12.945 million and determined that an interest rate of 14% represents fair value primarily due to the fact that security for these amendments is no longer subordinated to SWK's previous security priority. Accordingly, a fair value adjustment of $1,930 has been recorded on advances under these new facilities. As the loan is from a related party who has a controlling interest in the Company, the resultant gain has been recorded as contributed surplus. A +/- 1% change in the discount rate would change the estimated initial fair value of the loan by +/- $299.

In accordance with IFRS 9 - Financial Instruments, the Company has also assessed the fair market interest rate attributable to the senior secured facility amendments of $10 million in the current quarter and determined that an interest rate of 17% represents fair value reflecting the assessment undertaken on the prior period amendment as well as Bank of Canada prime rate increases through the current period. Accordingly, a fair value adjustment of $1,893 has been recorded on advances under these new facilities. As the loan is from a related party who has a controlling interest in the Company, the resultant gain has been recorded as contributed surplus. A +/- 1% change in the discount rate would change the estimated initial fair value of the loan by +/- $189.

(All amounts expressed in thousands of U.S. dollars except per share amounts
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10. LONG-TERM DEBT (continued)

At September 30, 2022, $47.945 million is outstanding on the secured loan facility. No principal or interest payments are expected over the next twelve months.

Canadian credit facility

The prior Canadian Credit facility of $0.75 million was not renewed and expired in August 2022.

Interest and financing costs

Balance payable, January 1, 2021	$	136
Interest and financing fees		2,570
Capitalized interest First Generation loan facility		(548)
Amortization of deferred financing fees		(264)
Accretion interest termination fee payable		(603)
Accretion interest First Generation loan facility		(243)
Loss on debt modification		(64)
Interest, financing fees and transaction costs paid		(932)
Accrued interest lease liability (note 7)		(14)
Balance payable, December 31, 2021 (note 9)	$	38

Balance payable, January 1, 2022 (note 9)	$	38
Interest and financing fees expense		4,257
Accretion interest termination fee payable		(445)
Accretion interest First Generation loan facility		(1,112)
Capitalized interest First Generation loan facility		(2,190)
Accrued interest lease liability (note 7)		(15)
Amortization of deferred financing fees		(398)
Interest, financing fees and transaction costs paid		(135)
Balance payable, September 30, 2022 (note 9)	$	-

11. LOSS PER SHARE

On April 19, 2022, the Company announced that it intended to undertake a consolidation of its outstanding common shares on the basis of one (1) post-consolidation share for every two hundred (200) pre-consolidation shares (the “Consolidation”). The Consolidation was previously approved by shareholders of the Company at the annual and special meeting of shareholders of the Company held on June 14, 2021.

Subsequently approved by the Toronto Stock Exchange (“TSX”), the Consolidation took effect on April 26, 2022 and the common shares commenced trading on the TSX on a post-consolidation basis beginning at the open of markets on April 29, 2022.

After the Consolidation, the number of common shares issued and outstanding were consolidated from approximately 1,541,549,299 to approximately 7,707,738 on a non-diluted basis. The exact number of common shares outstanding will vary based upon the elimination of fractional shares as no fractional shares were issued in connection with the Consolidation. Rather, all fractions of post-consolidation shares were rounded down to the nearest whole number.

11. LOSS PER SHARE (continued)

The following table sets forth the computing of basic and diluted loss per share adjusted for the share consolidation noted above (share and per share amounts below are not in thousands):

	For the three months ended September 30, 2022	2021
Numerator for basic and diluted loss per share available to common shareholders	$ (4,173)	$ (4,898)
Denominator for basic and diluted loss per share	7,702,297	7,687,932
Basic and diluted loss per share	$ (0.54)	$ (0.64)

	For the nine months ended September 30, 2022	2021
Numerator for basic and diluted loss per share available to common shareholders	$ (19,058)	$ (24,794)
Denominator for basic and diluted loss per share	7,702,297	7,687,932
Basic and diluted loss per share	$ (2.47)	$ (3.23)

Weighted Average Common Shares Outstanding

		Weighted Average Shares	
	Total issued	Basic	Diluted
Balance, January 1, 2021	7,687,932	4,879,245	4,879,245
Balance, September 30, 2021	7,687,932	7,687,932	7,687,932
Balance, January 1, 2022	7,687,932	7,687,932	7,687,932
Issuance of RSUs	19,806	14,365	14,365
Balance, September 30, 2022	7,707,738	7,702,297	7,702,297

12. SHARE BASED COMPENSATION

Under the Omnibus Incentive Plan adopted in 2020, the Company may issue stock options, RSUs and PSUs to employees, officers, consultants and others as determined by the Board of Directors. Stock options were previously issued under the Company's Amended and Restated Stock Option Plan. The Company may issue stock options and DSUs to directors.

At the time of approval of the Omnibus Incentive Plan, 304,575 stock options (post the share consolidation on April 26, 2022) were outstanding under the Amended and Restated Stock Option Plan. No further stock options may be issued under the Amended and Restated Stock Option Plan.

The Omnibus Incentive Plan is also subject to the following limitations: (i) no more than 10% of the outstanding Shares may be issued under the plan or pursuant to any other security-based compensation arrangements of the Company during any one year period; (ii) no more than 5% of the outstanding Shares may be issued under the plan or pursuant to any other security-based compensation arrangements of the Company to any one person; (iii) no more than 10% of the outstanding Shares may be issued to insiders under the plan or under any other security-based compensation arrangements of the Company within any one year period or be issuable to insiders at any time; and (iv) the aggregate number of Shares reserved for issue to any one service provider of the Company shall not exceed 2% of the total number of Shares then outstanding, excluding Shares issued to such service provider upon the exercise of stock options over the preceding 12-month period.

With respect to awards made under the Omnibus Incentive Plan, if for any reason shares subject to issuance on the exercise of stock options granted under the plan are not issued, or are re-acquired by the Company, for reasons including

12. SHARE BASED COMPENSATION (continued)

a termination, expiration or cancellation, such shares will become available for additional grants under the plan. If any RSUs, PSUs or DSUs granted under the plan expire, terminate or are cancelled for any reason without being settled in the form of Shares issued from treasury, such Shares will become available for additional grants under the plan.

Stock options

The Board may grant stock options to any participant under the Omnibus Incentive Plan at any time. The exercise price for stock options will be determined by the Board, but may not be less than the market value of a Share (being, on any particular day, the volume weighted average trading price of a Share on the TSX for the five (5) preceding days on which Shares were traded, or on any other stock exchange as selected by the Board for these purposes, and, in the event such Shares are not listed and posted for trading on any stock exchange, the fair market value of such Shares as determined by the Board in its discretion) (the "Market Value") on the date the stock option is granted, except in circumstances where the stock option is granted in exchange for another stock option, subject to TSX approval if required. It is anticipated that stock options will vest and become exercisable as to one third of the stock option on each of the anniversary of the date of grant for the three years following the date of grant, unless otherwise determined by the Board and specified in such participant's option agreement. Stock options must be exercised within a period fixed by the Board that may not exceed five years from the date of grant, except in a case where the expiry period falls during a blackout period, in which case the expiry period will be automatically extended until ten business days after the end of the blackout period. The Omnibus Incentive Plan also provides for earlier termination of stock options on the occurrence of certain events, including but not limited to, termination of a participant's employment.

The Omnibus Incentive Plan also provides for a holder of a stock option to elect a cashless exercise of such option equaling the amount by which the value of the underlying share at that time exceeds the exercise price of such option.

The Company uses the Black-Scholes option pricing model to price its options, which requires certain assumptions including the stock price volatility for a publicly held corporation. Details of the stock options issued in 2022 and fiscal 2021 are set out below:

Grant date	Number granted	Granted to	Exercise price (CDN$)	Life (years)	Vesting periods (years)	Risk-free rate	Expected volatility	Expected dividend rate	Fair value per options (CDN$)
Jun 29, 2021	5,853	Consultant	$9.58	5	1	1.0%	88.2%	nil	$6.60
Jun 29, 2021	204,101	Employees	$9.58	5	3	1.0%	88.2%	nil	$6.60
Mar 16, 2022	9,000	Employee	$9.30	5	3	1.6%	87.7%	nil	$6.40

A forfeiture rate of 3% was used to estimate option expenses during the period. The Company recognized stock option compensation expense of $96 and $513 for the three and nine months ended September 30, 2022 ($304 and $714 for the three and nine months ended September 30, 2021).

The following table summarizes the activity under the Company's stock option plan (amounts in chart below are not in thousands):

	September 30,					
	2022			2021		
	Number		Weighted average exercise price (CDN)	Number		Weighted average exercise price (CDN)
Balance at January 1,	563,641	$	10.59	362,548	$	11.51
Granted	9,000		9.30	209,954		9.58
Exercised	-		-	-		-
Forfeited	(7,006)		10.13	(1,755)		10.71
Expired	(6,000)		24.00	(7,105)		48.00
Balance at September 30,	559,635	$	10.43	563,642	$	10.59
Options exercisable at September 30,	332,163	$	10.94	168,021	$	13.28

(All amounts expressed in thousands of U.S. dollars except per share amounts
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12. SHARE BASED COMPENSATION (continued)

	Canadian Dollar Options outstanding as at September 30, 2022		
Exercise prices	Number outstanding	Weighted average remaining life in years	Number excercisable
\$6.90 to \$9.04	285,108	2.55	224,575
\$9.30 to \$11.86	249,253	3.50	83,987
\$24.00 to \$34.00	15,772	1.36	14,100
\$42.00 to \$72.00	9,502	0.65	9,501
	559,635	2.98	332,163

As described in note 8, the Company granted contingent share consideration as part of the total consideration provided for the purchase of Noctiva™. These shares will become issuable if certain performance sales performance milestones are met by certain dates. Pursuant to IFRS2, contingent share consideration to be issued by the company (other than that issued pursuant to the omnibus plan noted above), are valued using the estimated fair value of the contingent share consideration at the time such consideration is first granted. The value is recorded in contributed surplus as "equity to be issued". When the actual performance conditions are met and the shares issued, the amount originally booked is credited to share capital from contributed surplus. No further adjustment is made to reflect the actual market value of the shares issued at that time.

Restricted Share Units ("RSU")

An RSU is equivalent in value to a common share of the Company and are settled by the issuance of Company shares. RSUs vest one to three years from the date of grant. The cost of the RSU's is charged to selling, general and administrative expenses using the cliff vesting method. The fair value of each grant of RSUs is the fair value of the Company's share price on the date of the grant. The resulting compensation expense is charged to income over the period the employees unconditionally become entitled to the award, with a corresponding increase in contributed surplus.

A summary of the Company's RSU activity is as follows (adjusted for impact of 200 for 1 share consolidation):

	September 30, 2022	December 31, 2021
Balance, January 1	19,806	19,806
Exercised upon vesting	(19,806)	-
Balance	-	19,806

The RSUs vested on December 31, 2021, and 19,806 common shares were granted on March 16, 2022. The Company recognized RSU compensation expense of \$Nil for the three and nine months ended September 30, 2022 (\$29 and \$86 for the three and nine months ended September 30, 2021).

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13. RELATED PARTY TRANSACTIONS

Details of the transactions between the Company, key management and other related parties are disclosed below:

Key management includes the Company's directors and executive officers. The remuneration of directors and key members of management and professional fees paid or payable to firms affiliated with the current directors for the three and nine months ended September 30, 2022 and 2021 were as follows:

	For the three months ended September 30,		For the nine months ended September 30,	
	2022	2021	2022	2021
Short-term compensation of key management and directors	$ (35)	$ 509	$ 1,173	$ 1,563
Share-based compensation	99	297	496	722
Interest expense	920	197	2,190	250
	$ 984	$ 1,003	$ 3,859	$ 2,535

These transactions are in the normal course of operations. During the three months ended September 30, 2022, the Company reversed bonuses payable amounting $644 to its key management that were previously accrued for 2021 and 2022.

Trade and other receivables includes $71 due from an executive officer for payroll withholdings remitted upon the vesting of the RSUs described in note 12. The amount due bears interest at the Canada Customs and Revenue Agency prescribed rate, currently 2%.

Executive employment agreements allow for total additional payments of approximately $2,280 if all are terminated as a result of a change in control, $2,241 if all are terminated without cause, and $nil if all are terminated with cause.

First Generation owns 89.3% of the outstanding common stock of the Company at September 30, 2022 (89.5% at December 31, 2021).

14. COMMITMENTS AND CONTINGENCIES

Provision for legal claims on acquisition of Serenity Pharmaceuticals LLC

On December 11, 2019, Jones Day commenced an action in the New York State Supreme Court against Serenity, and certain members of its senior management, for alleged unpaid legal bills. On September 21, 2020, Serenity filed an answer with counterclaims against Jones Day. Serenity's counterclaim alleges breach of contract in connection with Jones Day's representation of Serenity in a prior lawsuit, fraud in respect of certain billing issues and malpractice. Also on September 21, 2020, the senior management members filed a motion to dismiss Jones Day's complaint as against them. Jones Day also brought a motion to dismiss Serenity's counterclaims. On May 12, 2020, a decision was rendered in both motions. Serenity's motion was dismissed and Jones Day's motion was granted with respect to the counterclaims in fraud and malpractice, but dismissed in respect of the breach of contract claim. On August 31, 2022, the senior management members filed a motion for summary judgment to dismiss Jones Day's complaint against them. On September 8, 2022, Jones Day filed a motion to amend its complaint to add Acerus as a new defendant. Serenity and the senior management members opposed the motion to amend because it seeks to both add Acerus as a defendant and also pierce Serenity's corporate veil to seek damages against the senior management members. Defendants' motion for summary judgment and Plaintiff's motion to amend its complaint are both pending. Decisions on both motions will likely be issued in late 2022 or sometime in 2023.

As a separate matter, the parties are engaged in motion practice related to discovery. Jones Day is seeking sanctions for an alleged violation of a court order regarding document production. However, according to New York law, all discovery is stayed while a motion for summary judgment is pending. In addition, the discovery order has been appealed and a decision on the discovery order is expected to be issued sometime within the next six months.

(All amounts expressed in thousands of U.S. dollars except per share amounts
and unless otherwise stated)

14. COMMITMENTS AND CONTINGENCIES (continued)

Whilst the Company feels confident in successfully upholding its claim of breach of contract and fending off the Jones Day demands, an initial provision of $2,250 was nevertheless recorded at March 31, 2022 to provide for a conservative estimate for anticipated costs of discovery, legal fees and other costs and potential settlement. The remaining provision at September 30, 2022 is as follows:

		Total
Provisions, March 31, 2022	$	2,250
Payments		(132)
Provisions, September 30, 2022	$	2,118

Serenity Pharmaceuticals LLC Royalty

In addition to the purchase consideration for Noctiva™ described note 8 above, the Company has agreed to pay milestone payments in the form of royalties to the vendors as follows:

- For sales in the US and Canada: 12% on annual net sales less than or equal to $50 million; 15% on annual net sales between $50 million and $100 million; and 18% on annual net sales exceeding $100 million.
- For sales outside of the US and Canada: 40% of net profits earned by licensed distributors.

These payments are not reflected in the purchase price of the intangible asset. These royalties cease if a generic version is launched.

Torreya Capital LLC fee

A success fee is payable to Torreya Capital LLC on total consideration paid on the acquisition of Serenity Pharmaceuticals LLC. The fee is computed as 10% of all paid and issued consideration; notably cash consideration, contingent share consideration, assumed liabilities and future royalty payments to Serenity Pharmaceuticals LLC up to the first $12,500 of aggregate consideration. Thereafter, a fee of 3% is earned on any aggregate consideration paid or issued in excess of $41,666. An estimate of the fee has been accrued and capitalized as part of the costs of acquiring the Noctiva™ intangible asset.

15. FAIR VALUE OF FINANCIAL INSTRUMENTS

Fair value is defined as the price that would be received from the sale of an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The best evidence of fair value is quoted bid or ask prices in an active market. Quoted prices are not always available for over-the-counter transactions, as well as transactions in inactive or illiquid markets. In these instances, pricing models, normally with observable market-based inputs, are used to estimate fair value. Financial instruments traded in a less active market have been valued using indicative market prices, present value or other valuation techniques. Where financial instruments trade in inactive markets or when using models where observable parameters do not exist, greater management judgement is required for valuation purposes. In addition, the calculation of estimated fair value is based on market conditions at a specific point in time and therefore may not be reflective of future fair values.

At September 30, 2022 and December 31, 2021, the Company's financial instruments consisted of cash, trade and other receivables, accounts payable, termination fee payable and accrued liabilities, deferred cash consideration, lease liability, promissory note, long-term debt, and derivative financial instruments. Cash, trade and other receivables, accounts payable, accrued liabilities and deferred cash consideration are measured at amortized cost and their fair values approximate carrying values due to their short-term nature.

(All amounts expressed in thousands of U.S. dollars except per share amounts
and unless otherwise stated)

15. FAIR VALUE OF FINANCIAL INSTRUMENTS (continued)

The derivative financial instruments are measured at fair value with any changes recognized through the consolidated statement of loss and comprehensive loss and are classified as Level 2. The fair value of the derivative financial instrument is estimated using a Black-Scholes pricing model.

At September 30, 2022, the fair value of the long-term First Generation debt, the termination fee payable, the promissory note and the lease liability approximates their carrying value of $43,872, $4,002, $1,950 and $309 respectively.

16. SEGMENT REPORTING

The Chief Executive Officer and Chief Financial Officer are the Company's chief operating decision-makers (CODM). Management has determined that there is one operating segment based on the information reviewed by the CODM for the purposes of allocating resources and assessing performance.

At September 30, 2022, the Company has inventory in Germany, USA, and UK in the amounts of $3,667, $1,453 and $nil respectively ($4,067, $336, and $202 respectively for the year ended December 31, 2021). At September 30, 2022, the Company has total long-term assets in Canada, USA and Germany in the amounts of $607, $36,330 and $317 respectively ($649, $nil and $354 respectively in Canada, USA and Germany at December 31, 2021).

For the three months ended September 30, 2022, the Company had revenues of $619, $45 and $106 respectively from customers located in U.S., Canada and rest of world respectively ($587, $nil and $nil from customers located in U.S., Canada and rest of world respectively for the three months ended September 30, 2021).

For the nine months ended September 30, 2022, the Company had revenues of $2,121, $45 and $134 from customers located in U.S., Canada and rest of world respectively ($982, $64 and $337 from customers located in U.S., Canada and rest of world respectively for the nine months ended September 30, 2021).

17. CONCENTRATION

The Company considers there to be a concentration risk for customers that account for 10% or more of its product revenue. The following table illustrates any customer which accounted for 10% or more of product revenue for the nine months ended September 30, 2022 and 2021:

	September 30, 2022	September 30, 2021
Cardinal Health, Inc.	25%	25%
AmerisourceBergen Corporation	22%	31%
McKesson Corporation	21%	34%

Changes in the mix of concentrations amongst the Company's largest customers are due to changes in the supply chain of our indirect customers.

The Company's accounts receivable primarily arise from product sales to its third-party logistics provider for the U.S market and wholesalers and drugstore chains in Canada. At September 30, 2022, approximately 75% of the gross accounts receivable are concentrated with the Company's third party logistics provider for the U.S. market. The Company performs ongoing credit evaluations of its customers and maintains an allowance for potential uncollectible amounts. The company does not expect to have write offs or adjustments to accounts receivable which would have a material adverse effect on its financial position, liquidity, or result from operations.

The Company's finished products and raw materials are obtained from single source suppliers. Although the Company seeks to identify more than one source for its various finished products and raw materials, loss of a single source supplier could have an adverse effect on the Company's results of operations, financial condition, and cash flows. Further, a second source supplier may not be able to produce the same volumes of inventory as the Company's primary supplier.

This is Exhibit "H" referred to in the Affidavit of Naveed Z. Manzoor
sworn by Naveed Z. Manzoor of the Town of Oakville,
in the Province of Ontario, before me at the City of Toronto,
in the Province of Ontario, on January 25, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

DocuSigned by:

Philip V

36124C4218DD47C...

Commissioner for Taking Affidavits

ACERUS PHARMACEUTICALS CORPORATION

THIRD AMENDED & RESTATED SECURED GRID PROMISSORY NOTE

March 30, 2022

ARTICLE 1
PROMISE TO PAY

Section 1.1 Promise to Pay.

FOR VALUE RECEIVED, ACERUS PHARMACEUTICALS CORPORATION (hereinafter referred to as the "**Borrower**") acknowledges itself indebted and **PROMISES TO PAY,** subject to the terms and conditions of this Note, to or to the order of FIRST GENERATION CAPITAL INC. (the "**Lender**"), or its permitted assigns, at its offices at 40 King Street West, Toronto, Ontario, M5H 3Y2 or such other place as the Lender may designate, the principal amount outstanding as recorded by the Lender in the column headed "**Unpaid Principal Balance**" on the record (the "**Grid**") attached to and forming part of this Note, in lawful money of the United States, together with interest thereon (including any PIK Interest) as hereinafter provided.

Section 1.2 Advances.

(1) Subject to this Section 1.2, the Lender shall make available to the Borrower one or more advances (each an "**Advance**") from the date of this Note to April 30, 2022 in an aggregate principal amount not to exceed US$35,845,000.

(2) As a condition to the disbursement of any Advance under this Note, the Borrower shall, at least three (3) Business Days before the requested disbursement date, deliver to the Lender a written notice (each, a "**Borrowing Notice**") setting out (i) that no Default or Event of Default has occurred and is continuing; (ii) the amount of the requested Advance, which amount must be in a minimum principal amount of US$500,000; and (iii) the date on which the Advance is to be disbursed (the "**Advance Date**"). Each Borrowing Notice shall be deemed to repeat the Borrower's representations and warranties in Article 3 as of the date of such Borrowing Notice, except to the extent that such representations and warranties relate specifically to an earlier date.

(3) The Lender shall and is unconditionally and absolutely authorized and directed by the Borrower to record on the Grid (i) the date and amount of each Advance made by the Lender, the amount of PIK Interest, and the resulting increase of the Unpaid Principal Balance, and (ii) the date and amount of each repayment on account of the principal paid to the Lender and the resulting decrease of the Unpaid Principal Balance. Such notations, in the absence of manifest mathematical error, shall be *prima facie* evidence of such advances, amounts and repayments; provided that the failure of the Lender to record the same shall not affect the obligations of the Borrower to pay such amounts to the Lender.

Section 1.3 Interest.

(1) Subject to Section 1.3(5) below, the Unpaid Principal Balance remaining from time to time unpaid and outstanding shall bear interest, both before and after maturity, default and judgment, at a rate of eight percent (8%) per annum. Interest at such rate shall be calculated on the basis of the actual number of days elapsed in a year of 365 days or 366 days, as the case may be, shall be payable in kind quarterly, in arrears, on the last Business Day of each and every quarter commencing on June 30, 2021 until the Unpaid Principal Balance as shown on the Grid together with all accrued interest on such

amount has been repaid in full, and shall be capitalized and added to, and shall become a part of, the Obligations without any further act by or on behalf of the Lender (such capitalized interest, the "**PIK Interest**").

(2) Notwithstanding Section 1.3(1) above, at the sole option of the Borrower, any interest on this Note shall be permitted to be paid in cash quarterly, in advance, on the last Business Day of any quarter.

(3) Overdue interest shall bear interest at the rate set forth in Section 1.3(1) above plus an additional two per cent (2%) per annum, calculated as aforesaid.

(4) For the purpose of the *Interest Act* (Canada) and disclosure thereunder, as well as under this Note, (i) whenever interest to be paid hereunder is to be calculated on the basis of a 360-day year or any other period of time that is less than a calendar year, the yearly rate of interest to which the rate determined pursuant to such calculation is equivalent is the rate so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by either 360 days or such other period of time, as the case may be, (ii) the principle of deemed reinvestment of interest shall not apply to any interest calculation hereunder, and (iii) the rates of interest stipulated hereunder are intended to be nominal rates and not effective rates or yields.

(5) Notwithstanding any other provision contained herein, the total amount of interest payable at any time hereunder shall not exceed US$6,309,646.

Section 1.4 Maturity Date.

The Unpaid Principal Balance of this Note (including any PIK Interest) together with all unpaid and accrued interest, fees, costs and expenses and other amounts owing hereunder (the "**Obligations**") shall be repaid in full on December 31, 2024 (the "**Maturity Date**").

Section 1.5 Prepayments.

The Borrower shall have the right and privilege of prepaying the whole or any portion of the Unpaid Principal Balance of this Note from time to time remaining unpaid and outstanding (including any PIK Interest) at any time or times together with all unpaid and accrued interest to the date of prepayment, provided that the Borrower gives the Lender ten (10) days' prior written notice of its intention to make a prepayment. Each prepayment of any principal amount of this Note (including any PIK Interest), whether voluntary, by reason of acceleration or otherwise, will be accompanied by the amount of accrued interest on the amount prepaid. Any principal amount that is repaid may not be re-borrowed.

Section 1.6 No Novation.

This Note is an amendment and restatement of the Original Note and not a novation of the Original Note. This Note reflects amendments to the Original Note and has been restated solely for the purposes of reflecting amendments to the Original Note which the Lender and the Borrower have agreed upon. All references to the "Note" or similar references contained in the documents delivered prior to the effectiveness of this Note in connection with or under the Original Note shall be references to this Note without further amendment to those documents. The Borrower confirms that each of the foregoing documents, including without limitation any delivered under the Original Note, remains in full force and effect. For the avoidance of doubt but without limitation, the Security Interest securing payment of the "Obligations" under the Original Note are in all respects continuing and in full force and effect and secure the payment of the Obligations.

ARTICLE 2
INTERPRETATION

Section 2.1 Defined Terms.

As used in this Note, the following terms have the following meanings:

"**Advance**" has the meaning specified in Section 1.2(1).

"**Advance Date**" has the meaning specified in Section 1.2(2).

"**Agreed Currency**" has the meaning specified in Section 9.7.

"**Asset**" means, with respect to any Person, any property (including real property), assets and undertaking of such Person of every kind and wheresoever situate, whether now owned or hereafter acquired (and, for greater certainty, includes any equity or like interest of such Person in any other Person).

"**Borrower**" has the meaning specified in Section 1.1.

"**Borrowing Notice**" has the meaning specified in Section 1.2(2).

"**Business Day**" means any day of the year, other than a Saturday, Sunday or any day on which major commercial banks are closed in Toronto, Ontario.

"**Collateral**" means all property and Assets of the Borrower subject to the Security Interest granted in Article 5.

"**Default**" means any event, circumstance or omission that constitutes an Event of Default or that, after the giving of notice, the passage of time or the failure to remedy such event, circumstance or omission within a period of time, would constitute an Event of Default.

"**Event of Default**" has the meaning specified in Section 7.1.

"**Governmental Entity**" means any (i) multinational, federal, provincial, state, municipal, local or other governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign; (ii) any subdivision or authority of any of the foregoing; or (iii) any quasi-governmental, self-regulatory organization or private body exercising any regulatory, expropriation or taxing authority under or for the account of its members or any of the above.

"**Grid**" has the meaning specified in Section 1.1.

"**IFRS**" means the body of pronouncements issued by the International Accounting Standards Board (IASB), including International Financial Reporting Standards and interpretations approved by the IASB, International Accounting Standards and Standing Interpretations Committee interpretations approved by the predecessor International Accounting Standards Committee, as consistently applied, which are applicable to the circumstances as of the date of determination.

"**Indemnitee**" has the meaning specified in Section 9.12.

"**Judgment Currency**" has the meaning specified in Section 9.7.

"**Lender**" has the meaning specified in Section 1.1.

"**Lien**" means any mortgage, charge, pledge, hypothecation, security interest, assignment, lien (statutory or otherwise), charge, title retention agreement or arrangement, restrictive covenant or other encumbrance of any nature, or any other arrangement, trust, arrangement or condition that in substance secures payment or performance of an obligation.

"**Material Adverse Effect**" means a material adverse effect on the business, operations, results of operations, Assets, liabilities or financial condition of the Borrower.

"**Maturity Date**" has the meaning specified in Section 1.4.

"**Note**" means this secured grid promissory note, as amended, supplemented, restated or replaced from time to time.

"**Obligations**" has the meaning specified in Section 1.4.

"**Original Note**" means the secured grid promissory note made by the Borrower to the Lender and dated April 29, 2021, as amended and restated pursuant to an amended & restated secured grid promissory note dated December 13, 2021, and as further amended and restated pursuant to a second amended & restated secured grid promissory note dated February 17, 2022.

"**Parties**" means the Lender and the Borrower and any other Person who may become a party to this Note.

"**Person**" means an individual, sole proprietorship, corporation, limited liability company, trust, joint venture, association, company, partnership, institution, public benefit corporation, investment or other fund, Governmental Entity or other entity, and pronouns have a similarly extended meaning.

"**PIK Interest**" has the meaning specified in Section 1.3(1).

"**Security Interest**" has the meaning specified in Section 5.1.

"**Solvent**" means, with respect to any Person on a particular date, that on such date, (i) such Person is not for any reason unable to meet its obligations as they generally become due, (ii) such Person has not ceased paying its current obligations in the ordinary course of business as they generally become due, and (iii) the aggregate property of such Person is, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would be sufficient, to enable payment of all its obligations, due and accruing due.

"**Subsidiary**" has the meaning specified in the *Business Corporations Act* (Ontario).

"**United States Dollars**" and "**US$**" each mean lawful money of the United States.

"**Unpaid Principal Balance**" has the meaning specified in Section 1.1. and shall include, for greater certainty, any PIK Interest.

Section 2.2 Gender and Number.

Any reference in this Note to gender includes all genders and words importing the singular number only include the plural and *vice versa*.

Section 2.3 Headings, etc.

The division of this Note into Articles and Sections and the insertion of headings are for convenient reference only and are not to affect the interpretation of this Note.

Section 2.4 Currency.

All references in this Note to US$ or Dollars, unless otherwise specifically indicated, shall mean United States Dollars.

Section 2.5 Certain Phrases, etc.

In this Note, (i) the words “including” and “includes” mean “including (or includes) without limitation”; and (ii) the phrase “the aggregate of”, “the total of”, “the sum of”, or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”, and references to “this Note”, “hereof” and “herein” and like references refer to this Note and not to any particular Article, Section or other subdivision of this Note.

Section 2.6 Non-Business Days.

Whenever any payment to be made hereunder shall be stated to be due or any action to be taken hereunder shall be stated to be required to be taken on a day other than a Business Day, such payment shall be made or such action shall be taken on the next succeeding Business Day and, in the case of the payment of any amount, the extension of time shall be included for the purposes of computation of interest, if any, thereon.

Section 2.7 Accounting Terms.

All accounting terms not specifically defined in this Note shall be interpreted in accordance with IFRS.

Section 2.8 Statutes.

Any reference in this Note to a statute refers to such statute and all rules and regulations made under it as the same may have been or may from time to time be amended, re-enacted or replaced.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

Section 3.1 Representations and Warranties of the Borrower.

The Borrower represents and warrants as follows, acknowledging and confirming that the Lender is relying on such representations and warranties in entering into this Note:

(a) **Organization and Qualification.** The Borrower is a corporation duly incorporated, organized and validly existing under the laws of the Province of Ontario. No authorization, consent, approval, licence or exemption under any law, rule or regulation having the force of law is required by the Borrower to enter into and perform its obligations under this Note. The Borrower is qualified, licensed or registered to carry on business under the laws applicable to it in all jurisdictions in which such qualification, licensing or registration is necessary or where failure to be so qualified would have a Material Adverse Effect;

(b) **Corporate Power**. The Borrower has all requisite corporate power and authority to (i) own, lease and operate its Assets and to carry on its business as now being conducted by it; and (ii) enter into and perform its obligations under this Note;

(c) **Conflict With Other Instruments**. The execution and delivery by the Borrower and the performance by it of its obligations under, and compliance with the terms, conditions and provisions of, this Note will not (i) conflict with or result in a breach of any of the terms or conditions of (A) its organizational documents or by-laws, (B) any applicable law, rule or regulation, (C) any material contractual restriction binding on or affecting it or its properties, or (D) any judgment, injunction, determination or award which is binding on it, or (ii) result in, require or permit (A) the imposition of any Lien in, on or with respect to any of its Assets other than in favour of the Lender, (B) the acceleration of the maturity of any debt binding on or affecting the Borrower or any of its Subsidiaries, or (C) any third party to terminate or acquire rights under any material contract to which the Borrower or any of its Subsidiaries is a party;

(d) **Corporate Action, Governmental Approvals, etc.** The execution and delivery of this Note by the Borrower and the performance by the Borrower of its obligations hereunder have been duly authorized by all necessary corporate action. No authorization, consent, approval, registration, qualification, designation, declaration or filing with any Governmental Entity or other Person, is or was necessary in connection with the execution, delivery and performance of obligations under this Note except as are in full force and effect, unamended, at the date hereof;

(e) **Execution and Binding Obligation**. This Note has been duly executed and delivered by the Borrower and constitutes legal, valid and binding obligations of the Borrower enforceable against it in accordance with its terms, subject only to any limitation under applicable laws relating to (i) bankruptcy, insolvency, arrangement or creditors' rights generally, and (ii) the discretion that a court may exercise in the granting of equitable remedies;

(f) **Authorizations, etc.** The Borrower possesses all authorizations, permits, consents, registrations and approvals necessary to properly conduct its business and all such authorizations, permits, consents, registrations and approvals are in good standing and in full force and effect, except where the failure to possess or maintain in good standing and in full force and effect such authorizations, permits, consents, registrations or approvals, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect;

(g) **No Litigation**. Except as set out in Schedule "A" hereto, there is no action, suit or proceeding, at law or in equity, by any Person, nor any arbitration, administrative or other proceeding by or before (or to the best of the knowledge of the Borrower any investigation by) any Governmental Entity pending, or, to the best of the knowledge of the Borrower, threatened against or affecting the Borrower or its Subsidiaries or their respective properties or rights or any of their Assets, and the Borrower does not know of any valid basis for any such action, suit, proceeding, arbitration or investigation. The Borrower and its Subsidiaries are not subject to any judgment, order or decree entered in any lawsuit or proceeding;

(h) **Debts and Encumbrances.** The Borrower has no liabilities or obligations of any nature, which give the Lender of such liability priority over the obligations arising under this Note;

(i) **No Default.** The Borrower is not in violation of its organizational documents or by-laws or any shareholders' agreement applicable to it; and

(j) **Solvency.** The Borrower is Solvent.

Section 3.2 Survival of Representations and Warranties.

The representations and warranties in this Note and in any certificates or documents delivered to the Lender shall not merge and shall survive and continue in full force and effect so long as any amounts are owing by the Borrower to the Lender under this Note.

ARTICLE 4
COVENANTS

Section 4.1 Positive Covenants.

The Borrower hereby covenants and agrees with the Lender that so long as this Note remains outstanding:

(a) **Payment of Principal and Interest**. The Borrower shall punctually pay or cause to be paid to the Lender the Unpaid Principal Balance (including any PIK Interest) of and interest on this Note and all other fees, costs and expenses and other amounts owing under or in connection with this Note as and when the same become due and payable hereunder;

(b) **Corporate Existence**. The Borrower shall preserve and maintain its corporate existence except as otherwise permitted hereunder;

(c) **Pay Taxes**. The Borrower shall duly pay or cause to be paid, and cause each of its Subsidiaries to pay or cause to be paid, when due (i) all taxes, assessments and governmental charges or levies imposed upon it or upon its income, sales, capital or profit or any other property belonging to it; and (ii) all claims which, if unpaid, might by law become a Lien upon its Assets, except any such tax, assessment, charge, levy or claim which is being contested in good faith and by proper proceedings and in respect of which the Borrower or its Subsidiaries have established adequate reserves in accordance with IFRS;

(d) **Compliance with Laws, etc.** The Borrower shall comply, and cause each of its Subsidiaries to comply, with the requirements of all applicable laws, judgments, orders, decisions and awards, other than acts of non-compliance which are not material;

(e) **Notification of Default.** The Borrower shall notify the Lender in writing immediately upon becoming aware of any default hereunder;

(f) **Other Information.** The Borrower shall provide or cause to be provided such other information respecting the condition or operations, financial or otherwise, of the Borrower's or its Subsidiaries' businesses or the Borrower or its Subsidiaries as the Lender may from time to time reasonably request; and

(g) **Post-Closing Deliverables.** The Borrower shall on or before April 15, 2022, or such later date as agreed to by the Lender, deliver to the Lender a certificate of insurance naming the Lender as first loss payee and additional insured, as their interests may appear.

Section 4.2 Negative Covenants.

The Borrower hereby covenants and agrees with the Lender that so long as this Note remains outstanding, without the Lender's prior consent:

(a) **Debt.** The Borrower shall not, create, incur, assume or suffer to exist or permit any of its Subsidiaries to create, incur, assume or suffer to exist any indebtedness for borrowed money other than indebtedness of the Borrower to the Lender under this Note;

(b) **Mergers, Etc.** The Borrower shall not enter into any reorganization, consolidation, amalgamation, arrangement, winding-up, merger or other similar transaction, unless the Borrower has given prior written notice of its intention to do so;

(c) **Disposal of Assets.** The Borrower shall not sell, exchange, lease, release or abandon or otherwise dispose of, or permit any of its Subsidiaries to sell, exchange, lease, release or abandon or otherwise dispose of, all or substantially all of their Assets; and

(d) **Change in Business.** The Borrower shall not make any material change in the nature of its business or permit any of its Subsidiaries to make any material change in the nature of its business.

ARTICLE 5
SECURITY

Section 5.1 Security Interest.

The Borrower confirms that the security interests, mortgages, charges, hypothecs and pledges (the "**Security Interest**") granted by the Borrower to and in favour of the Lender in connection with the Original Note, remains in full force and effect, unamended, and the Security Interest granted by the Borrower to the Lender continue to secure, apply and extend to all debts, liabilities and obligations, present or future, direct or indirect, absolute or contingent, matured or unmatured of the Borrower under this Note, including the Obligations.

Section 5.2 [Intentionally Deleted]

Section 5.3 [Intentionally Deleted]

Section 5.4 Continuing Security.

Notwithstanding the principal sum expressed to be payable under this Note or the stipulated rate of interest, this Note and any other security given with the Lender's consent in replacement thereof, substitution therefor or in addition thereto shall be held by the Lender as general and continuing security for due payment and performance of all Obligations, including all costs and amounts payable pursuant to this Note and interest on the Obligations at the rate or rates applicable thereto in accordance with this Note. Any and all payments made at any time in respect of the Obligations and the proceeds realized from any securities held therefor (including moneys realized from the enforcement of this Note) may be applied (and reapplied from time to time notwithstanding any previous application) to such part or parts of the Obligations as the Lender sees fit. The Lender may hold as additional security any increase or profits or other proceeds realized from the Collateral (including money) for such period of time as the Lender sees fit. The Borrower shall be accountable for any deficiency and the Lender shall be accountable for any surplus.

Section 5.5 Discharge.

The Security Interest will be discharged upon, but only upon, (i) full and indefeasible payment and performance of the Obligations, and (ii) the Lender having no obligations hereunder. Upon discharge of the Security Interest and at the request and expense of the Borrower, the Lender will execute and deliver to the Borrower such releases, discharges, financing statements and other documents or instruments as the Borrower may reasonably require and the Lender will redeliver to the Borrower, or as the Borrower may otherwise direct the Lender, any Collateral in its possession.

ARTICLE 6
CONDITIONS

Section 6.1 Condition to Closing.

This Note shall be effective upon receipt by the Lender of executed counterparts of this Note properly executed by the Borrower.

Section 6.2 Conditions to each Advance.

(1) The Lender agreeing to make available any Advance, including the first Advance, is subject to and conditional upon each of the conditions below being satisfied, in the opinion of the Lender, acting reasonably, on the applicable Advance Date:

(a) receipt by the Lender of a Borrowing Notice within the time prescribed for the delivery thereof in Section 1.2(2);

(b) no Default or Event of Default has occurred and is continuing on the Advance Date, or would result from the making of the Advance;

(c) the representations and warranties in Article 3 shall be true and correct on the Advance Date as if made on that date, except to the extent that such representations and warranties relate specifically to an earlier date.

(2) Upon satisfaction of the conditions stated in this Section 6.2, the Lender shall make available to the Borrower on the Advance Date the amount set out in the Borrowing Notice in immediately available funds.

(3) The conditions stated in this Section 6.2 are inserted for the sole benefit of the Lender and may only be waived by the Lender, and any such waiver may be made in whole or in part, with or without terms or conditions and in respect of all or any portion of the Advances, without affecting the right of the Lender to assert terms and conditions in whole or in part in respect of any other future Advance.

ARTICLE 7
EVENTS OF DEFAULT

Section 7.1 Events of Default.

The following events shall each be an “**Event of Default**”:

(a) the Borrower defaults in any payment of principal of this Note when such amount becomes due and payable under the provisions of this Note;

(b) the Borrower fails to pay any interest on this Note when it becomes due and payable and such failure remains unremedied for a period of three (3) Business Days;

(c) any representation or warranty made or deemed to be made by the Borrower herein proves to be incorrect in any material respect when made or deemed to be made;

(d) the Borrower fails to observe, perform or comply with any other term, covenant or condition contained in this Note to be observed, performed or complied with by it and such failure remains unremedied for ten (10) days;

(e) (i) the Borrower shall generally not pay its debts as such debts become due, shall admit in writing its inability to pay its debts generally, shall make a general assignment for the benefit of creditors, or shall cease doing business as a going concern, (ii) any proceeding shall be instituted by or against the Borrower seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, composition of it or its debts or any similar order, in each case under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or seeking the entry of an order for relief or the appointment of a custodian, receiver, trustee, conservator, liquidating agent, liquidator, other similar official or other official with similar powers, in each case for it or for any substantial part of its property and, in the case of any such proceedings instituted against (but not by or with the consent of) it, either such proceedings shall remain undismissed or unstayed for a period of forty-five (45) days or more or any action sought in such proceedings shall occur or (iii) the Borrower shall take any corporate or similar action or any other action to authorize any action described in clause (i) or (ii) above;

(f) (i) a notice of Lien, levy, or assessment is filed against any Assets of the Borrower by any government agency, and is not discharged or stayed (whether through the posting of a bond or otherwise) prior to the earlier to occur of ten (10) days after the occurrence thereof or such action becoming effective; or

(g) (i) any court order enjoins, restrains, or prevents the Borrower from conducting any material part of its business, (ii) the institution by any governmental authority of criminal proceedings against the Borrower, or (iii) one or more judgments or orders for the payment of money (not paid or fully covered by insurance and as to which the relevant insurance company has acknowledged coverage in writing) aggregating in excess of $50,000 shall be rendered against the Borrower and either (A) enforcement proceedings shall have been commenced by any creditor upon any such judgments or orders, or (B) there shall be any period of ten (10) consecutive days during which a stay of enforcement of any such judgments or orders, by reason of a pending appeal, bond or otherwise, shall not be in effect.

Section 7.2 Remedy.

Whenever an Event of Default has occurred and is continuing, then the Lender may declare (i) that the Lender’s obligation, if any, to make Advances has terminated, (ii) the whole of the Unpaid Principal Balance (including any PIK Interest) of this Note remaining unpaid and all accrued unpaid interest, fees and other amounts owing hereunder to be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are expressly waived by the Borrower and the Security Interest and all of the rights and remedies hereby conferred in respect of the Collateral shall become immediately enforceable and any and all additional and collateral securities for payment of this Note shall become immediately enforceable.

ARTICLE 8
ENFORCEMENT

Section 8.1 Remedies.

Whenever the Security Interest has become enforceable, the Lender may realize upon the Collateral and enforce its rights by:

(a) entry onto any premises where Collateral consisting of tangible personal property may be located;

(b) entry into possession of the Collateral by any method permitted by law;

(c) sale, grant of options to purchase, or lease of all or any part of the Collateral;

(d) collection of any proceeds arising in respect of the Collateral;

(e) exercising and enforcing all rights and remedies of a lender of the Collateral as if the Lender were the absolute owner thereof (including, if necessary, causing the Collateral to be registered in the name of the Lender or its nominee if not already done);

(f) collection, realization or sale of, or other dealing with, the accounts;

(g) appointment by instrument in writing of a receiver (which term as used in this Note includes a receiver and manager) or agent of all or any part of the Collateral and removal or replacement from time to time of any receiver or agent;

(h) institution of proceedings in any court of competent jurisdiction for the appointment of a receiver of all or any part of the Collateral;

(i) institution of proceedings in any court of competent jurisdiction for sale or foreclosure of all or any part of the Collateral;

(j) filing of proofs of claim and other documents to establish claims to the Collateral in any proceeding relating to the Borrower; and

(k) any other remedy or proceeding authorized or permitted under the *Personal Property Security Act* (Ontario) or otherwise by law or equity.

Such remedies, together with the remedies under Section 8.2, may be exercised from time to time separately or in combination and are in addition to, and not in substitution for, any other rights of the Lender however created. The Lender shall not be bound to exercise any right or remedy, and the exercise of rights and remedies shall be without prejudice to the rights of the Lender in respect of the Obligations including the right to claim for any deficiency.

Section 8.2 Additional Rights.

In addition to the remedies set forth in Section 8.1, the Lender may, whenever the Security Interest has become enforceable:

(a) require the Borrower, at the Borrower's expense, to assemble the Collateral to the extent reasonably practicable at a place or places designated by notice in writing and the Borrower agrees to so assemble the Collateral immediately upon receipt of such notice;

(b) require the Borrower, by notice in writing, to disclose to the Lender the location or locations of the Collateral and the Borrower agrees to make such disclosure when so required;

(c) repair, process, modify, complete or otherwise deal with the Collateral and prepare for the disposition of the Collateral, whether on the premises of the Borrower or otherwise;

(d) redeem any prior security interest against any Collateral, procure the transfer of such security interest to itself, settle and pass the accounts of the prior mortgagee, chargee or encumbrancer (any accounts to be conclusive and binding on the Borrower), or pay any liability secured by any Lien against any Collateral (the Borrower will immediately on demand reimburse the Lender for all such payments);

(e) carry on all or any part of the business of the Borrower and, to the exclusion of all others including the Borrower, enter upon, occupy and use all or any of the premises, buildings, and other property of or used by the Borrower for such time as the Lender sees fit, free of charge, and the Lender shall not be liable to the Borrower for any act, omission or negligence (other than gross negligence or wilful misconduct) in so doing or for any rent, charges, depreciation or damages incurred in connection with or resulting from such action;

(f) borrow for the purpose of carrying on the business of the Borrower or for the maintenance, preservation or protection of the Collateral and grant a security interest in the Collateral, whether or not in priority to the Security Interest, to secure repayment; and

(g) commence, continue or defend any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing or obtaining possession or payment of the Collateral, and give good and valid receipts and discharges in respect of the Collateral and compromise or give time for the payment or performance of all or any part of the accounts or any other obligation of any third party to the Borrower.

Section 8.3 Receiver's Powers.

(1) Any receiver appointed by the Lender shall be vested with the rights and remedies which could have been exercised by the Lender in respect of the Borrower or the Collateral and such other powers and discretions as are granted in the instrument of appointment and any supplemental instruments. The identity of the receiver, its replacement and its remuneration shall be within the sole discretion of the Lender, acting reasonably.

(2) Any receiver appointed by the Lender shall act as agent for the Lender for the purposes of taking possession of the Collateral, but otherwise and for all other purposes (except as provided below), as agent for the Borrower. The receiver may sell, lease, or otherwise dispose of Collateral as agent for the Borrower or as agent for the Lender as the Lender may determine in its discretion. The Borrower agrees to ratify and confirm all actions of the receiver acting as agent for the Borrower, and to release and indemnify the receiver in respect of all such actions.

(3) The Lender, in appointing or refraining from appointing any receiver, shall not incur liability to the receiver, the Borrower or otherwise and shall not be responsible for any misconduct or negligence of such receiver.

Section 8.4 Appointment of Attorney.

The Borrower irrevocably constitutes and appoints the Lender (and any of its officers) the true and lawful attorney of the Borrower. As the attorney of the Borrower, the Lender has the power to exercise for and in the name of the Borrower with full power of substitution, upon the occurrence and during the continuance of an Event of Default, any of the Borrower's right (including the right of disposal), title and interest in and to the Collateral including the execution, endorsement, delivery and transfer of the Collateral to the Lender, its nominees or transferees, and the Lender and its nominees or transferees are hereby empowered to exercise all rights and powers and to perform all acts of ownership with respect to the Collateral to the same extent as the Borrower might do. This power of attorney is irrevocable, is coupled with an interest, has been given for valuable consideration (the receipt and adequacy of which is acknowledged) and survives, and does not terminate upon, the bankruptcy, dissolution, winding up or insolvency of the Borrower. This power of attorney extends to and is binding upon the Borrower's successors and permitted assigns.

Section 8.5 Dealing with the Collateral.

(1) The Lender shall not be obliged to exhaust its recourse against the Borrower or any other person or against any other security it may hold in respect of the Obligations before realizing upon or otherwise dealing with the Collateral in such manner as the Lender may consider desirable.

(2) The Lender may grant extensions or other indulgences, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the Borrower and with other persons, sureties or securities as they may see fit without prejudice to the Obligations, the liability of the Borrower or the rights of the Lender in respect of the Collateral.

(3) Except as otherwise provided by law or this Note, the Lender shall not be (i) liable or accountable for any failure to collect, realize or obtain payment in respect of the Collateral, (ii) bound to institute proceedings for the purpose of collecting, enforcing, realizing or obtaining payment of the Collateral or for the purpose of preserving any rights of any persons in respect of the Collateral, (iii) responsible for any loss occasioned by any sale or other dealing with the Collateral or by the retention of or failure to sell or otherwise deal with the Collateral, or (iv) bound to protect the Collateral from depreciating in value or becoming worthless.

Section 8.6 Standards of Sale.

Without prejudice to the ability of the Lender to dispose of the Collateral in any manner which is commercially reasonable, the Borrower acknowledges that:

(a) Collateral may be disposed of in whole or in part;

(b) Collateral may be disposed of by public auction, public tender or private contract, with or without advertising and without any other formality;

(c) any assignee of such Collateral may be the Lender or a customer of the Lender;

(d) any sale conducted by the Lender will be at such time and place, on such notice and in accordance with such procedures as the Lender, acting reasonably, may deem advantageous;

(e) the Collateral may be disposed of in any manner and on any terms necessary to avoid violation of applicable law (including compliance with such procedures as may restrict the number of prospective bidders and purchasers, require that the prospective bidders and purchasers have certain qualifications, and restrict the prospective bidders and purchasers to Persons who will represent and agree that they are purchasing for their own account for investment and not with a view to the distribution or resale of the Collateral) or in order to obtain any required approval of the disposition (or of the resulting purchase) by any governmental or regulatory authority or official;

(f) a disposition of Collateral may be on such terms and conditions as to credit or otherwise as the Lender, acting reasonably, may deem advantageous; and

(g) the Lender may establish an upset or reserve bid or price in respect of Collateral.

Section 8.7 Dealings by Third Parties.

(1) No person dealing with the Lender, or an agent or receiver shall be required to determine (i) whether the Security Interest has become enforceable, (ii) whether the powers which such person is purporting to exercise have become exercisable, (iii) whether any money remains due to the Lender by the Borrower, (iv) the necessity or expediency of the stipulations and conditions subject to which any sale or lease is made, (v) the propriety or regularity of any sale or other dealing by the Lender or any such agent or receiver with the Collateral, or (vi) how any money paid to the Lender or any such agent or receiver has been applied.

(2) Any *bona fide* purchaser of all or any part of the Collateral from the Lender or any receiver or agent shall hold the Collateral absolutely, free from any claim or right of whatever kind, including any equity of redemption, of the Borrower, which it specifically waives (to the fullest extent permitted by law) as against any such purchaser together with all rights of redemption, stay or appraisal which the Borrower has or may have under any rule of law or statute now existing or hereafter adopted.

ARTICLE 9
MISCELLANEOUS

Section 9.1 Notices.

Any notice, direction or other communication given under this Note shall be in writing and given by delivering it or sending it by facsimile or other similar form of recorded communication addressed:

(a) to the Borrower at:

Acerus Pharmaceuticals Corporation
7025 Langer Drive, Suite 205
Mississauga ON L5N 0E8

Attention:	Mr. Robert Motz, Chief Financial Officer
Email:	rmotz@aceruspharma.com
Facsimile:	(905) 569-1809

with a copy to:

Attention:	Mr. Philippe Savard
Email:	psavard@aceruspharma.com
Facsimile:	(905) 569-1809

(b) to the Lender at:

First Generation Capital Inc.
40 King Street West
Toronto ON M5H 3Y2

Attention:	Mr. Ian Ihnatowycz
Email:	ian@generationcapitalmgmt.com
Facsimile:	(416) 304-9919

Any such communication shall be deemed to have been validly and effectively given (i) if personally delivered, on the date of such delivery if such date is a Business Day and such delivery was made prior to 4:00 p.m. (local time in the place of receipt) and otherwise on the next Business Day; or (ii) if transmitted by facsimile, email, or similar means of recorded communication on the date of such transmission if such date is a Business Day and such transmission was made prior to 4:00 p.m. (local time in the place of receipt) and otherwise on the Business Day following the date of transmission. Any Party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to such Party at its changed address.

Section 9.2 Third Party Beneficiaries.

The Lender and the Borrower intend that this Note shall not benefit or create any right or cause of action in, or on behalf of, any Person other than the Borrower and the Lender and no Person other than the Lender and the Borrower shall be entitled to rely on the provisions of this Note in any action, suit, proceeding, hearing or other forum.

Section 9.3 Amendments, etc.

No amendment or waiver of any provision of this Note is effective unless in writing and approved by the Lender and the Borrower. Any amendment, waiver or consent is effective only in the specific instance and for the specific purpose for which it was given.

Section 9.4 Successors and Assigns.

(1) This Note shall be binding upon and enure to the benefit of the Borrower and the Lender and their respective successors and permitted assigns.

(2) The Borrower shall not have the right to assign its rights or obligations under this Note or any interest in this Note without the prior consent of the Lender, which consent may be arbitrarily withheld.

(3) The Borrower shall provide such certificates, acknowledgments and further assurances in respect of this Note as such Lender may reasonably require in connection with any participation or assignment pursuant to Section 9.4.

(4) Any assignment by the Lender shall become effective when the Borrower has been notified of the assignment and the assignee has executed an assumption agreement reasonably requested by the Lender by which the assignee assumes the obligations of the Lender and agrees to be bound by all the terms and conditions of this Note. Any assignee shall be treated as if it were the Lender, shall be entitled to the benefit of this Note and shall be subject to the obligations of the Lender as if it were an original signatory to this Note, in each case to the extent of the rights and obligations assigned to it. The Lender shall be released and discharged of the obligations it has assigned.

(5) Any assignment or grant of participation pursuant to Section 9.4 will not constitute a repayment by the Borrower to the assigning or granting Lender of any amount outstanding under this Note and the parties acknowledge that the Borrower's obligations under this Note will continue and will not constitute new obligations.

Section 9.5 Waiver.

No failure on the part of the Lender to exercise and no delay in exercising, any right under this Note shall operate as a waiver of such right; nor shall any single or partial exercise of any right under this Note preclude any other or further exercise of such right or the exercise of any other right. The rights and remedies of the Lender hereunder are cumulative and not exclusive of any rights or remedies provided by law.

Section 9.6 Presentment, Withholdings, etc.

The Borrower and all endorsers of this Note waive presentment for payment, demand and protest and notice of protest and notice of non-payment, and agree and consent to all extensions or renewals of this Note without notice. All payments made pursuant to this Note shall be made free and clear of any withholdings and without any set-off or counterclaim of any kind whatsoever.

Section 9.7 Currency.

If a judgment or order is rendered by any court or tribunal for the payment of any amount owing to the Lender hereunder or for the payment of damages in respect of any breach of this Note, or under or in respect of a judgment or order of another court or tribunal for the payment of those amounts or damages, and the judgment or order is expressed in a currency (the "**Judgment Currency**") except the currency payable hereunder (the "**Agreed Currency**"), the Borrower shall indemnify and hold the Lender harmless against any deficiency in terms of the Agreed Currency in the amounts received by the Lender arising or resulting from any variation as between (a) the actual rate of exchange at which the Agreed Currency is converted into the Judgment Currency for the purposes of the judgment or order, and (b) the actual rate of exchange at which the Lender is able to purchase the Agreed Currency with the amount of the Judgment Currency actually received by the Lender on the date of receipt. The obligations in this Section shall survive termination of this Note.

Section 9.8 Usury.

The parties intend to comply with applicable law relating to usury. Notwithstanding any other provision of this Note, in no event shall it require the payment or permit the collection of interest or other amounts in an amount or at a rate in excess of the amount or rate that is permitted by applicable law or in an amount or at a rate that would result in the receipt by the Lender of interest at a criminal rate, as the terms “interest” and “criminal rate” are defined under the *Criminal Code* (Canada). If from any circumstance whatever, fulfilment of any provision of this Note would result in exceeding the highest rate or amount permitted by applicable law for the collection or charging of interest, the obligation to be fulfilled shall be reduced to reflect the highest permitted rate or amount. If from any circumstance the Lender shall ever receive anything of value as interest or deemed interest under this Note that would result in exceeding the highest lawful rate or amount of interest permitted by applicable law, the amount that would be excessive interest shall be applied to the reduction of the principal amount of the Obligations, and not to the payment of interest, or if the excessive interest exceeds the unpaid principal balance of the Obligations, the amount exceeding the unpaid balance shall be refunded to the Borrower.

Section 9.9 Governing Law.

This Note shall be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Each Party hereby irrevocably and unconditionally attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

Section 9.10 Limitation Periods

To the extent that any limitation period applies to any claim for payment of the Obligations or remedy for enforcement of the Obligations, the Borrower agrees that:

(a) any limitation period is expressly excluded and waived entirely if permitted by applicable law;

(b) if a complete exclusion and waiver of any limitation period is not permitted by applicable law, any limitation period is extended to the maximum length permitted by applicable law;

(c) any applicable limitation period shall not begin before an express demand for payment of the Obligations is made in writing by the Lender to the Borrower;

(d) any applicable limitation period shall begin afresh upon any payment or other acknowledgment of the Obligations by the Borrower; and

(e) this Agreement is a “business agreement” as defined in the *Limitations Act, 2002* (Ontario) if that Act applies.

Section 9.11 Severability.

If any provision of this Note is or becomes invalid, illegal or unenforceable in any relevant jurisdiction, the remaining provisions shall remain in full force and effect.

Section 9.12 Indemnification.

The Borrower shall indemnify the Lender and each of its affiliates, directors, officers, employees, agents and advisors (each of whom is called an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by the Borrower or other Person (except an Indemnitee) arising out of, in connection with, or as a result of (i) the execution or delivery of this Note or any agreement or instrument contemplated by it, the performance or non-performance by the Borrower of its obligations under this Note or any agreement or instrument contemplated by it or the consummation or non-consummation of the transactions contemplated by this Note. For greater certainty, all amounts owing by the Borrower pursuant to this Section 10.12 shall form part of the Obligations.

Section 9.13 Fees and Expenses.

The Borrower shall promptly pay (i) all reasonable costs and expenses incurred by the Lender, including the reasonable fees, charges and disbursements of counsel for the Lender, in connection with the preparation, negotiation, execution, delivery and administration of this Note and any agreement or instrument contemplated by it, or any amendments, modifications or waivers of their provisions (whether or not the transactions contemplated by them are consummated) and (ii) all reasonable costs and expenses incurred by the Lender, including the reasonable fees, charges and disbursements of counsel, in connection with the enforcement or protection of its rights in connection with this Note and any agreement or instrument contemplated by it. For greater certainty, all fees and expenses owing by the Borrower pursuant to this Section 10.13 shall form part of the Obligations.

Section 9.14 Counterparts.

This Note may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument.

[*Remainder of page intentionally left blank.*]

WITNESS the execution of this Note on the date first written above.

ACERUS PHARMACEUTICALS CORPORATION

By: ______________________________
Authorized Signing Officer

FIRST GENERATION CAPITAL INC.

By: ______________________________
Authorized Signing Officer

WITNESS the execution of this Note on the date first written above.

ACERUS PHARMACEUTICALS CORPORATION

By: ______________________________
Authorized Signing Officer

FIRST GENERATION CAPITAL INC.

By: ______________________________
Authorized Signing Officer

GRID

ADVANCES AND REPAYMENT OF PRINCIPAL

Loan	Days	Interest on loan at 8%	Advances	Repayments	Carrying amount
6-May-21			$ 1,500,000	$ -	$ 1,500,000
13-May-21	7	$ 2,301	$ 1,500,000	$ -	$ 3,002,301
26-May-21	13	$ 8,555	$ 2,000,000	$ -	$ 5,010,856
15-Jun-21	20	$ 21,965	$ 1,000,000	$ -	$ 6,032,821
29-Jun-21	14	$ 18,512	$ 1,000,000	$ -	$ 7,051,333
30-Jun-21	1	$ 1,545	$ -	$ -	$ 7,052,878
13-Jul-21	13	$ 20,096	$ 1,000,000	$ -	$ 8,072,974
26-Jul-21	13	$ 23,002	$ 1,000,000	$ -	$ 9,095,977
11-Aug-21	16	$ 31,898	$ 2,000,000	$ -	$ 11,127,875
28-Sep-21	48	$ 117,071	$ 1,000,000	$ -	$ 12,244,946
30-Sep-21	2	$ 5,368	$ -	$ -	$ 12,250,314
14-Oct-21	14	$ 37,590	$ 1,000,000	$ -	$ 13,287,904
1-Nov-21	18	$ 52,424	$ 1,000,000	$ -	$ 14,340,327
12-Nov-21	11	$ 34,574	$ 1,000,000	$ -	$ 15,374,901
15-Dec-21	33	$ 111,205	$ 2,000,000	$ -	$ 17,486,106
30-Dec-21	15	$ 57,489	$ 3,000,000	$ -	$ 20,543,595
31-Dec-21	1	$ 4,503	$ -	$ -	$ 20,548,097
14-Jan-22	14	$ 63,052	$ 1,500,000	$ -	$ 22,111,149
24-Jan-22	10	$ 48,463	$ 1,000,000	$ -	$ 23,159,612
28-Jan-22	4	$ 20,304	$ 2,500,000	$ -	$ 25,679,916
16-Feb-22	19	$ 106,941	$ 5,845,000	$ -	$ 31,631,857
30-Mar-22	42	$ 291,186	$ -	$ -	$ 31,923,044
TOTAL		$ 1,078,044	$ 30,845,000		

Schedule "A"
LITIGATION

Schenk Litigation

Valeant Pharmaceuticals International, Inc. and Valeant International Bermuda ("**Valeant**") are defendants in Ontario Superior Court of Justice Action No. CV-11-438382, which claims a declaration that Valeant is contractually obligated to compensate the plaintiff, Reiner Schenk ("**Schenk**") pursuant to the terms of a contract between Schenk and Biovail Corporation. The main action was commenced by Notice of Action issued on October 31, 2011 and a Statement of Claim was issued on December 14, 2011. Acerus Pharmaceuticals Corporation ("**Acerus**") was named as one of the defendants in the main action, but the action was discontinued as against Acerus on December 14, 2011. On October 29, 2013, Valeant commenced a third party claim against Acerus (among others) claiming contribution, indemnity and other relief over to the full extent that Valeant may be held liable to Schenk, and damages for breach of fiduciary duty, breach of contract and intentional interference with economic relations in any amount for which Valeant is found liable to Schenk. Acerus has defended the third party claim, denying any liability to Valeant. The parties have concluded examinations for discovery and attended a pre-trial conference in February 2020. The trial was scheduled to commence in April 2020 and was anticipated to be two weeks long. However, in an effort to reduce the transmission of COVID-19, the Ontario Superior Court suspended all regular operations in March 2020. Accordingly, the trial was adjourned to a later date. The parties attended a further pre-trial conference in December 2021 and the trial is now expected to take place in January 2023.

Jones Day Litigation

On December 11, 2019, Jones Day commenced an action in the New York State Supreme Court against Serenity Pharmaceuticals LLC ("**Serenity**"), and certain members of its former senior management, for alleged unpaid legal bills. On September 21, 2020, Serenity filed an answer with counterclaims against Jones Day. Serenity's counterclaim alleges breach of contract in connection with Jones Day's representation of Serenity in a prior lawsuit, fraud in respect of certain billing issues and malpractice. Also on September 21, 2020, the former senior management members filed a motion to dismiss Jones Day's complaint as against them. Jones Day also brought a motion to dismiss Serenity's counterclaims. On May 12, 2020, a decision was rendered in both motions. Serenity's motion was dismissed and Jones Day's motion was granted with respect to the counterclaims in fraud and malpractice, but dismissed in respect of the breach of contract claim. The parties are now proceeding through discovery.

This is Exhibit "I" referred to in the Affidavit of Naveed Z. Manzoor
sworn by Naveed Z. Manzoor of the Town of Oakville,
in the Province of Ontario, before me at the City of Toronto,
in the Province of Ontario, on January 25, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

DocuSigned by:

Philip Y

36124C4218DD47C...

Commissioner for Taking Affidavits

LOAN AGREEMENT
DATED AS OF DECEMBER 21, 2022

WHEREAS the Borrowers (as defined below) have requested that the Lender (as defined below) provides financing to fund certain of the Borrowers' cash requirements in accordance with the terms and conditions set out herein;

AND WHEREAS the Lender has agreed to provide the Facility (as defined below) in accordance with the terms and subject to the conditions set out herein.

NOW THEREFORE in consideration of the foregoing and their respective covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

1. **Defined Terms**: Capitalized terms that are not defined in the body of this Agreement have the meanings ascribed to them in Schedule A.

2. **Currency**: Unless otherwise stated, all monetary denominations shall be in lawful currency of the United States of America.

3. **Borrowers**: Acerus Pharmaceuticals Corporation and Acerus Pharmaceuticals USA, LLC (collectively, the "**Borrowers**", and any reference to the Borrowers shall be deemed to mean, "the Borrowers or any one of them").

4. **Borrower Agent**: Unless otherwise specified, any notices or other communications provided by the Borrower Agent to the Lender shall be deemed to be provided by the Borrower Agent for itself and on behalf of the other Obligors and any notice or other communication provided by the Lender to the Borrower Agent shall be deemed to be provided by the Lender to the Obligors.

5. **Guarantors:** All present and future subsidiaries of the Borrowers, including without limitation Acerus Biopharma Inc. and Acerus Labs Inc. (together, the "**Guarantors**", and any reference to the Guarantors shall be deemed to mean, "the Guarantors or any one of them"; and collectively with the Borrowers, the "**Obligors**").

6. **Lender**: First Generation Capital Inc. (the "**Lender**").

7. **Facility and Maximum Loan Amount**: Subject to the terms and conditions hereof, the Lender agrees to provide to the Borrowers a non-revolving credit facility (the "**Facility**") in an amount up to $2,000,000 (the "**Maximum Loan Amount**"). The Facility is a non-revolving, multiple draw credit facility. The principal amount of any Advance that is repaid may not be re-borrowed and the available Maximum Loan Amount shall be automatically reduced by such repaid amount.

8. **Availability**: Advances under the Facility (each, an "**Advance**") are available for borrowing up to and including March 31, 2023, after which date any amount not borrowed under the Facility shall be permanently cancelled and not available for borrowing.

9. **Advances**: Advances require a written notice to be delivered by the Borrowers to the Lender (an "**Advance Notice**") substantially in the form attached at Schedule B hereto, which Advance Notice has been executed by an officer of the Borrowers, setting out: (a) the proposed amount of the requested Advance; (b) the date the Advance is requested; (c) the Borrower that will receive the Advance; (d) the use for the proceeds of the Advance; (e) certification that the representations and warranties contained herein are true and correct as of such date; and (f) certification that no Default or Event of Default has occurred or will occur after giving effect to the Advance. Each Advance Notice shall be delivered by the Borrowers to the Lender not less than three (3) Business Days prior to the requested date of the Advance. Each Advance shall be in the minimum amount of $250,000.

10. **Use of Proceeds**: The proceeds of the Facility shall be used by the Borrowers solely to fund the ordinary course working capital and other general corporate purposes of the Borrowers, including to pay Permitted Fees and Expenses. No proceeds may be used for any other purpose, except with the prior written approval of the Lender, in its sole discretion.

11. **Evidence of Indebtedness**: The Lender shall maintain a register evidencing Advances and repayments under the Facility and all other amounts owing from time to time hereunder (including the amount of PIK Interest) in the form of the Grid attached at Schedule C hereto. The Lender's register constitutes *prima facie* evidence, absent manifest error, of the Obligations; provided that the failure of the Lender to record the same shall not affect the obligations of the Borrowers to pay such amounts to the Lender.

12. **Interest**: All amounts owing hereunder on account of principal, and overdue interest, fees and expenses, shall bear interest at the rate equal to the Applicable Interest Rate. Interest at such rate shall be calculated on the basis of the actual number of days elapsed in a year of 365 days or 366 days, as the case may be, shall be payable in kind quarterly, in arrears, on the last Business Day of each and every quarter commencing on December 31, 2022 until the unpaid principal balance, together with all accrued interest on such amount, has been repaid in full, and shall be capitalized and added to, and shall become a part of, the Obligations without any further act by or on behalf of the Lender (such capitalized interest, the "**PIK Interest**").

    Notwithstanding the foregoing, at the sole option of the Borrowers, any interest under this Agreement may be paid in cash quarterly, in advance, on the last Business Day of any quarter.

    Overdue interest shall bear interest at the rate set forth above plus an additional two per cent (2%) per annum, calculated as aforesaid.

    For the purposes of the *Interest Act* (Canada) and disclosure thereunder, whenever any interest or fee to be paid under this Agreement is to be calculated on the basis of a period that is less than a calendar year, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by the number of days in the period that is less than a calendar year.

13. **Fees and Expenses**: The Borrowers shall pay all reasonable costs and expenses of the Lender (including all reasonable fees, expenses and disbursements of outside counsel and any financial advisor) in connection with the Facility, including the preparation of the Loan Documents, the administration of the Facility, the enforcement of any of the Lender's rights and remedies available hereunder and under any other Loan Documents (collectively, "**Permitted Fees and Expenses**").

14. **Budget**: Attached hereto as Schedule D is a detailed cash flow forecast to January 31, 2023 (the "**Budget**"), which is in form and substance satisfactory to the Lender. On Wednesday of each week, the Borrower Agent shall provide the Lender with an updated cash flow forecast substantially in the form of the Budget (the "**Updated Cash Flow**") and a variance report (the "**Cash Flow Variance Report**"), certified by an officer of the Borrower Agent, showing on a line-by-line basis the actual receipts and disbursements and the total available liquidity for the last day of the prior week on a weekly and cumulative basis and noting therein all variances on a line-by-line basis from the amounts in the Budget, with explanations for all material variances. The Lender may, in its sole discretion, agree to substitute the Updated Cash Flow for the then current Budget, in which case the Updated Cash Flow shall thereafter be deemed to be the effective Budget for the purposes hereof.

15. **Conditions Precedent to Initial Advance**: The Lender's agreement to make the initial Advance under the Facility is subject to the satisfaction of the following conditions precedent:

(a) This Agreement, the Security and the other Loan Documents shall have been executed and delivered by the parties hereto and thereto;

(b) All Loan Documents and instruments shall have been properly registered, recorded and filed in all places which, searches shall have been conducted in all jurisdictions which, and the Lender shall have received of all consents, approvals, undertakings, control agreements, estoppel letters, waivers or certificates, documents of title, financing statements and other documents and instruments which, in the opinion of counsel to the Lender, are necessary to make effective the Security created or intended to be created by the Obligors and to ensure the perfection and the first ranking priority of the Security;

(c) The Lender shall have received duly executed certificate(s) of insurance evidencing the insurance required by this Agreement and noting the Lender's interest as first mortgagee, first loss payee and additional insured;

(d) The Lender shall have received evidence of approval from the TSX to the Loan Agreement;

(e) The Lender shall have received customary officer's certificates from the Obligors; and

(f) The Lender shall have received such additional information and documents as it may reasonably require.

16. **Conditions Precedent to Advances**: The Lender's agreement to make each Advance under the Facility, including without limitation, the initial Advance, is subject to the satisfaction of the following conditions precedent:

(a) The conditions in Section 15 shall have been satisfied or waived and the Loan Documents shall be in full force and effect;

(b) The Lender shall have received an Advance Notice in accordance with the terms hereof, which requested Advance shall not result in the Maximum Loan Amount being exceeded;

(c) All representations and warranties contained in this Agreement and the other Loan Documents shall be true and correct on the date of such requested Advance with the same effect as if made on and as of such date, except to the extent that such representations and warranties relate specifically to an earlier date;

(d) No Default or Event of Default shall have occurred or will occur as a result of the requested Advance;

(e) No Material Adverse Effect shall have occurred since the latter of the latest financial statements;

(f) To the extent required in accordance with Section 14, the Lender shall have received an updated Budget and Cash Flow Variance Report, which shall be in form and substance satisfactory to the Lender, in its sole discretion, and the proposed uses of the requested Advance shall be consistent with the Budget and acceptable to the Lender, acting reasonably.

The conditions stated in this Section 16 are inserted for the sole benefit of the Lender and may only be waived by the Lender, and any such waiver may be made in whole or in part, with or without terms or conditions and in respect of all or any portion of the Advances, without affecting the right of the Lender to assert terms and conditions in whole or in part in respect of any other future Advance.

17. **Security**: All indebtedness, liabilities and obligations of the Obligors under or in connection with the Facility, this Agreement and the other Loan Documents, including without limitation, all principal, interest (including PIK Interest), fees, expenses (including the Permitted Fees and Expenses) and other amounts owing in respect of fees and expenses of the Lender (collectively, the "**Obligations**") shall be secured by:

(a) An unlimited guarantee from each Borrower of the present and future obligations of the other Borrower;

(b) An unlimited guarantee from each Guarantor of the present and future obligations of the Borrowers;

(c) A first-ranking general security agreement from each Obligor (including the U.S. Security Agreement from Acerus Pharmaceuticals USA, LLC);

(d) A first-ranking pledge of shares held by each Obligor (including the U.S. Pledge Agreement from Acerus Pharmaceuticals Corporation);

(e) Certificates of insurance noting the Lender as first mortgagee, first loss payee and additional insured in respect of the insurance policies of each Obligor; and

(f) Such other loan and security documents reasonably requested by the Lender, including any UCC financing statements and any PPSA financing statements determined by the Lender to be necessary or appropriate.

18. **Repayment and Maturity Date**: All Obligations owing to the Lender shall be due and payable on the earlier of the following:

(a) December 31, 2024; and

(b) an Event of Default in respect of which the Lender has elected to accelerate the Obligations;

(such earlier date, the "**Maturity Date**").

Unless otherwise expired pursuant to this Agreement, the Lender's commitment to make Advances under the Facility shall expire on the Maturity Date and all then outstanding Obligations shall be repaid on the Maturity Date, without the Lender being required to make demand upon the Borrowers or to give notice that the Facility has expired and that the obligations hereunder are due and payable.

19. **Mandatory Prepayments**: The Borrowers shall apply each of the following amounts in accordance with the provisions of Section 21:

(a) the Net Proceeds from the sale of any of the Collateral other than in the ordinary course of business

(b) the Net Proceeds from the sale of any equity interests in an Obligor or the receipt of capital contributions by an Obligor;

(c) the net cash proceeds received from the incurrence by an Obligor of any Indebtedness (except as permitted hereunder); and

(d) insurance proceeds (net of deductibles) or expropriation awards received by an Obligor.

Each such prepayment shall be accompanied by the amount of accrued interest on the amount prepaid. Any mandatory prepayment made hereunder shall permanently reduce the Maximum Loan Amount and may not be re-borrowed.

20. **Optional Prepayment**: The Borrowers may not voluntarily prepay (in whole or in part) any Obligations until repayment in full of all indebtedness, liability and obligations outstanding under the Promissory Note and cancellation of al commitments of the Lender thereunder. Each such prepayment shall be accompanied by the amount of accrued interest on the amount prepaid. Any voluntary prepayment made hereunder shall permanently reduce the Maximum Loan Amount and may not be re-borrowed.

21. **Application of Payments/Proceeds of Collateral**: All payments made by or on behalf of the Borrowers (whether before or after the Maturity Date), and all proceeds of the Collateral, shall be paid to the Lender and applied as follows, subject to applicable Law:

(a) Prior to the exercise of any rights and remedies arising under Section 28:

(i) firstly, in payment of all Permitted Fees and Expenses;

(ii) secondly, in payment of all indebtedness, liability and obligations outstanding under the Promissory Note;

(iii) thirdly, in payment of all outstanding Obligations;

(b) Following the exercise of any rights and remedies arising under Section 28:

(i) Firstly, in payment of all Permitted Fees and Expenses;

(ii) secondly, in payment of all outstanding Obligations;

(iii) thirdly, in payment of all indebtedness, liability and obligations outstanding under the Promissory Note.

22. **Payments**: All payments hereunder shall be made for value in the full amount due at or before 1:00 pm (Toronto time) on the day such amount is due by deposit or transfer thereof to an account designated by the Lender. Payments received after such time shall be deemed to have been made on the next following Business Day. If any payment is due on a day which is not a Business Day, such payment shall be due on the next following Business Day and interest shall accrue until but excluding the actual date of payment.

Each payment to be made by the Borrowers shall be made in full without deduction, set-off or counterclaim of any kind or for any reason. All payments required hereunder shall be made in lawful currency of the United States of America.

If any fees and expenses incurred by the Obligors after the date of this Agreement are not paid by the Obligors, the Lender may, but shall have no duty to, pay all such fees and expenses whereupon such amounts shall be added to and form part of the Obligations and shall reduce the availability under the Facility.

23. **Representations and Warranties**: Each Obligor represents and warrants to the Lender, upon which the Lender relies in entering into this Agreement and the other Loan Documents, that:

(a) The transactions contemplated by this Agreement and the other Loan Documents have been duly authorized, executed and delivered by or on behalf of the Obligors, and:

(i) are within the powers of the Obligors;

(ii) constitute legal, valid and binding obligations of the Obligors, subject only to any limitation under applicable laws relating to (i) bankruptcy, insolvency, arrangement or creditors' rights generally, and (ii) the discretion that a court may exercise in the granting of equitable remedies;

(iii) do not require any consent or approval under, result in a breach or violation of, or conflict with, any of the terms or provisions of its constating documents or by-laws or any contracts (including the Promissory Note) or instruments to which it is a party or pursuant to which any of its assets and property may be affected;

(iv) there is no requirement for the Obligors to make any filing with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to the execution, delivery and performance by the Obligors of the transactions contemplated by this Agreement, other than any such filing, notice, etc. as has been obtained;

(b) The Business has been and will continue to be conducted in material compliance with applicable Law of each jurisdiction in which the Business is carried on;

(c) The Obligors have obtained all Authorizations for the operation of the Business, which Authorizations are in full force and effect, and no proceedings have been commenced to revoke or amend any such Authorizations, except where the failure to possess or maintain in good standing and in full force and effect such Authorizations, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect;

(d) The Obligors have (i) good and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), (iii) valid licensed rights in (in the case of licensed interests in intellectual property) and (iv) good title to (in the case of all other personal property), the Collateral. Except as permitted by this Agreement, the Collateral is free and clear of Encumbrances;

(e) Except as set out in Schedule E hereto, there is no action, suit or proceeding, at law or in equity, by any Person, nor any arbitration, administrative or other proceeding by or before (or to the best of the knowledge of the Borrower any investigation by) any Governmental Authority pending, or, to the best of the knowledge of the Obligors, threatened against or affecting the Obligors or their respective properties or rights or any of their assets or properties, and the Obligors do not know of any valid basis for any such action, suit, proceeding, arbitration or investigation. The Obligors are not subject to any judgment, order or decree entered in any lawsuit or proceeding;

(f) No Default or Event of Default has occurred and is continuing; and

(g) All factual information provided by or on behalf of the Obligors to the Lender for the purposes of or in connection with this Agreement or any transaction contemplated herein is true and accurate in all material respects on the date as of which such information is dated or certified and is not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not materially misleading at such time in light of the circumstances under which such information was provided.

The representations and warranties in this Agreement and in any certificates or documents delivered to the Lender shall not merge and shall survive and continue in full force and effect so long as any amounts are owing by the Obligors to the Lender under this Agreement or the other Loan Documents.

24. **Affirmative Covenants**: Each Obligor agrees and covenants to perform and do each of the following until the Obligations are indefeasibly repaid and the Facility is cancelled:

(a) Pay when due all principal interest, fees and other amounts payable by the Obligors under this Agreement and the other Loan Documents;

(b) Comply with the requirements of all applicable Laws, judgments, orders, decisions and awards;

(c) Deliver to the Lender (i) Updated Cash Flows and Cash Flow Variance Reports in accordance with Section 14 and (ii) such other reporting and other information from time to time as is reasonably requested by the Lender;

(d) Keep the Lender apprised on a timely basis of all material developments with respect to the Business and affairs of the Obligors (including any changes to the strategy of the Obligors);

(e) Notify the Lender forthwith of the occurrence of any Default or Event of Default;

(f) Allow the Lender, its directors, officers, employees, agents, advisors and representatives full access to the Obligors' premises and all information and documentation of the Obligors and their Affiliates on reasonable notice and during normal business hours and cause management thereof to fully cooperate with any such directors, officers, employees, agents, advisors and representatives;

(g) Preserve, renew, maintain and keep in full force and effect its corporate existence and its Authorizations required in respect of the Business or any of the Collateral;

(h) Maintain in full force all policies of insurance that are now in effect (or renewals thereof) under which the Obligors, the Business or any of the Collateral is insured; and

(i) Pay when due all applicable Taxes and other amounts that are Priority Payables, permitting and licences fees and other amounts necessary to preserve the Collateral to avoid any Encumbrance on the Collateral that is not a Permitted Encumbrance.

25. **Negative Covenants**: Each Obligor covenants and agrees not to do the following, other than with the prior written consent of the Lender, in its sole discretion:

(a) Utilize any Advance except in accordance with the permitted uses hereunder and the Budget;

(b) Except as contemplated by this Agreement or the Budget, make any payment of any Indebtedness or obligations existing as at the date of this Agreement (the "**Pre-Existing Debt**");

(c) Create, incur or permit to exist any Indebtedness other than Pre-Existing Debt, Advances and accounts payable in the ordinary course of business in accordance with the Budget;

(d) Except for Permitted Encumbrances, create or permit to exist any Encumbrance or provide or seek or support a motion by another Person to provide any Encumbrance, upon any of the Collateral;

(e) Sell, exchange, lease, release, abandon or otherwise dispose of any Collateral other than in the ordinary course of business;

(f) Purchase or acquire, or make any commitment to purchase or acquire, any shares, capital stock, equity interest, or any obligations or other securities of, or any interest in, any Person;

(g) Make or commit to make any acquisition of assets (other than in the ordinary course of business) or of any business or part thereof;

(h) Except for the liability of the Obligors under the Loan Documents, make any investments in or loans to or guarantee (or provide any other financial assistance with respect to) the Indebtedness or obligations of any other Person or entity or permit its Affiliates to do so;

(i) Make or permit any dividends, distributions, or other payments (in cash, property or obligations) on, or other payments or distributions on account of, any portion of any direct or indirect ownership interest in the Obligors or other rights to acquire any such ownership interest, or otherwise make or permit any payments to be made to any holder of any such direct or indirect ownership interest or any rights to acquire such direct or indirect ownership interest;

(j) Change its jurisdiction of incorporation, chief executive office or registered office;

(k) Change its name, fiscal year end or accounting policies or amalgamate, consolidate with, merge into, dissolve or enter into any similar transaction with any other Person or permit a change of control of any Obligor;

(l) Modify, repudiate or terminate any material contract which would reasonably be expected to result in a material adverse change in the financial condition, operation or prospects of the Obligors;

(m) Make any material change in the nature of the Business;

(n) Create or acquire any new subsidiary; or

(o) Permit the net variance (as compared to the Budget) in the aggregate receipts of the Obligors and aggregate operating disbursements (excluding professional fees and expenses and other one-time restructuring charges) of the Obligors for the prior four-week period to exceed 15%.

26. **Post-Close Covenant**: Acerus Pharmaceuticals Corporation shall use commercially reasonable best efforts, including taking such actions as may be requested by the Lender, acting reasonably, to obtain the approval of the Toronto Stock Exchange ("**TSX Consent**") to permit the payment by the Borrowers of interest on all amounts owing hereunder at a rate of eight percent (8%) per annum. For greater certainty, provided the Borrower has complied with its obligations pursuant to this Section 26, failure of the Borrower to obtain the TSX Consent shall not constitute and Event of Default.

27. **Events of Default**: The occurrence of any one or more of the following events shall constitute an event of default (each, an "**Event of Default**") under this Agreement:

(a) Failure of the Borrowers to pay any amounts to the Lender when due and owing hereunder or otherwise;

(b) Failure of the Borrowers to comply with Section 25(o);

(c) Except as otherwise set forth in this Section 27, failure of the Obligors to perform or comply with any term or covenant of this Agreement or any other Loan Document and, if capable of being remedied, such failure remains unremedied for five (5) days;

(d) Any representation or warranty made or given hereunder or under any other Loan Document by the Obligors is incorrect in any material respect or misleading when made or deemed to be made;

(e) A Borrower fails to pay or remit any amount with respect to a Priority Payable when due;

(f) (i) An Obligor shall generally not pay its debts as such debts become due, shall admit in writing its inability to pay its debts generally, shall make a general assignment for the benefit of creditors, or shall cease doing business as a going concern, (ii) any proceeding shall be instituted by or against an Obligor seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, composition of it or its debts or any similar order, in each case under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or seeking the entry of an order for relief or the appointment of a custodian, receiver, trustee, conservator, liquidating agent, liquidator, other similar official or other official with similar powers, in each case for it or for any substantial part of its property and, in the case of any such proceedings instituted against (but not by or with the consent of) it, either such proceedings shall remain undismissed or unstayed for a period of forty-five (45) days or more or any action sought in such proceedings shall occur or (iii) the Borrower shall take any corporate or similar action or any other action to authorize any action described in clause (i) or (ii) above;

(g) The appointment of a receiver and manager, receiver, interim receiver or similar official or any process of any court becomes enforceable against an Obligor, or any of its property is seized or levied upon, or a creditor takes possession of any property of an Obligor;

(h) Any Obligor ceases to carry on or maintain the Business or its assets and property in the ordinary course of the Business or any court order enjoins, restrains, or prevents any Obligor from conducting any material part of the Business;

(i) Any proceeding, motion or application is commenced or filed by an Obligor, or if commenced by another Person, supported or otherwise consented to by an Obligor, seeking the invalidation, subordination or other challenge of the terms of the Facility, this Agreement, the Security, any other Loan Document, the Promissory Note or the Promissory Note Security;

(j) The Lender determines, in its sole discretion, acting reasonably, that a material adverse change has occurred after the date hereof in respect of the business, affairs or financial condition of the Obligors or their ability to comply with their obligations under this Agreement or any other Loan Document;

(k) A Promissory Note Event of Default occurs and is continuing; or

(l) The denial or repudiation by any Obligor of the legality, validity, binding nature or enforceability of this Agreement or any of the other Loan Documents.

28. **Remedies**: Upon the occurrence of an Event of Default, the Lender may, in its sole discretion, elect to terminate the Lender's commitment to make further Advances to the Borrowers and set-off, consolidate or accelerate all amounts outstanding under the Facility

and any Loan Documents and declare such amounts to be immediately due and payable without any periods of grace. Upon the occurrence of an Event of Default, the Lender may:

(a) apply to court for the appointment of a receiver, an interim receiver or a receiver and manger over the Collateral;

(b) exercise the powers and rights of a secured creditor; and/or

(c) exercise all such other rights and remedies available to the Lender under this Agreement, the other Loan Documents, and applicable Law.

Nothing shall prevent the Lender from applying to court for such relief as the Lender may determine is necessary or appropriate at any time. No failure or delay by the Lender in exercising any of its rights hereunder or at Law shall be deemed a waiver of any kind. The rights, powers and remedies under this Agreement, the Security and the other Loan Documents are cumulative and are in addition to and not in substitution for any other rights, powers and remedies available at Law or in equity or otherwise. No single or partial exercise by the Lender of any right, power or remedy precludes or otherwise affects the exercise of any other right, power or remedy to which the Lender may be entitled.

29. **Further Assurances:** The Obligors shall, at their own expense, from time to time do, execute and deliver, or cause to be done, executed and delivered, all such further acts, documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) as the Lender may reasonably request for the purpose of giving effect to this Agreement and the other Loan Documents.

30. **Joint & Several Liability:** Each Borrower shall be jointly and severally liable for all Obligations regardless of which Borrower actually receives Advances under the Facility or the amount of any such Advance received or the manner in which the Lender accounts for such Advances on its books and records.

31. **Indemnity**: Each Borrower shall indemnify and hold harmless the Lender, and its Affiliates and the officers, directors, employees, representatives, advisors, managers, solicitors and agents of the Lender and its Affiliates (collectively, the "**Indemnified Persons**") from and against any and all actions, lawsuits, proceedings (including any investigations or inquiries), losses, damages, liabilities or expenses of any kind or nature whatsoever which may be incurred by or suited against or involve any of the Indemnified Persons as a result of, in connection with or in any way related to the Facility, the proposed or actual use of the Advances, this Agreement or the other Loan Documents. Notwithstanding the foregoing, the Borrowers shall have no obligation to indemnify any Indemnified Person against such loss, liability, cost or expense to the extent that they are found by final judgment of a court of competent jurisdiction to arise from the gross negligence or willful misconduct of such Indemnified Person. The Lender shall not be responsible or liable to the Obligors or any other Person for any indirect, consequential special or punitive damages.

32. **Judgement Currency**: If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or under any other Loan Documents in Canadian

dollars into another currency, the parties hereto agree, to the fullest extent permitted by law, that the rate of exchange used shall be that at which, in accordance with normal banking procedures, the Lender could purchase Canadian dollars with such other currency at the buying spot rate of exchange on the Business Day immediately preceding that on which any such judgment, or any relevant part thereof, is given. The obligations of the Obligors in respect of any sum due to the Lender hereunder and under the other Loan Documents shall, notwithstanding any judgment in a currency other than Canadian dollars, be discharged only to the extent that on the Business Day following receipt by the Lender of any sum adjudged to be so due in such other currency the Lender may, in accordance with normal banking procedures, purchase Canadian dollars with such other currency. If the amount of Canadian dollars so purchased is less than the sum originally due to the Lender in Canadian dollars, the Obligors agree, to the fullest extent that they may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify the Lender against such loss.

33. **Withholdings and Tax Indemnity**: Any and all payments by or on account of any obligation of the Obligors hereunder or under any other Loan Document shall be made free and clear of and without deduction or withholding for any Taxes; provided that, if any Obligor is required by applicable Law to deduct or withhold any Taxes from such payments, then:

(a) if such tax is an Indemnified Tax, the amount payable by the Obligors shall be increased so that after making all required deductions or withholdings (including deductions or withholdings applicable to additional amounts payable under this Section 33), the Lender receives an amount equal to the amount it would have received had no such deductions or withholdings been made; and

(b) the Obligors shall make such deductions and timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Law.

In addition, the Obligors shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Law. The Borrowers shall indemnify the Lender, within ten days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed on or attributable to amounts payable hereunder or under any other Loan Document) paid by the Lender on or with respect to an amount payable by the Obligors under or in respect of this Agreement or under any other Loan Document together with any penalties, interest and expenses arising in connection therewith and with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate from the Lender as to the amount of such payment or liability delivered to the Borrower Agent shall be conclusive absent manifest error. Promptly after any payment of Indemnified Taxes or Other Taxes by the Obligors to a Governmental Authority (but in any event within 30 days after the date of such payment), the Obligors shall deliver to the Lender the original or certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the relevant return reporting such payment or other evidence of such payment reasonably satisfactory to the Lender.

34. **Entire Agreement:** This Agreement and the other Loan Documents, constitute the entire agreement between the parties related to the subject matter hereof and, as the definitive documents, supersede all prior correspondence, agreements, negotiations, discussions and understandings. To the extent that there is any inconsistency between this Agreement and the other Loan Documents, this Agreement shall prevail.

35. **Amendments and Waivers:** No waiver or delay on the part of the Lender in exercising any right or privilege hereunder or under any other Loan Document shall operate as a waiver hereof or thereof unless made in writing and delivered in accordance with the terms of this Agreement. A waiver, amendment, release or modification of this Agreement or any other Loan Document shall not be established by conduct, custom or course of dealing and shall occur, if applicable, solely by an instrument in writing duly executed by the Lender, in the case of a waiver or release, and the parties hereto, in the case of an amendment or other modification.

36. **Enurement**: This Agreement be binding upon and enure to the benefit of the Obligors and the Lender and their respective successors and permitted assigns.

37. **Assignment**: The Lender may assign this Agreement and its rights and obligations hereunder and under the other Loan Documents (and grant participation herein and therein), in whole or in part, to any Person acceptable to the Lender, in its sole discretion. The Obligors shall not be permitted to assign this Agreement or any other Loan Document nor any right and obligation hereunder or thereunder without the written consent of the Lender, in its sole discretion.

38. **Severability:** Any provision in this Agreement or any other Loan Document which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof or effecting the validity of enforceability of such provision in any other jurisdiction.

39. **No Third Party Beneficiary**: No Person, other than the Obligors and the Lender, are entitled to rely upon this Agreement, and the parties expressly agree that this Agreement does not confer any rights upon any Person not a signatory hereto.

40. **Press Releases**: The Obligors shall not issue any press release naming the Lender without its prior approval, unless the Obligors are required to do so by applicable Law.

41. **Counterparts:** This Agreement may be executed in any number of counterparts and delivered by e-mail, including in PDF format, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

42. **Notices**: Any notice, direction or other communication given under this Agreement shall be in writing and given by delivering it or sending it as indicated below to:

    (a) **the Obligors at:**

Acerus Pharmaceuticals Corporation
7025 Langer Drive, Suite 205
Mississauga ON L5N 0E8

Attention:	Mr. Ed Gudaitis, Chief Executive Officer
Email:	egudaitis@aceruspharma.com
Facsimile:	(905) 569-1809

Attention:	Mr. Naveed Manzoor, Chief Strategy Officer
Email:	nmansoor@aceruspharma.com
Facsimile:	(905) 569-1809

(b) **the Lender at:**

First Generation Capital Inc.
40 King Street West
Toronto ON M5H 3Y2

Attention:	Mr. Ian Ihnatowycz
Email:	ian@generationcapitalmgmt.com
Facsimile:	(416) 304-9919

With a copy to:

Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, Ontario
M5H 4E3

Attention:	Howard Silverman
Email:	hsilverman@blg.com

Attention:	Christine Mason
Email:	cmason@blg.com

Attention:	Alex L. MacFarlane
Email:	amacfarlane@blg.com

Any such communication shall be deemed to have been validly and effectively given (i) if personally delivered, on the date of such delivery if such date is a Business Day and such delivery was made prior to 4:00 p.m. (local time in the place of receipt) and otherwise on the next Business Day; or (ii) if transmitted by facsimile, email, or similar means of recorded communication on the date of such transmission if such date is a Business Day and such transmission was made prior to 4:00 p.m. (local time in the place of receipt) and otherwise on the Business Day following the date of transmission. Any Party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to such Party at its changed address.

43. **English Language:** The parties hereto confirm that this Agreement and all related documents have been drawn up in the English language at their request. *Les parties aux présentes confirment que le présent acte et tous les documents y relatifs furent rédigés en anglais à leur demande.*

44. **Interpretation**: In this Agreement, words signifying the singular include the plural and vice versa, and words signifying gender include all genders. Every use of the word "including" in this Agreement is to be construed as meaning "including, without limitation". The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. References in this Agreement to a Section or Schedule are to be construed as references to a Section or Schedule of or to this Agreement unless the context requires otherwise. Subject to any limitations set forth herein, references to contracts, agreements or instruments are deemed to include all amendments, supplements, restatements or replacements to or of such contracts, agreements or instruments. References to a Person includes that Person's successors and permitted assigns. Reference in this Agreement to a statute refers to such statute and all rules and regulations made under it as the same may have been or may from time to time be amended, re-enacted or replaced.

45. **Governing Law and Jurisdiction:** This Agreement shall be governed by, and construed in accordance with, the Laws of the Province of Ontario and the federal Laws of Canada applicable therein. The parties hereby attorn and submit to the non-exclusive jurisdiction of the courts of the Province of Ontario.

[remainder of page left intentionally blank; signature pages follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

AS LENDER:

FIRST GENERATION CAPITAL INC.

By: ______________________________

Name: Ian Ihnatowycz
Title: President & CEO

AS BORROWER:

ACERUS PHARMACEUTICALS CORPORATION

By: ______________________________
Name: Edward Gudaitis
Title: President & Chief Executive Officer

AS BORROWER:

ACERUS PHARMACEUTICALS USA, LLC

By: ______________________________
Name: Edward Gudaitis
Title: President

AS GUARANTOR:

ACERUS BIOPHARMA INC.

By: ______________________________
Name: Edward Gudaitis
Title: President

AS GUARANTOR:

ACERUS LABS INC.

By: ______________________________
Name: Edward Gudaitis
Title: President

SCHEDULE A

DEFINITIONS

"**Advance**" has the meaning given to that term in Section 8;

"**Advance Notice**" has the meaning given to that term in Section 9;

"**Affiliate**" of any Person means, at the time such determination is made, any other Person controlling, controlled by or under common control with such first Person, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of such Person, whether through the ownership of voting securities or otherwise;

"**Agreement**" means this Facility Loan Agreement, including all Schedules, as it may be modified, amended, revised, restated, replaced, supplemented or otherwise changed from time to time and at any time hereafter;

"**Applicable Interest Rate**" means eight percent (8%) per annum *provided that* unless and until such time as the TSX Consent is obtained pursuant to Section 26 of this Agreement, the Applicable Interest Rate will be zero percent (0%) per annum.

"**Authorization**" means, with respect to any Person, any order, permit, approval, consent, waiver, licence (including, without limitation, any of the foregoing relating to the Business) or similar authorization of any Governmental Authority related to the Obligors, the Collateral or the Business;

"**Borrower Agent**" means Acerus Pharmaceuticals Corporation;

"**Borrowers**" has the meaning given to that term in Section 3;

"**Budget**" has the meaning given to that term in Section 14;

"**Business**" means the commercialization and development of innovative prescription products that improve patient experience, with a primary focus on men's health, and the directly related activities of such business conducted by the Obligors;

"**Business Day**" means any day of the year, other than a Saturday, Sunday or any day on which major commercial banks are closed in Toronto, Ontario;

"**Canadian General Security Agreements**" means, collectively, each general security agreement, dated as of the date hereof, by of Acerus Pharmaceuticals Corporation, Acerus Biopharma Inc. and Acerus Labs Inc., in favor of the Lender, as amended, supplemented, restated and replaced from time to time;

"**Canadian Security Documents**" means the General Security Agreements and the Canadian Share Pledge;

"**Canadian Share Pledge**" means that certain pledge of equity interests, dated as of the date hereof, by Acerus Pharmaceuticals Corporation in favor of the Lender, as amended, supplemented, restated and replaced from time to time;

"**Cash Flow Variance Report**" has the meaning given to that term in Section 14;

"**Collateral**" means all present and after-acquired assets and property of the Obligors, real and personal, tangible and intangible and all proceeds therefrom, but excluding consumer goods and the last day of the term of any lease or agreement to lease;

"**Default**" means any event, circumstance or omission that constitutes an Event of Default or that, after the giving of notice, the passage of time or the failure to remedy such event, circumstance or omission within a period of time, would constitute an Event of Default;

"**Encumbrance**" means any encumbrance, lien, charge, hypothec, pledge, mortgage, title retention agreement, security interest of any nature, adverse claim, exception, reservation, easement, encroachment, servitude, restriction on use, right of occupation, any matter capable of registration against title, option, right of first offer or refusal or similar right, restriction on voting (in the case of any voting or equity interest), right of pre-emption or privilege or any contract to create any of the foregoing;

"**Event of Default**" has the meaning given to that term in Section 27;

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to the Lender or any other recipient of any payment to be made by or on account of any Obligations, or required to be withheld or deducted from a payment to any such recipient, (a) income, net profits, or capital taxes imposed on or measured by net income, and franchise taxes imposed (i) by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or conducts business, in which its principal office is located or in which its applicable lending office is located, but not including Taxes payable by the Lender as a result of the fact that the Applicable Interest Rate results in the deemed receipt of interest notwithstanding that no such interest was paid to the Lender or (ii) that are Other Connection Taxes and (b) any branch profits taxes or any similar tax imposed by the jurisdiction where an Obligor is located;

"**Facility**" has the meaning given to that term in Section 7;

"**Governmental Authority**" means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, body, board, tribunal or dispute settlement panel or other law or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

"**Guarantors**" has the meaning given to that term in Section 5;

"**Indebtedness**" of any Person means, at any date, without duplication, (a) all obligations of such Person for borrowed money, including by way of overdraft and drafts or orders accepted as representing extensions of credit, (b) all obligations of such Person evidenced by bonds, debentures, the face amount of all bankers' acceptances, letters of credit, letters of guarantee and similar instruments, notes, letters of credit or other similar instruments, including obligations under any arrangement providing for the leasing of any property, which property has been or is to be sold or transferred in contemplation of such leasing, (c) all obligations of such Person to pay the deferred purchase price of property or services, (d) all obligations of such Person as lessee which are capitalized in accordance with generally accepted accounting principles (or other applicable accounting standards) consistently applied in Canada, (e) all indebtedness, liabilities and obligations secured by an Encumbrance on any asset of such Person, whether or not the same is otherwise indebtedness, liabilities or obligations of such Person, which, for greater certainty will not include rent paid or payable by such Person in the ordinary course, (f) all indebtedness, liabilities and obligations of others which is, directly or indirectly, guaranteed by such Person or which such Person has agreed (contingently or otherwise) to purchase or otherwise acquire, (g) all indebtedness, liabilities and obligations in respect of financial instruments which are classified as a liability on the balance sheet of such Person, (h) all obligations of such Person to otherwise assure a creditor against loss, (i) all hedging obligations and (j) all obligations of such Person for trade accounts and contracts;

"**Indemnified Persons**" has the meaning given to that term in Section 31;

"**Indemnified Taxes**" means (a) Taxes other than Excluded Taxes and (b) to the extent not otherwise described in (a), Other Taxes;

"**Law**" means any federal, provincial, county, territorial, district, municipal, local, foreign, supranational or international. law, statute, ordinance, regulation, by-law, rule, code, treaty or rule of common law or otherwise of, or any order, judgment, injunction, decree or similar authority enacted, issued, promulgated, enforced or entered by, any Governmental Authority;

"**Lender**" has the meaning given to that term in Section 6;

"**Loan Documents**" means this Agreement, Security, and any other agreements, instruments or other documents in respect of the Facility contemplated by this Agreement or required by the Lender;

"**Material Adverse Effect**" means a material adverse effect on the business, operations, results of operations, assets, liabilities or financial condition of the Obligor;

"**Maturity Date**" has the meaning given to that term in Section 18;

"**Maximum Loan Amount**" has the meaning given to that term in Section 7;

"**Net Proceeds**" means the applicable gross sale price, less applicable Taxes, customary closing adjustments, reasonable legal fees and expenses and other expenses incurred in respect of the relevant sale, all subject to Lender approval;

"**Obligations**" has the meaning given to that term in Section 17;

"**Obligors**" has the meaning given to that term in Section 5;

"**Other Connection Taxes**" means, with respect to the Lender and any other recipient of any payment to be made by or on account of any Obligations, Taxes imposed as a result of a present or former connection between such recipient and the jurisdiction imposing the Tax (other than a connection arising from the execution, delivery, enforcement of, or performance under, or receipt of payments under any Loan Document, or from the sale or assignment of an interest in any Advance or Loan Document).

"**Other Taxes**" means any and all present or future stamp, recording, filing, documentary or similar taxes or any other excise or property taxes, charges or similar levies arising from any payment (or deemed payment) made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or performance under or otherwise with respect to this Agreement or any other Loan Document (other than Excluded Taxes and Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 37));

"**Permitted Encumbrance**" means the Security Interest (as defined in the Promissory Note);

"**Permitted Fees and Expenses**" has the meaning given to that term in Section 13;

"**Person**" means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, Governmental Authority, and where the context requires, any of the foregoing when they are acting as trustee, executor, administrator or other legal representative;

"**PIK Interest**" has the meaning given to that term in Section 12;

"**PPSA**" has the meaning given to that term in the General Security Agreements;

"**Pre-Existing Debt**" has the meaning given to that term in Section 25(b);

"**Priority Payables**" means harmonized sales tax, sales Tax and any amount payable or accrued by the Obligors which is secured by an Encumbrance which ranks or is capable of ranking prior to or *pari passu* with the Security, including amounts accrued or owing for wages, vacation pay, termination pay (only where it is a priority payable), employee deductions, or Taxes, and other statutory or other claims that have or may have priority over, or rank *pari passu* with, the Security;

"**Promissory Note**" means the third amended and restated secured grid promissory note dated March 30, 2022 by the Borrower in favour of the Lender (amending and restating the Original Note (as defined therein)), as amended by Amendment #1 to Third Amended and Restated Secured Grid Promissory Note dated as of June 23, 2022, Amendment #2 to Third Amended and Restated Secured Grid Promissory Note dated as of August 4, 2022 and Amendment #3 to Third Amended and Restated Secured Grid Promissory Note dated as of the date hereof, as further amended, supplemented, restated and replaced from time to time;

"**Promissory Note Event of Default**" means an Event of Default, as defined in, and under the Promissory Note;

"**Promissory Note Security**" means the security granted pursuant to the Promissory Note and any other security granted to First Generation Capital Inc. as security for the obligations under the Promissory Note;

"**Security**" means all security documents and guarantees held by the Lender securing or intended to secure directly or indirectly repayment of the Obligations, including without limitation the Canadian Security Documents, the U.S Security Documents and any other security document described in Section 17;

"**Tax**" and "**Taxes**" means any taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, excise, withholding, business, franchising, property, development, occupancy, payroll, health, social services, education, employment and all social security taxes, all surtaxes, all customs, duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees and all employment insurance and health insurance, and other government pension plan premiums or contributions;

"**TSX Consent**" has the meaning given to that term in Section 26;

"**UCC**" has the meaning given to that term in the U.S. Security Agreement;

"**Updated Cash Flow**" has the meaning given to that term in Section 14;

"**U.S. Pledge Agreement**" means that certain Pledge Agreement, dated as of the date hereof, by and between Acerus Pharmaceuticals Corporation and the Lender, as amended, supplemented, restated and replaced from time to time

"**U.S. Security Agreement**" means that certain Pledge and Security Agreement, dated as of the date hereof, by and between Acerus Pharmaceuticals USA, LLC and the Lender, as amended, supplemented, restated and replaced from time to time; and

"**U.S. Security Documents**" means the U.S. Security Agreement and the U.S. Pledge Agreement.

SCHEDULE B

ADVANCE NOTICE

To: First Generation Capital Inc.
40 King Street West
Toronto, Ontario
M5H 3Y2

This Advance Notice is delivered pursuant to the Loan Agreement dated December 21, 2022 made among Acerus Pharmaceuticals Corporation and Acerus Pharmaceuticals USA, LLC, as borrowers (the "**Borrowers**"), Acerus Biopharma Inc. and Acerus Labs Inc., as Guarantors, and First Generation Capital Inc., as Lender (as amended, restated, varied, amended and restated or supplemented from time to time, the "**Loan Agreement**"). All terms used herein as defined terms and not otherwise defined shall have the respective meanings ascribed thereto in the Loan Agreement.

1. The Borrowers hereby request Advance as follows:

Date of Advance:	_____________, 20__
Amount of Advance:	$____________
Recipient of Advance:	[Acerus Pharmaceuticals Corporation] / [Acerus Pharmaceuticals USA, LLC]
Use of Proceeds:	[●]

2. The Borrowers hereby certify that as at the date of this Advance Notice and the date of the Advance requested hereby:

(a) the representations and warranties contained in the Loan Agreement are true and correct in all material respects (except for any such representations and warranties which are specifically expressed to have been given only as at the date of the Loan Agreement);

(b) all terms and conditions precedent to an Advance contained in the Loan Agreement have been satisfied; and

(c) Default or Event of Default has occurred or will occur after giving effect to the Advance:

[signature page follows]

Dated this ______ day of ___________, 20__

ACERUS PHARMACEUTICALS CORPORATION

By: ______________________________________

Name:
Title:

ACERUS PHARMACEUTICALS USA, LLC

By: ______________________________________

Name:
Title:

SCHEDULE C

GRID

ADVANCES AND REPAYMENT OF PRINICPAL

Advance Date	Days	Interest at 8%	Advances	Repayments	Carrying Amount
		$	$	$	$
		$	$	$	$

SCHEDULE D

BUDGET

(See attached)

Cashflow

APC Consolidated

APC Consolidated (USD $000s)	2022 Dec 12	2022 Dec 19	2022 Dec 26	2023 Jan 02	2023 Jan 09	2023 Jan 16	2023 Jan 23
Opening balance	$ 807	$ 353	$ 2,254	$ 1,464	$ 860	$ 702	$ 620
Inflows:							
Accounts Receivable	243	197	197	238	195	195	195
FGC Advance	-	2,000	-	-	-	.	-
Other (Interest, HST)	-	25	-	-	-	25	-
	243	2,222	197	238	195	220	195
Outflows:							
Aged A/P outside of terms	-	-	-	-	-	-	-
Post Jan 31, 2022 Payor claims			-	-	-	-	-
Opex - SGA	20	-	66	-	-	-	66
GtN payments	177	248	170	138	138	167	137
Payroll Cda	47	-	47	-	43	-	43
Payroll US	37	-	40	-	37	-	40
Natesto USA related	37	-	250	-	-	37	-
Natesto CDA related	34	-	22	-	-	34	-
Noctiva related	73	-	-	-	75	-	-
Syneos	60	60	60	60	60	60	60
Piramal	-	-	-	-	-	-	-
Renaissance	-	-	28	-	-	-	-
APBM	-	-	-	-	-	-	-
Investigator Fees	-	-	-	250	-	-	-
ProTrials and Other Partners	6	-	137	-	-	-	175
ABBVIE	-	-	40	-	-	-	-
Clinial trials other	-	-	-	-	-	-	-
Haupt	-	-	28	-	-	-	50
Aptar - 200k 15ml barrels	168	-	-	-	-	-	160
FDA PDFUA - Natesto	-	-	-	394	-	-	-
FDA PDFUA - Noctiva	-	-	-	-	-	-	-
Aptar - re Noctiva	-	-	-	-	-	-	-
Marsh - Product Liability	-	4	-	-	-	4	-
Sam H & CNF	-	-	-	-	-	-	-
Jones Day litigation	-	-	50	-	-	-	50
Serenity promissory note & accrued	-	-	-	-	-	-	-
PwC	-	-	-	-	-	-	-
Evans & Evans (Valuation, FO)	-	-	9	-	-	-	-
EY SISP process	38	10	10	-	-	-	-
FAAN fees	-	-	30	-	-	-	30
	697	322	987	842	353	302	811
Ending cash balance	**$ 353**	**$ 2,254**	**$ 1,464**	**$ 860**	**$ 702**	**$ 620**	**$ 5**

SCHEDULE E

LITIGATION

Schenk Litigation

Valeant Pharmaceuticals International, Inc. and Valeant International Bermuda ("**Valeant**") are defendants in Ontario Superior Court of Justice Action No. CV-11-438382, which claims a declaration that Valeant is contractually obligated to compensate the plaintiff, Reiner Schenk ("**Schenk**") pursuant to the terms of a contract between Schenk and Biovail Corporation. The main action was commenced by Notice of Action issued on October 31, 2011 and a Statement of Claim was issued on December 14, 2011. Acerus Pharmaceuticals Corporation ("**Acerus**") was named as one of the defendants in the main action, but the action was discontinued as against Acerus on December 14, 2011. On October 29, 2013, Valeant commenced a third party claim against Acerus (among others) claiming contribution, indemnity and other relief over to the full extent that Valeant may be held liable to Schenk, and damages for breach of fiduciary duty, breach of contract and intentional interference with economic relations in any amount for which Valeant is found liable to Schenk. Acerus has defended the third-party claim, denying any liability to Valeant. The parties have concluded examinations for discovery and attended a pre-trial conference in February 2020. The trial was scheduled to commence in April 2020 and was anticipated to be two weeks long. However, in an effort to reduce the transmission of COVID-19, the Ontario Superior Court suspended all regular operations in March 2020. Accordingly, the trial was adjourned to a later date. The parties attended a further pre-trial conference in December 2021 and the trial is now expected to take place in January 2023.

Jones Day litigation

On December 11, 2019, Jones Day commenced an action in the New York State Supreme Court against Serenity Pharmaceuticals LLC ("**Serenity**") (now Acerus Pharmaceuticals USA, LLC), and certain members of its senior management, for alleged unpaid legal bills. On September 21, 2020, Serenity filed an answer with counterclaims against Jones Day. Serenity's counterclaim alleges breach of contract in connection with Jones Day's representation of Serenity in a prior lawsuit, fraud in respect of certain billing issues and malpractice. Also on September 21, 2020, the senior management members filed a motion to dismiss Jones Day's complaint as against them. Jones Day also brought a motion to dismiss Serenity's counterclaims. On May 12, 2020, a decision was rendered in both motions. Serenity's motion was dismissed, and Jones Day's motion was granted with respect to the counterclaims in fraud and malpractice but dismissed in respect of the breach of contract claim. On August 31, 2022, the senior management members filed a motion for summary judgment to dismiss Jones Day's complaint against them. On September 8, 2022, Jones Day filed a motion to amend its complaint to add Acerus as a new defendant. Serenity and the senior management members opposed the motion to amend because it seeks to both add Acerus as a defendant and also pierce Serenity's corporate veil to seek damages against the senior management members. Defendants' motion for summary judgment and Plaintiff's motion to amend its complaint are both pending. Decisions on both motions will likely be issued in late 2022 or sometime in 2023.

As a separate matter, the parties are engaged in motion practice related to discovery. Jones Day is seeking sanctions for an alleged violation of a court order regarding document production. However, according to New York law, all discovery is stayed while a motion for summary judgment is pending. In addition, the discovery order has been appealed and a decision on the discovery order is expected to be issued sometime within the next six months.

Robert Motz

Acerus received a demand letter in November 2022 from counsel to Robert Motz, that alleges that Acerus owes Robert Motz certain contractual entitlements (severance payments) under his employment agreement. No other actions have been taken in respect of such allegations since that date.

This is Exhibit "J" referred to in the Affidavit of Naveed Z. Manzoor
sworn by Naveed Z. Manzoor of the Town of Oakville,
in the Province of Ontario, before me at the City of Toronto,
in the Province of Ontario, on January 25, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

DocuSigned by:

Philip

36124C4218DD47C...

Commissioner for Taking Affidavits

Joel Weinstein
Senior Listings Advisor
Toronto Stock Exchange
300 - 100 Adelaide St. West
Toronto, ON M5H 1S3
(416) 947-4216
Joel.Weinstein@tmx.com

January 10, 2023

VIA EMAIL

Mike Devereux
Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Dear Mr. Devereux:

Re: Acerus Pharmaceuticals Corporation (the "Company")
Private Placement of US$2 Million Loan to First Generation Capital Inc.
Notice Pursuant to Section 501(c) of the TSX Company Manual - Section 604(f) Exemption

Reference is made to your letter dated December 15, 2022 advising Toronto Stock Exchange ("**TSX**") that the Company has entered into a US$2 million secured loan agreement (the "**Loan Agreement**") with First Generation Capital Inc. ("**First Generation**"), a company affiliated with the Chairman of the Company.

The Loan Agreement bears interest at a rate of eight percent (8%) per annum, subject to the approval of the TSX. The Loan Agreement is repayable in full on December 31, 2024.

The Loan Agreement is supplementary to the secured loan facility entered into with First Generation on April 30, 2021 (the "**Loan Facility**") which has been amended on several occasions to increase the amount available to the Company. At December 21, 2022, US$ 47,945,000 of principal was outstanding under the Loan Facility and it is fully-drawn.

The Loan Agreement triggers the requirement for shareholder approval pursuant to Part V of the TSX Company Manual (the "**Manual**"), unless an exemption is applicable, because the Company is a "non-exempt" issuer for purposes of Part V of the Manual, First Generation is an insider of the Company, and the interest payable pursuant to the Loan Agreement together with the interest paid pursuant to the Loan Facility within the past 6 months, in aggregate, is greater than 10% of the Company's current market capitalization. The Company has applied to the TSX pursuant to Section 604(f) of the Manual for an exemption from the shareholder approval requirement on the basis that First Generation owns at least 90% of the issued and outstanding common shares of the Company. Listed issuers relying on this exemption are required to issue a press release at least ten business days in advance of the closing of the transaction. If the Company's application is approved by the TSX, then the Loan Agreement will commence bearing interest at the rate of 8% per annum.

TSX has conditionally accepted notice under Subsection 501(c) of the TSX Company Manual, on the terms and conditions of the proposed transaction, subject the following conditions:

1. The proposed transaction is subject to the approval of the Company's shareholders. We understand that the Company wishes to be exempted from securityholder approval as provided for under Part V of the Manual. TSX hereby confirms that it will grant the exemption subject to the issuance of a press release disclosing the material terms of the transaction and that the Company has relied upon this exemption in Section 604(f) of the Manual. We confirm that the draft press release reviewed by the undersigned and issued by the Company on December 21, 2022 complies with the requirements of Section 604(f) of the Manual. If the Company's application is approved by the TSX after the 10 day waiting period pursuant to Section 604(f) of the Manual, then the Loan Agreement will commence bearing interest at the rate of 8% per annum; and

2. Receipt of the following documentation **by January 16, 2023**:

    a) executed copy of the loan agreement; and

    b) a certified copy of the minutes of the meeting of the directors evidencing approval of the independent directors of the Company of the Loan Agreement.

For future transactions subject to section 501 of the TSX Company Manual, TSX would like to take this opportunity to remind the Company that, during any six-month period, transactions with insiders or other related parties will be aggregated for the purposes of section 501.

Should you have any questions with respect to the following, please contact the undersigned.

Yours very truly,

TORONTO STOCK EXCHANGE

(signed) "Joel Weinstein"

Joel Weinstein

This is Exhibit "K" referred to in the Affidavit of Naveed Z. Manzoor
sworn by Naveed Z. Manzoor of the Town of Oakville,
in the Province of Ontario, before me at the City of Toronto,
in the Province of Ontario, on January 25, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

DocuSigned by:
Philip
36124C4218DD47C...

Commissioner for Taking Affidavits

Execution Version

GUARANTEE AND INDEMNITY

(Acerus Biopharma Inc.)

TO: First Generation Capital Inc. (the "**Lender**")

DATE: December 21, 2022

RECITALS:

A. The Obligor is an affiliate of the Borrower. The Obligor is required to deliver this Agreement under the terms of the Loan Documents. The Obligor will derive substantial direct and indirect benefits and advantages from the financial accommodations to the Borrower under the Loan Documents, and it will be to the Obligor's direct interest and economic benefit to deliver this Agreement in order to allow the Borrower to obtain those financial accommodations. The Obligor acknowledges the value of that benefit.

FOR VALUE RECEIVED and intending to be legally bound by this guarantee and indemnity (the "**Agreement**"), the undersigned (the "**Obligor**") agrees as follows:

1. INTERPRETATION

1.1 Capitalized Terms In this Agreement, except where the context otherwise requires:

(a) "**Borrower**" means Acerus Pharmaceuticals USA, LLC.

(b) "**Guarantee**" means the unlimited guarantee and indemnity dated as of the date hereof, of the indebtedness, liability and obligations of Acerus Pharmaceuticals Corporation given by the Borrower in favour of the Lender, as amended, supplemented, restated and replaced from time to time.

(c) "**Loan Agreement**" means the loan agreement dated as of the date hereof between, *inter alios,* the Borrower and Acerus Pharmaceuticals Corporation, as borrowers, the Obligor, as guarantor, and the Lender, as lender, as amended, supplemented, restated and replaced from time to time.

(d) "**Loan Documents**" means, collectively, the Loan Agreement, the Guarantee, and any other document or security relating to the Obligations, and "Loan Document" means each of them individually.

(e) "**Obligations**" means all debts, liabilities and obligations of the Borrower to the Lender, whether present or future, direct or indirect, absolute or contingent, matured or not, at any time owing or remaining unpaid by the Borrower to the Lender in any currency, whether arising from dealings between the Lender and the Borrower or from other dealings or proceedings by which the Lender may be or become in any manner whatever a creditor of the Borrower, and wherever incurred, and whether incurred by the Borrower alone or with another or others and whether as principal or surety (including, without limitation, obligations under or in

connection with Loan Documents or any of them), and all interest, fees, commissions and legal and other costs, charges and expenses owing or remaining unpaid by the Borrower to the Lender in any currency.

1.2 No *Contra Proferentum* This Agreement has been negotiated by the Obligor and the Lender with the benefit of legal representation, and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the construction or interpretation of this Agreement.

1.3 Other Interpretation Rules In this Agreement:

(a) The division into Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

(b) Unless otherwise specified or the context otherwise requires, (i) "including" or "includes" means "including (or includes) but is not limited to" and shall not be construed to limit any general statement preceding it to the specific or similar items or matters immediately following it, (ii) a reference to any legislation, statutory instrument or regulation or a section thereof is a reference to the legislation, statutory instrument, regulation or section as amended, restated and re-enacted from time to time, and (iii) words in the singular include the plural and vice-versa and words in one gender include all genders.

(c) Unless otherwise specified or the context otherwise requires, any reference in this Agreement to payment of the Obligations includes performance of the Obligations.

2. GUARANTEE AND INDEMNITY

2.1 Guarantee The Obligor unconditionally guarantees payment to the Lender of the Obligations.

2.2 Indemnity The Obligor also unconditionally agrees that, if the Borrower does not unconditionally and irrevocably pay any Obligations when due and those Obligations are not recoverable from the Obligor for any reason under Section 2.1, the Obligor shall indemnify the Lender immediately on demand against any cost, loss, damage, expense or liability suffered by the Lender as a result of the Borrower's failure to do so.

2.3 Separate Liabilities The liabilities of the Obligor under Sections 2.1 and 2.2 are separate and distinct from each other, but the provisions of this Agreement shall apply to the liabilities under both of those Sections unless the context otherwise requires.

2.4 Limit on Liability The liability of the Obligor under this Agreement is unlimited.

2.5 Irrevocable This Agreement is irrevocable by the Obligor and, subject to Section 3.4, the Obligor expressly and unconditionally waives any right to terminate this Agreement.

3. CONTINUING AGREEMENT AND REINSTATEMENT

3.1 Continuing Agreement This Agreement is a continuing guarantee and indemnity and will extend to the ultimate balance of the Obligations, regardless of any intermediate payment or discharge of the Obligations in whole or in part. Without limiting the foregoing, the Obligations may include advances and re-advances under revolving credit facilities, which permit borrowing, repayment of all or part of the amount borrowed and re-borrowing of amounts previously paid.

3.2 Payments in Gross Until this Agreement has been terminated in accordance with Section 3.4, all amounts of any kind received by the Lender from any source in respect of the Obligations shall be regarded for all purposes as payments in gross without any right on the part of the Obligor to claim the benefit of those amounts in reduction of its liabilities under this Agreement.

3.3 Reinstatement If at any time any payment of the Obligations is or must be rescinded or returned by the Lender as a result of insolvency or reorganization of the Borrower, the Obligor or any other person, or for any other reason whatsoever, the Obligations will be deemed to have continued in existence and this Agreement shall continue to be effective, or be reinstated, as if the payment had not occurred. The Lender may concede or compromise any claim that any payment ought to be rescinded or returned without diminishing the liability of the Obligor under this Section.

3.4 Termination If the Obligations have been indefeasibly paid in full in cash and if all obligations of the Lender to extend credit under any Loan Document have been cancelled, then the Lender shall, at the request and expense of the Obligor, execute and deliver whatever documents are reasonably required to acknowledge the termination of this Agreement.

4. WAIVER OF DEFENCES AND OTHER MATTERS

4.1 In Addition to Other Rights; No Marshalling This Agreement is in addition to and is not in any way prejudiced by or merged with any other guarantee, indemnity or security now or subsequently held by the Lender in respect of any Obligations. The Lender shall be under no obligation to marshal in favour of the Obligor any other guarantees or other securities or any money or other property that the Lender may be entitled to receive or may have a claim upon.

4.2 Liabilities Unconditional The liabilities of the Obligor under this Agreement are absolute and unconditional, and will not be affected by any act, omission, law, circumstance or thing that, but for this Section, would reduce, release or prejudice any of its liabilities under this Agreement, or that might constitute a legal or equitable defence to or a discharge, limitation or reduction of the Obligor's liabilities under this Agreement, including the following, whether or not known to it or the Lender or consented to by it or the Lender:

(a) any discontinuance, reduction, increase, extension or other variance of the credit granted by the Lender to the Borrower or any time, waiver or consent granted to, or any release of or compromise or other dealing of any kind with, the Borrower or any other person;

(b) any amendment, supplement or restatement (however fundamental) or replacement of any Loan Document;

(c) any unenforceability, illegality or invalidity of any obligation of any person under or in connection with any Loan Document, including any bar to recovery from the Borrower under any statute of limitations;

(d) the loss of capacity of the Borrower, any change in the name of the Borrower, or in the membership of the Borrower, if a partnership, or in the ownership, objects, capital structure or constitution of the Borrower, if a corporation, the sale of all or any part of the Borrower's business or the Borrower being amalgamated or merged with one or more other entities, and this Agreement shall, notwithstanding any such event, continue to apply to all Obligations whether previously or subsequently incurred; and in the case of a change in the membership of a Borrower that is a partnership or in the case of the Borrower being amalgamated or merged with one or more other entities, this Agreement shall also apply to the liabilities of the resulting or continuing entity, and the term "Borrower" shall include each resulting or continuing entity;

(e) any credit being granted or continued by the Lender purportedly to or for the Borrower after the death, loss of capacity, bankruptcy or insolvency of the Borrower;

(f) any lack or limitation of power, incapacity or disability of the Borrower or of the directors, partners or agents of the Borrower, or the Borrower not being a legal or suable entity, or any irregularity, defect or lack of formality in the obtaining of credit by the Borrower;

(g) any bankruptcy, insolvency or similar proceedings, including any stay of or moratorium on proceedings, any action or omission of the Lender in connection with any such proceedings, or any effect of any such proceedings on the Lender;

(h) any impossibility, impracticability, frustration of purpose, force majeure, illegality or act of governmental authority affecting any Loan Document;

(i) any taking or failure to take security, any loss of or loss of value of security for the Obligations, any invalidity, lack of perfection, unenforceability or release of any security, or any subordination, postponement or enforcement of, failure to enforce, or irregularity or deficiency in the enforcement of, any security or other right;

(j) the existence of any claim, set-off or other right that the Obligor may have against the Borrower, the Lender or any other person, whether in connection with the Loan Documents or otherwise; or

(k) any loss of, or adverse effect on, any right of the Obligor that is postponed pursuant to Section 6, whether or not caused by any act or omission of the Lender.

Each of the defences mentioned above is waived by the Obligor to the fullest extent permitted under applicable law.

4.3 Information Concerning Borrower The Obligor acknowledges that it is presently familiar with the Loan Documents, the financial condition of the Borrower and any other circumstances affecting the risk incurred by the Obligor in connection with this Agreement. The Obligor shall be solely responsible for keeping itself informed concerning those matters in the future. The Obligor acknowledges that the Lender has no obligation to provide any information concerning those matters now or in the future and that, if it does so at any time, it shall have no obligation to update the information or provide other information subsequently.

4.4 No Obligation to Enforce Other Rights The Obligor waives any right it may have of requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Obligor under this Agreement and the Obligor waives all benefits of discussion and division. These waivers apply irrespective of any law or any provision of any Loan Document to the contrary.

5. USE OF AMOUNTS RECEIVED

5.1 Use of Amounts Received Until this Agreement has been terminated in accordance with Section 3.4, the Lender (or any trustee or agent on its behalf) may:

(a) refrain from applying any money received or enforcing any other security or rights held by or on behalf of the Lender in respect of the Obligations, or apply any money and enforce any other security or rights in any manner and order as it sees fit;

(b) change any application of money received in whole or in part from time to time; and

(c) hold in a suspense account any money received from the Obligor or on account of the Obligor's liabilities under this Agreement.

6. POSTPONEMENT OF OBLIGOR’S RIGHTS

6.1 Postponement of Subrogation Etc. Until this Agreement has been terminated in accordance with Section 3.4, the Obligor shall not exercise any rights that it may have by reason of performance by it of its liabilities under this Agreement:

(a) to be indemnified by the Borrower;

(b) to claim contribution from any other guarantor of the Obligations; or

(c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under any Loan Document.

6.2 Postponement of Set-Off Etc. Until this Agreement has been terminated in accordance with Section 3.4, the Obligor shall not claim any set-off or counterclaim against the Borrower as a result of any liability of the Borrower to the Obligor, or claim or prove in the bankruptcy or insolvency of the Borrower in competition with the Lender.

6.3 Postponement and Assignment The Obligor assigns to the Lender all present and future debts, liabilities and obligations of the Borrower to the Obligor as security for payment of the Obligor's liabilities under this Agreement, and agrees that all money received by the Obligor in respect of those debts, liabilities and obligations shall be received in trust for the Lender and forthwith upon receipt shall be paid over to the Lender, all without in any way lessening or limiting the liabilities of the Obligor under this Agreement. The provisions of this Section 6.3 are independent of the other provisions of this Agreement and shall remain in full force and effect until this Agreement has been terminated in accordance with Section 3.4, notwithstanding that the other liabilities of the Obligor under this Agreement may have been discharged or terminated.

7. OBLIGATION TO MAKE PAYMENT

7.1 Payment Immediately After Demand The Obligor's liability to make a payment under this Agreement shall arise immediately after demand for payment has been made in writing on the Obligor. In connection with any demand, the Lender may treat all Obligations as due and payable and may demand immediate payment from the Obligor of the total amount of its liabilities under this Agreement, whether or not all Obligations are otherwise due and payable at the time of demand.

7.2 Right to Enforce Demands under this Agreement may be made from time to time, and the liabilities of the Obligor under this Agreement may be enforced, irrespective of:

(a) whether any demands, steps or proceedings are being or have been made or taken against the Borrower and/or any third party; or

(b) whether or in what order any security to which the Lender may be entitled in connection with any Loan Document is enforced.

7.3 Certificate as to Amount A certificate of the Lender specifying the outstanding amount of the Obligations shall be conclusive evidence of that amount against the Obligor in the absence of any manifest error.

7.4 Interest The Obligor's liabilities under this Agreement shall bear interest from the date of demand at the highest rate of interest per annum that is applicable to any part of the Obligations.

7.5 Rights Cumulative No failure on the part of the Lender to exercise, nor any delay in exercising, any right or remedy under any Loan Document or this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any

further or other exercise or the exercise of any other right or remedy. Neither the taking of any judicial or extra-judicial proceeding nor the exercise of rights under any security held from the Obligor shall extinguish the liability of the Obligor to pay and perform its liabilities under this Agreement, nor shall the acceptance of any payment or security create any novation. No covenant, representation or warranty of the Obligor in this Agreement shall merge in any judgment. The rights and remedies provided in this Agreement are cumulative and do not exclude any rights and remedies provided by law or otherwise.

7.6 Limitation Periods To the extent that any limitation period applies to any claim for payment of the Obligations or remedy for enforcement of the Obligations, the Obligor agrees that:

(a) any limitation period is expressly excluded and waived entirely if permitted by applicable law;

(b) if a complete exclusion and waiver of any limitation period is not permitted by applicable law, any limitation period is extended to the maximum length permitted by applicable law;

(c) any applicable limitation period shall not begin before an express demand for payment of the Obligations is made in writing by the Lender to the Obligor;

(d) any applicable limitation period shall begin afresh upon any payment or other acknowledgment of the Obligations by the Obligor; and

(e) this Agreement is a "business agreement" as defined in the *Limitations Act, 2002* (Ontario) if that Act applies.

8. PAYMENTS

8.1 Withholdings Etc. Any payment made by the Obligor under this Agreement shall be made without any deduction or withholding for or on account of tax and without any set-off or counterclaim of any kind. However, if the Obligor is required by law to deduct, withhold or pay any tax in respect of any payment under this Agreement, then (i) the Obligor shall pay additional sums under this Agreement as necessary so that, after making or allowing for all required deductions, withholdings and payments (including deductions, withholdings and payments applicable to additional sums payable under this Section), the Lender receives an amount equal to the sum it would have received had no deductions, withholdings or payments been required, (ii) the Obligor shall make any deductions, withholdings or payments required by law to be made by it and (iii) the Obligor shall timely pay the full amount required to be deducted, withheld or paid to the relevant governmental authority in accordance with applicable law.

8.2 Currency and Place of Payment shall be made in the currency or currencies specified in the demand for payment to the Lender at Lender's at the address or account that the Lender may specify by in such demand or by written notice to the Obligor from time to time.

8.3 Currency Indemnity If a judgment or order is rendered by any court or tribunal for the payment of any amount owing to the Lender under or in connection with this Agreement and the judgment or order is expressed in a currency (the "**Judgment Currency**") other than the currency payable under or in connection with this Agreement (the "**Agreed Currency**"), the Obligor shall indemnify and hold the Lender harmless against any deficiency in terms of the Agreed Currency in the amount received by the Lender arising or resulting from any variation as between (a) the rate at which the Agreed Currency is converted into the Judgment Currency for the purposes of the judgment or order, and (b) the rate at which the Lender is able to purchase the Agreed Currency in accordance with normal banking practice with the amount of the Judgment Currency actually received by the Lender on the date of receipt. The indemnity in this Section shall constitute a separate and independent liability from the other liabilities of the Obligor under this Agreement, shall apply irrespective of any indulgence granted by the Lender, and shall be secured by any security held by the Lender from the Obligor.

8.4 Set-Off The Lender and each of its affiliates is authorized at any time and from time to time to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by the Lender or affiliate to or for the credit or the account of the Obligor against any and all of the liabilities of the Obligor now or in the future existing under this Agreement, irrespective of whether or not the Lender has made any demand under this Agreement and although those liabilities of the Obligor may be contingent or unmatured or are owed to a branch or office of the Lender different from the branch or office holding any deposit or obligated to the Obligor. The rights of the Lender and its affiliates under this Section 8.4 are in addition to other rights and remedies (including other rights of set-off, consolidation of accounts and bankers' lien) that the Lender or its affiliates may have.

9. NOTICES

9.1 Notices in Writing Any communication to be made under this Agreement shall be made in accordance with the Loan Agreement.

10. ENTIRE AGREEMENT; SEVERABILITY

10.1 Entire Agreement This Agreement embodies all the agreements between the Obligor and the Lender relating to the Obligations. No party shall be bound by any representation or promise made by any person relating to this Agreement that is not embodied in it. It is specifically agreed that the Lender shall not be bound by any representation or promise made by the Borrower to the Obligor. Any waiver of, or consent to departure from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Lender, and only in the specific instance and for the specific purpose for which it has been given.

10.2 Severability If, in any jurisdiction, any provision of this Agreement or its application to any circumstance is restricted, prohibited or unenforceable, that provision shall, as to that jurisdiction, be ineffective only to the extent of that restriction, prohibition or

unenforceability without invalidating the remaining provisions of this Agreement, without affecting the validity or enforceability of that provision in any other jurisdiction and, if applicable, without affecting its application to other circumstances.

11. DELIVERY OF AGREEMENT

11.1 Counterparts This Agreement may be executed in any number of counterparts and all counterparts taken together shall be deemed to constitute one agreement.

11.2 Delivery To evidence the fact that it has executed this Agreement, the Obligor may send a signed copy of this Agreement or its signature to this Agreement by facsimile transmission or e-mail and the signature sent in that way shall be deemed to be its original signature for all purposes.

11.3 No Conditions Possession of this Agreement by the Lender shall be conclusive evidence against the Obligor that the Agreement was not delivered in escrow or pursuant to any agreement that it should not be effective until any condition precedent or subsequent has been complied with. This Agreement shall be operative and binding notwithstanding that it is not executed by any proposed signatory.

11.4 Receipt and Waiver The Obligor acknowledges receipt of a copy of this Agreement. The Obligor waives any notice of acceptance of this Agreement by the Lender. The Obligor also waives the right to receive a copy of any financing statement or financing change statement that may be registered in connection with this Agreement or any verification statement issued with respect to a registration, if waiver is not otherwise prohibited by law. The Obligor agrees that the Lender may from time to time provide information regarding this Agreement and the Obligations to persons that the Lender believes in good faith are entitled to the information under applicable law.

12. GOVERNING LAW

12.1 Governing Law This Agreement and any dispute arising from or in relation to this Agreement shall be governed by, and interpreted and enforced in accordance with, the law of the province of Ontario and the laws of Canada applicable in that province, excluding the conflict of law rules of that province.

12.2 Obligor's Exclusive Dispute Resolution Jurisdiction The Obligor agrees that the courts of the province of Ontario have exclusive jurisdiction over any dispute arising from or in relation to this Agreement and the Obligor irrevocably and unconditionally attorns to the exclusive jurisdiction of that province. The Obligor agrees that the courts of that province are the most appropriate and convenient forum to settle disputes and agrees not to argue to the contrary.

12.3 Lender Entitled to Concurrent Jurisdiction Despite Section 12.2, the Lender is permitted to take proceedings in relation to any dispute arising from or in relation to this Agreement in any court of another province or another state with jurisdiction and to the extent allowed by law may take concurrent proceedings in any number of jurisdictions.

13. SUCCESSORS AND ASSIGNS

13.1 Successors and Assigns The Obligor may not assign or transfer all or any part of its liabilities under this Agreement. This Agreement shall enure to the benefit of the Lender and its successors and assigns and be binding on the Obligor and its successors and any permitted assigns.

[remainder of page left intentionally blank; signature page follows]

133525594:v2

IN WITNESS OF WHICH, the Obligor has duly executed this Agreement.

ACERUS BIOPHARMA INC.

By: ______________________
Name: Edward Gudaitis
Title: President

By: ______________________
Name:
Title

I/We have authority to bind the corporation.

[signature page for Guarantee and Indemnity by Acerus Biopharma Inc.]

Execution Version

GUARANTEE AND INDEMNITY

(Acerus Biopharma Inc.)

TO: First Generation Capital Inc. (the "**Lender**")

DATE: December 21, 2022

RECITALS:

A. The Obligor is a subsidiary of the Borrower. The Obligor is required to deliver this Agreement under the terms of the Loan Documents. The Obligor will derive substantial direct and indirect benefits and advantages from the financial accommodations to the Borrower under the Loan Documents, and it will be to the Obligor's direct interest and economic benefit to deliver this Agreement in order to allow the Borrower to obtain those financial accommodations. The Obligor acknowledges the value of that benefit.

FOR VALUE RECEIVED and intending to be legally bound by this guarantee and indemnity (the "**Agreement**"), the undersigned (the "**Obligor**") agrees as follows:

1. INTERPRETATION

1.1 Capitalized Terms In this Agreement, except where the context otherwise requires:

(a) "**Borrower**" means Acerus Pharmaceuticals Corporation.

(b) “**Guarantee**” means the unlimited guarantee and indemnity dated as of the date hereof, of the indebtedness, liability and obligations of Acerus Pharmaceuticals USA, LLC given by the Borrower in favour of the Lender, as amended, supplemented, restated and replaced from time to time

(c) “**Loan Agreement**” means the loan agreement dated as of the date hereof between, *inter alios,* the Borrower and Acerus Pharmaceuticals USA, LLC, as borrowers, the Obligor, as guarantor, and the Lender, as lender, as amended, supplemented, restated and replaced from time to time.

(d) "**Loan Documents**" means, collectively, the Promissory Note, the Loan Agreement, the Guarantee, and any other document or security relating to the Obligations, and “Loan Document” means each of them individually.

(e) "**Obligations**" means all debts, liabilities and obligations of the Borrower to the Lender, whether present or future, direct or indirect, absolute or contingent, matured or not, at any time owing or remaining unpaid by the Borrower to the Lender in any currency, whether arising from dealings between the Lender and the Borrower or from other dealings or proceedings by which the Lender may be or become in any manner whatever a creditor of the Borrower, and wherever incurred, and whether incurred by the Borrower alone or with another or others and whether as principal or surety (including, without limitation, obligations under or in

connection with Loan Documents or any of them), and all interest, fees, commissions and legal and other costs, charges and expenses owing or remaining unpaid by the Borrower to the Lender in any currency.

(f) **"Promissory Note"** means the third amended and restated secured grid promissory note dated March 30, 2022 by the Borrower in favour of the Lender (amending and restating the Original Note (as defined therein)), as amended by Amendment #1 to Third Amended and Restated Secured Grid Promissory Note dated as of June 23, 2022, Amendment #2 to Third Amended and Restated Secured Grid Promissory Note dated as of August 4, 2022 and Amendment #3 to Third Amended and Restated Secured Grid Promissory Note dated as of the date hereof, as further amended, supplemented, restated and replaced from time to time.

1.2 No *Contra Proferentum* This Agreement has been negotiated by the Obligor and the Lender with the benefit of legal representation, and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the construction or interpretation of this Agreement.

1.3 Other Interpretation Rules In this Agreement:

(a) The division into Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

(b) Unless otherwise specified or the context otherwise requires, (i) "including" or "includes" means "including (or includes) but is not limited to" and shall not be construed to limit any general statement preceding it to the specific or similar items or matters immediately following it, (ii) a reference to any legislation, statutory instrument or regulation or a section thereof is a reference to the legislation, statutory instrument, regulation or section as amended, restated and re-enacted from time to time, and (iii) words in the singular include the plural and vice-versa and words in one gender include all genders.

(c) Unless otherwise specified or the context otherwise requires, any reference in this Agreement to payment of the Obligations includes performance of the Obligations.

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2.2 Indemnity The Obligor also unconditionally agrees that, if the Borrower does not unconditionally and irrevocably pay any Obligations when due and those Obligations are not recoverable from the Obligor for any reason under Section 2.1, the Obligor shall indemnify the Lender immediately on demand against any cost, loss, damage, expense or liability suffered by the Lender as a result of the Borrower's failure to do so.

2.3 Separate Liabilities The liabilities of the Obligor under Sections 2.1 and 2.2 are separate and distinct from each other, but the provisions of this Agreement shall apply to the liabilities under both of those Sections unless the context otherwise requires.

2.4 Limit on Liability The liability of the Obligor under this Agreement is unlimited.

2.5 Irrevocable This Agreement is irrevocable by the Obligor and, subject to Section 3.4, the Obligor expressly and unconditionally waives any right to terminate this Agreement.

3. CONTINUING AGREEMENT AND REINSTATEMENT

3.1 Continuing Agreement This Agreement is a continuing guarantee and indemnity and will extend to the ultimate balance of the Obligations, regardless of any intermediate payment or discharge of the Obligations in whole or in part. Without limiting the foregoing, the Obligations may include advances and re-advances under revolving credit facilities, which permit borrowing, repayment of all or part of the amount borrowed and re-borrowing of amounts previously paid.

3.2 Payments in Gross Until this Agreement has been terminated in accordance with Section 3.4, all amounts of any kind received by the Lender from any source in respect of the Obligations shall be regarded for all purposes as payments in gross without any right on the part of the Obligor to claim the benefit of those amounts in reduction of its liabilities under this Agreement.

3.3 Reinstatement If at any time any payment of the Obligations is or must be rescinded or returned by the Lender as a result of insolvency or reorganization of the Borrower, the Obligor or any other person, or for any other reason whatsoever, the Obligations will be deemed to have continued in existence and this Agreement shall continue to be effective, or be reinstated, as if the payment had not occurred. The Lender may concede or compromise any claim that any payment ought to be rescinded or returned without diminishing the liability of the Obligor under this Section.

3.4 Termination If the Obligations have been indefeasibly paid in full in cash and if all obligations of the Lender to extend credit under any Loan Document have been cancelled, then the Lender shall, at the request and expense of the Obligor, execute and deliver whatever documents are reasonably required to acknowledge the termination of this Agreement.

4. WAIVER OF DEFENCES AND OTHER MATTERS

4.1 In Addition to Other Rights; No Marshalling This Agreement is in addition to and is not in any way prejudiced by or merged with any other guarantee, indemnity or security now or subsequently held by the Lender in respect of any Obligations. The Lender shall be under no obligation to marshal in favour of the Obligor any other guarantees or other securities or any money or other property that the Lender may be entitled to receive or may have a claim upon.

4.2 Liabilities Unconditional The liabilities of the Obligor under this Agreement are absolute and unconditional, and will not be affected by any act, omission, law, circumstance or thing that, but for this Section, would reduce, release or prejudice any of its liabilities under this Agreement, or that might constitute a legal or equitable defence to or a discharge, limitation or reduction of the Obligor's liabilities under this Agreement, including the following, whether or not known to it or the Lender or consented to by it or the Lender:

(a) any discontinuance, reduction, increase, extension or other variance of the credit granted by the Lender to the Borrower or any time, waiver or consent granted to, or any release of or compromise or other dealing of any kind with, the Borrower or any other person;

(b) any amendment, supplement or restatement (however fundamental) or replacement of any Loan Document;

(c) any unenforceability, illegality or invalidity of any obligation of any person under or in connection with any Loan Document, including any bar to recovery from the Borrower under any statute of limitations;

(d) the loss of capacity of the Borrower, any change in the name of the Borrower, or in the membership of the Borrower, if a partnership, or in the ownership, objects, capital structure or constitution of the Borrower, if a corporation, the sale of all or any part of the Borrower's business or the Borrower being amalgamated or merged with one or more other entities, and this Agreement shall, notwithstanding any such event, continue to apply to all Obligations whether previously or subsequently incurred; and in the case of a change in the membership of a Borrower that is a partnership or in the case of the Borrower being amalgamated or merged with one or more other entities, this Agreement shall also apply to the liabilities of the resulting or continuing entity, and the term "Borrower" shall include each resulting or continuing entity;

(e) any credit being granted or continued by the Lender purportedly to or for the Borrower after the death, loss of capacity, bankruptcy or insolvency of the Borrower;

(f) any lack or limitation of power, incapacity or disability of the Borrower or of the directors, partners or agents of the Borrower, or the Borrower not being a legal or suable entity, or any irregularity, defect or lack of formality in the obtaining of credit by the Borrower;

(g) any bankruptcy, insolvency or similar proceedings, including any stay of or moratorium on proceedings, any action or omission of the Lender in connection with any such proceedings, or any effect of any such proceedings on the Lender;

(h) any impossibility, impracticability, frustration of purpose, force majeure, illegality or act of governmental authority affecting any Loan Document;

(i) any taking or failure to take security, any loss of or loss of value of security for the Obligations, any invalidity, lack of perfection, unenforceability or release of any security, or any subordination, postponement or enforcement of, failure to enforce, or irregularity or deficiency in the enforcement of, any security or other right;

(j) the existence of any claim, set-off or other right that the Obligor may have against the Borrower, the Lender or any other person, whether in connection with the Loan Documents or otherwise; or

(k) any loss of, or adverse effect on, any right of the Obligor that is postponed pursuant to Section 6, whether or not caused by any act or omission of the Lender.

Each of the defences mentioned above is waived by the Obligor to the fullest extent permitted under applicable law.

4.3 Information Concerning Borrower The Obligor acknowledges that it is presently familiar with the Loan Documents, the financial condition of the Borrower and any other circumstances affecting the risk incurred by the Obligor in connection with this Agreement. The Obligor shall be solely responsible for keeping itself informed concerning those matters in the future. The Obligor acknowledges that the Lender has no obligation to provide any information concerning those matters now or in the future and that, if it does so at any time, it shall have no obligation to update the information or provide other information subsequently.

4.4 No Obligation to Enforce Other Rights The Obligor waives any right it may have of requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Obligor under this Agreement and the Obligor waives all benefits of discussion and division. These waivers apply irrespective of any law or any provision of any Loan Document to the contrary.

5. USE OF AMOUNTS RECEIVED

5.1 Use of Amounts Received Until this Agreement has been terminated in accordance with Section 3.4, the Lender (or any trustee or agent on its behalf) may:

(a) refrain from applying any money received or enforcing any other security or rights held by or on behalf of the Lender in respect of the Obligations, or apply any money and enforce any other security or rights in any manner and order as it sees fit;

(b) change any application of money received in whole or in part from time to time; and

(c) hold in a suspense account any money received from the Obligor or on account of the Obligor's liabilities under this Agreement.

6. POSTPONEMENT OF OBLIGOR'S RIGHTS

6.1 Postponement of Subrogation Etc. Until this Agreement has been terminated in accordance with Section 3.4, the Obligor shall not exercise any rights that it may have by reason of performance by it of its liabilities under this Agreement:

(a) to be indemnified by the Borrower;

(b) to claim contribution from any other guarantor of the Obligations; or

(c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under any Loan Document.

6.2 Postponement of Set-Off Etc. Until this Agreement has been terminated in accordance with Section 3.4, the Obligor shall not claim any set-off or counterclaim against the Borrower as a result of any liability of the Borrower to the Obligor, or claim or prove in the bankruptcy or insolvency of the Borrower in competition with the Lender.

6.3 Postponement and Assignment The Obligor assigns to the Lender all present and future debts, liabilities and obligations of the Borrower to the Obligor as security for payment of the Obligor's liabilities under this Agreement, and agrees that all money received by the Obligor in respect of those debts, liabilities and obligations shall be received in trust for the Lender and forthwith upon receipt shall be paid over to the Lender, all without in any way lessening or limiting the liabilities of the Obligor under this Agreement. The provisions of this Section 6.3 are independent of the other provisions of this Agreement and shall remain in full force and effect until this Agreement has been terminated in accordance with Section 3.4, notwithstanding that the other liabilities of the Obligor under this Agreement may have been discharged or terminated.

7. OBLIGATION TO MAKE PAYMENT

7.1 Payment Immediately After Demand The Obligor's liability to make a payment under this Agreement shall arise immediately after demand for payment has been made in writing on the Obligor. In connection with any demand, the Lender may treat all Obligations as due and payable and may demand immediate payment from the Obligor of the total amount of its liabilities under this Agreement, whether or not all Obligations are otherwise due and payable at the time of demand.

7.2 Right to Enforce Demands under this Agreement may be made from time to time, and the liabilities of the Obligor under this Agreement may be enforced, irrespective of:

(a) whether any demands, steps or proceedings are being or have been made or taken against the Borrower and/or any third party; or

(b) whether or in what order any security to which the Lender may be entitled in connection with any Loan Document is enforced.

7.3 Certificate as to Amount A certificate of the Lender specifying the outstanding amount of the Obligations shall be conclusive evidence of that amount against the Obligor in the absence of any manifest error.

7.4 Interest The Obligor's liabilities under this Agreement shall bear interest from the date of demand at the highest rate of interest per annum that is applicable to any part of the Obligations.

7.5 Rights Cumulative No failure on the part of the Lender to exercise, nor any delay in exercising, any right or remedy under any Loan Document or this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. Neither the taking of any judicial or extra-judicial proceeding nor the exercise of rights under any security held from the Obligor shall extinguish the liability of the Obligor to pay and perform its liabilities under this Agreement, nor shall the acceptance of any payment or security create any novation. No covenant, representation or warranty of the Obligor in this Agreement shall merge in any judgment. The rights and remedies provided in this Agreement are cumulative and do not exclude any rights and remedies provided by law or otherwise.

7.6 Limitation Periods To the extent that any limitation period applies to any claim for payment of the Obligations or remedy for enforcement of the Obligations, the Obligor agrees that:

(a) any limitation period is expressly excluded and waived entirely if permitted by applicable law;

(b) if a complete exclusion and waiver of any limitation period is not permitted by applicable law, any limitation period is extended to the maximum length permitted by applicable law;

(c) any applicable limitation period shall not begin before an express demand for payment of the Obligations is made in writing by the Lender to the Obligor;

(d) any applicable limitation period shall begin afresh upon any payment or other acknowledgment of the Obligations by the Obligor; and

(e) this Agreement is a "business agreement" as defined in the *Limitations Act, 2002* (Ontario) if that Act applies.

8. PAYMENTS

8.1 Withholdings Etc. Any payment made by the Obligor under this Agreement shall be made without any deduction or withholding for or on account of tax and without any set-off or counterclaim of any kind. However, if the Obligor is required by law to deduct, withhold or pay any tax in respect of any payment under this Agreement, then (i) the Obligor shall pay additional sums under this Agreement as necessary so that, after making or allowing for all required deductions, withholdings and payments (including deductions, withholdings and payments applicable to additional sums payable under this Section), the

Lender receives an amount equal to the sum it would have received had no deductions, withholdings or payments been required, (ii) the Obligor shall make any deductions, withholdings or payments required by law to be made by it and (iii) the Obligor shall timely pay the full amount required to be deducted, withheld or paid to the relevant governmental authority in accordance with applicable law.

8.2 Currency and Place of Payment shall be made in the currency or currencies specified in the demand for payment to the Lender at Lender's at the address or account that the Lender may specify by in such demand or by written notice to the Obligor from time to time.

8.3 Currency Indemnity If a judgment or order is rendered by any court or tribunal for the payment of any amount owing to the Lender under or in connection with this Agreement and the judgment or order is expressed in a currency (the "**Judgment Currency**") other than the currency payable under or in connection with this Agreement (the "**Agreed Currency**"), the Obligor shall indemnify and hold the Lender harmless against any deficiency in terms of the Agreed Currency in the amount received by the Lender arising or resulting from any variation as between (a) the rate at which the Agreed Currency is converted into the Judgment Currency for the purposes of the judgment or order, and (b) the rate at which the Lender is able to purchase the Agreed Currency in accordance with normal banking practice with the amount of the Judgment Currency actually received by the Lender on the date of receipt. The indemnity in this Section shall constitute a separate and independent liability from the other liabilities of the Obligor under this Agreement, shall apply irrespective of any indulgence granted by the Lender, and shall be secured by any security held by the Lender from the Obligor.

8.4 Set-Off The Lender and each of its affiliates is authorized at any time and from time to time to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by the Lender or affiliate to or for the credit or the account of the Obligor against any and all of the liabilities of the Obligor now or in the future existing under this Agreement, irrespective of whether or not the Lender has made any demand under this Agreement and although those liabilities of the Obligor may be contingent or unmatured or are owed to a branch or office of the Lender different from the branch or office holding any deposit or obligated to the Obligor. The rights of the Lender and its affiliates under this Section 8.4 are in addition to other rights and remedies (including other rights of set-off, consolidation of accounts and bankers' lien) that the Lender or its affiliates may have.

9. NOTICES

9.1 Notices in Writing Any communication to be made under this Agreement shall be made in accordance with the Loan Agreement.

10. ENTIRE AGREEMENT; SEVERABILITY

10.1 Entire Agreement This Agreement embodies all the agreements between the Obligor and the Lender relating to the Obligations. No party shall be bound by any representation or promise made by any person relating to this Agreement that is not embodied in it. It is specifically agreed that the Lender shall not be bound by any representation or promise made by the Borrower to the Obligor. Any waiver of, or consent to departure from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Lender, and only in the specific instance and for the specific purpose for which it has been given.

10.2 Severability If, in any jurisdiction, any provision of this Agreement or its application to any circumstance is restricted, prohibited or unenforceable, that provision shall, as to that jurisdiction, be ineffective only to the extent of that restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement, without affecting the validity or enforceability of that provision in any other jurisdiction and, if applicable, without affecting its application to other circumstances.

11. DELIVERY OF AGREEMENT

11.1 Counterparts This Agreement may be executed in any number of counterparts and all counterparts taken together shall be deemed to constitute one agreement.

11.2 Delivery To evidence the fact that it has executed this Agreement, the Obligor may send a signed copy of this Agreement or its signature to this Agreement by facsimile transmission or e-mail and the signature sent in that way shall be deemed to be its original signature for all purposes.

11.3 No Conditions Possession of this Agreement by the Lender shall be conclusive evidence against the Obligor that the Agreement was not delivered in escrow or pursuant to any agreement that it should not be effective until any condition precedent or subsequent has been complied with. This Agreement shall be operative and binding notwithstanding that it is not executed by any proposed signatory.

11.4 Receipt and Waiver The Obligor acknowledges receipt of a copy of this Agreement. The Obligor waives any notice of acceptance of this Agreement by the Lender. The Obligor also waives the right to receive a copy of any financing statement or financing change statement that may be registered in connection with this Agreement or any verification statement issued with respect to a registration, if waiver is not otherwise prohibited by law. The Obligor agrees that the Lender may from time to time provide information regarding this Agreement and the Obligations to persons that the Lender believes in good faith are entitled to the information under applicable law.

12. GOVERNING LAW

12.1 Governing Law This Agreement and any dispute arising from or in relation to this Agreement shall be governed by, and interpreted and enforced in accordance with, the law of the province of Ontario and the laws of Canada applicable in that province, excluding the conflict of law rules of that province.

12.2 Obligor's Exclusive Dispute Resolution Jurisdiction The Obligor agrees that the courts of the province of Ontario have exclusive jurisdiction over any dispute arising from or in relation to this Agreement and the Obligor irrevocably and unconditionally attorns to the exclusive jurisdiction of that province. The Obligor agrees that the courts of that province are the most appropriate and convenient forum to settle disputes and agrees not to argue to the contrary.

12.3 Lender Entitled to Concurrent Jurisdiction Despite Section 12.2, the Lender is permitted to take proceedings in relation to any dispute arising from or in relation to this Agreement in any court of another province or another state with jurisdiction and to the extent allowed by law may take concurrent proceedings in any number of jurisdictions.

13. SUCCESSORS AND ASSIGNS

13.1 Successors and Assigns The Obligor may not assign or transfer all or any part of its liabilities under this Agreement. This Agreement shall enure to the benefit of the Lender and its successors and assigns and be binding on the Obligor and its successors and any permitted assigns.

[remainder of page left intentionally blank; signature page follows]

133525607:v2

IN WITNESS OF WHICH, the Obligor has duly executed this Agreement.

ACERUS BIOPHARMA INC.

By: ______________________
Name: Edward Gudaitis
Title: President

By: ______________________
Name:
Title

I/We have authority to bind the corporation.

[signature page for Guarantee and Indemnity by Acerus Biopharma Inc.]

Execution Version

GUARANTEE AND INDEMNITY

(Acerus Labs Inc.)

TO: First Generation Capital Inc. (the "**Lender**")

DATE: December 21, 2022

RECITALS:

A. The Obligor is a subsidiary of the Borrower. The Obligor is required to deliver this Agreement under the terms of the Loan Documents. The Obligor will derive substantial direct and indirect benefits and advantages from the financial accommodations to the Borrower under the Loan Documents, and it will be to the Obligor's direct interest and economic benefit to deliver this Agreement in order to allow the Borrower to obtain those financial accommodations. The Obligor acknowledges the value of that benefit.

FOR VALUE RECEIVED and intending to be legally bound by this guarantee and indemnity (the "**Agreement**"), the undersigned (the "**Obligor**") agrees as follows:

1. INTERPRETATION

1.1 Capitalized Terms In this Agreement, except where the context otherwise requires:

(a) "**Borrower**" means Acerus Pharmaceuticals Corporation.

(b) "**Guarantee**" means the unlimited guarantee and indemnity dated as of the date hereof, of the indebtedness, liability and obligations of Acerus Pharmaceuticals USA, LLC given by the Borrower in favour of the Lender, as amended, supplemented, restated and replaced from time to time

(c) "**Loan Agreement**" means the loan agreement dated as of the date hereof between, *inter alios*, the Borrower and Acerus Pharmaceuticals USA, LLC, as borrowers, the Obligor, as guarantor, and the Lender, as lender, as amended, supplemented, restated and replaced from time to time.

(d) "**Loan Documents**" means, collectively, the Promissory Note, the Loan Agreement, the Guarantee, and any other document or security relating to the Obligations, and "Loan Document" means each of them individually.

(e) "**Obligations**" means all debts, liabilities and obligations of the Borrower to the Lender, whether present or future, direct or indirect, absolute or contingent, matured or not, at any time owing or remaining unpaid by the Borrower to the Lender in any currency, whether arising from dealings between the Lender and the Borrower or from other dealings or proceedings by which the Lender may be or become in any manner whatever a creditor of the Borrower, and wherever incurred, and whether incurred by the Borrower alone or with another or others and whether as principal or surety (including, without limitation, obligations under or in

connection with Loan Documents or any of them), and all interest, fees, commissions and legal and other costs, charges and expenses owing or remaining unpaid by the Borrower to the Lender in any currency.

(f) **"Promissory Note**" means the third amended and restated secured grid promissory note dated March 30, 2022 by the Borrower in favour of the Lender (amending and restating the Original Note (as defined therein)), as amended by Amendment #1 to Third Amended and Restated Secured Grid Promissory Note dated as of June 23, 2022, Amendment #2 to Third Amended and Restated Secured Grid Promissory Note dated as of August 4, 2022 and Amendment #3 to Third Amended and Restated Secured Grid Promissory Note dated as of the date hereof, as further amended, supplemented, restated and replaced from time to time.

1.2 No *Contra Proferentum* This Agreement has been negotiated by the Obligor and the Lender with the benefit of legal representation, and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the construction or interpretation of this Agreement.

1.3 Other Interpretation Rules In this Agreement:

(a) The division into Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

(b) Unless otherwise specified or the context otherwise requires, (i) "including" or "includes" means "including (or includes) but is not limited to" and shall not be construed to limit any general statement preceding it to the specific or similar items or matters immediately following it, (ii) a reference to any legislation, statutory instrument or regulation or a section thereof is a reference to the legislation, statutory instrument, regulation or section as amended, restated and re-enacted from time to time, and (iii) words in the singular include the plural and vice-versa and words in one gender include all genders.

(c) Unless otherwise specified or the context otherwise requires, any reference in this Agreement to payment of the Obligations includes performance of the Obligations.

2. GUARANTEE AND INDEMNITY

2.1 Guarantee The Obligor unconditionally guarantees payment to the Lender of the Obligations.

2.2 Indemnity The Obligor also unconditionally agrees that, if the Borrower does not unconditionally and irrevocably pay any Obligations when due and those Obligations are not recoverable from the Obligor for any reason under Section 2.1, the Obligor shall indemnify the Lender immediately on demand against any cost, loss, damage, expense or liability suffered by the Lender as a result of the Borrower's failure to do so.

2.3 Separate Liabilities The liabilities of the Obligor under Sections 2.1 and 2.2 are separate and distinct from each other, but the provisions of this Agreement shall apply to the liabilities under both of those Sections unless the context otherwise requires.

2.4 Limit on Liability The liability of the Obligor under this Agreement is unlimited.

2.5 Irrevocable This Agreement is irrevocable by the Obligor and, subject to Section 3.4, the Obligor expressly and unconditionally waives any right to terminate this Agreement.

3. CONTINUING AGREEMENT AND REINSTATEMENT

3.1 Continuing Agreement This Agreement is a continuing guarantee and indemnity and will extend to the ultimate balance of the Obligations, regardless of any intermediate payment or discharge of the Obligations in whole or in part. Without limiting the foregoing, the Obligations may include advances and re-advances under revolving credit facilities, which permit borrowing, repayment of all or part of the amount borrowed and re-borrowing of amounts previously paid.

3.2 Payments in Gross Until this Agreement has been terminated in accordance with Section 3.4, all amounts of any kind received by the Lender from any source in respect of the Obligations shall be regarded for all purposes as payments in gross without any right on the part of the Obligor to claim the benefit of those amounts in reduction of its liabilities under this Agreement.

3.3 Reinstatement If at any time any payment of the Obligations is or must be rescinded or returned by the Lender as a result of insolvency or reorganization of the Borrower, the Obligor or any other person, or for any other reason whatsoever, the Obligations will be deemed to have continued in existence and this Agreement shall continue to be effective, or be reinstated, as if the payment had not occurred. The Lender may concede or compromise any claim that any payment ought to be rescinded or returned without diminishing the liability of the Obligor under this Section.

3.4 Termination If the Obligations have been indefeasibly paid in full in cash and if all obligations of the Lender to extend credit under any Loan Document have been cancelled, then the Lender shall, at the request and expense of the Obligor, execute and deliver whatever documents are reasonably required to acknowledge the termination of this Agreement.

4. WAIVER OF DEFENCES AND OTHER MATTERS

4.1 In Addition to Other Rights; No Marshalling This Agreement is in addition to and is not in any way prejudiced by or merged with any other guarantee, indemnity or security now or subsequently held by the Lender in respect of any Obligations. The Lender shall be under no obligation to marshal in favour of the Obligor any other guarantees or other securities or any money or other property that the Lender may be entitled to receive or may have a claim upon.

4.2 Liabilities Unconditional The liabilities of the Obligor under this Agreement are absolute and unconditional, and will not be affected by any act, omission, law, circumstance or thing that, but for this Section, would reduce, release or prejudice any of its liabilities under this Agreement, or that might constitute a legal or equitable defence to or a discharge, limitation or reduction of the Obligor's liabilities under this Agreement, including the following, whether or not known to it or the Lender or consented to by it or the Lender:

(a) any discontinuance, reduction, increase, extension or other variance of the credit granted by the Lender to the Borrower or any time, waiver or consent granted to, or any release of or compromise or other dealing of any kind with, the Borrower or any other person;

(b) any amendment, supplement or restatement (however fundamental) or replacement of any Loan Document;

(c) any unenforceability, illegality or invalidity of any obligation of any person under or in connection with any Loan Document, including any bar to recovery from the Borrower under any statute of limitations;

(d) the loss of capacity of the Borrower, any change in the name of the Borrower, or in the membership of the Borrower, if a partnership, or in the ownership, objects, capital structure or constitution of the Borrower, if a corporation, the sale of all or any part of the Borrower's business or the Borrower being amalgamated or merged with one or more other entities, and this Agreement shall, notwithstanding any such event, continue to apply to all Obligations whether previously or subsequently incurred; and in the case of a change in the membership of a Borrower that is a partnership or in the case of the Borrower being amalgamated or merged with one or more other entities, this Agreement shall also apply to the liabilities of the resulting or continuing entity, and the term "Borrower" shall include each resulting or continuing entity;

(e) any credit being granted or continued by the Lender purportedly to or for the Borrower after the death, loss of capacity, bankruptcy or insolvency of the Borrower;

(f) any lack or limitation of power, incapacity or disability of the Borrower or of the directors, partners or agents of the Borrower, or the Borrower not being a legal or suable entity, or any irregularity, defect or lack of formality in the obtaining of credit by the Borrower;

(g) any bankruptcy, insolvency or similar proceedings, including any stay of or moratorium on proceedings, any action or omission of the Lender in connection with any such proceedings, or any effect of any such proceedings on the Lender;

(h) any impossibility, impracticability, frustration of purpose, force majeure, illegality or act of governmental authority affecting any Loan Document;

(i) any taking or failure to take security, any loss of or loss of value of security for the Obligations, any invalidity, lack of perfection, unenforceability or release of any security, or any subordination, postponement or enforcement of, failure to enforce, or irregularity or deficiency in the enforcement of, any security or other right;

(j) the existence of any claim, set-off or other right that the Obligor may have against the Borrower, the Lender or any other person, whether in connection with the Loan Documents or otherwise; or

(k) any loss of, or adverse effect on, any right of the Obligor that is postponed pursuant to Section 6, whether or not caused by any act or omission of the Lender.

Each of the defences mentioned above is waived by the Obligor to the fullest extent permitted under applicable law.

4.3 Information Concerning Borrower The Obligor acknowledges that it is presently familiar with the Loan Documents, the financial condition of the Borrower and any other circumstances affecting the risk incurred by the Obligor in connection with this Agreement. The Obligor shall be solely responsible for keeping itself informed concerning those matters in the future. The Obligor acknowledges that the Lender has no obligation to provide any information concerning those matters now or in the future and that, if it does so at any time, it shall have no obligation to update the information or provide other information subsequently.

4.4 No Obligation to Enforce Other Rights The Obligor waives any right it may have of requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Obligor under this Agreement and the Obligor waives all benefits of discussion and division. These waivers apply irrespective of any law or any provision of any Loan Document to the contrary.

5. USE OF AMOUNTS RECEIVED

5.1 Use of Amounts Received Until this Agreement has been terminated in accordance with Section 3.4, the Lender (or any trustee or agent on its behalf) may:

(a) refrain from applying any money received or enforcing any other security or rights held by or on behalf of the Lender in respect of the Obligations, or apply any money and enforce any other security or rights in any manner and order as it sees fit;

(b) change any application of money received in whole or in part from time to time; and

(c) hold in a suspense account any money received from the Obligor or on account of the Obligor's liabilities under this Agreement.

6. POSTPONEMENT OF OBLIGOR'S RIGHTS

6.1 Postponement of Subrogation Etc. Until this Agreement has been terminated in accordance with Section 3.4, the Obligor shall not exercise any rights that it may have by reason of performance by it of its liabilities under this Agreement:

(a) to be indemnified by the Borrower;

(b) to claim contribution from any other guarantor of the Obligations; or

(c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under any Loan Document.

6.2 Postponement of Set-Off Etc. Until this Agreement has been terminated in accordance with Section 3.4, the Obligor shall not claim any set-off or counterclaim against the Borrower as a result of any liability of the Borrower to the Obligor, or claim or prove in the bankruptcy or insolvency of the Borrower in competition with the Lender.

6.3 Postponement and Assignment The Obligor assigns to the Lender all present and future debts, liabilities and obligations of the Borrower to the Obligor as security for payment of the Obligor's liabilities under this Agreement, and agrees that all money received by the Obligor in respect of those debts, liabilities and obligations shall be received in trust for the Lender and forthwith upon receipt shall be paid over to the Lender, all without in any way lessening or limiting the liabilities of the Obligor under this Agreement. The provisions of this Section 6.3 are independent of the other provisions of this Agreement and shall remain in full force and effect until this Agreement has been terminated in accordance with Section 3.4, notwithstanding that the other liabilities of the Obligor under this Agreement may have been discharged or terminated.

7. OBLIGATION TO MAKE PAYMENT

7.1 Payment Immediately After Demand The Obligor's liability to make a payment under this Agreement shall arise immediately after demand for payment has been made in writing on the Obligor. In connection with any demand, the Lender may treat all Obligations as due and payable and may demand immediate payment from the Obligor of the total amount of its liabilities under this Agreement, whether or not all Obligations are otherwise due and payable at the time of demand.

7.2 Right to Enforce Demands under this Agreement may be made from time to time, and the liabilities of the Obligor under this Agreement may be enforced, irrespective of:

(a) whether any demands, steps or proceedings are being or have been made or taken against the Borrower and/or any third party; or

(b) whether or in what order any security to which the Lender may be entitled in connection with any Loan Document is enforced.

7.3 Certificate as to Amount A certificate of the Lender specifying the outstanding amount of the Obligations shall be conclusive evidence of that amount against the Obligor in the absence of any manifest error.

7.4 Interest The Obligor's liabilities under this Agreement shall bear interest from the date of demand at the highest rate of interest per annum that is applicable to any part of the Obligations.

7.5 Rights Cumulative No failure on the part of the Lender to exercise, nor any delay in exercising, any right or remedy under any Loan Document or this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. Neither the taking of any judicial or extra-judicial proceeding nor the exercise of rights under any security held from the Obligor shall extinguish the liability of the Obligor to pay and perform its liabilities under this Agreement, nor shall the acceptance of any payment or security create any novation. No covenant, representation or warranty of the Obligor in this Agreement shall merge in any judgment. The rights and remedies provided in this Agreement are cumulative and do not exclude any rights and remedies provided by law or otherwise.

7.6 Limitation Periods To the extent that any limitation period applies to any claim for payment of the Obligations or remedy for enforcement of the Obligations, the Obligor agrees that:

(a) any limitation period is expressly excluded and waived entirely if permitted by applicable law;

(b) if a complete exclusion and waiver of any limitation period is not permitted by applicable law, any limitation period is extended to the maximum length permitted by applicable law;

(c) any applicable limitation period shall not begin before an express demand for payment of the Obligations is made in writing by the Lender to the Obligor;

(d) any applicable limitation period shall begin afresh upon any payment or other acknowledgment of the Obligations by the Obligor; and

(e) this Agreement is a "business agreement" as defined in the *Limitations Act, 2002* (Ontario) if that Act applies.

8. PAYMENTS

8.1 Withholdings Etc. Any payment made by the Obligor under this Agreement shall be made without any deduction or withholding for or on account of tax and without any set-off or counterclaim of any kind. However, if the Obligor is required by law to deduct, withhold or pay any tax in respect of any payment under this Agreement, then (i) the Obligor shall pay additional sums under this Agreement as necessary so that, after making or allowing for all required deductions, withholdings and payments (including deductions, withholdings and payments applicable to additional sums payable under this Section), the

Lender receives an amount equal to the sum it would have received had no deductions, withholdings or payments been required, (ii) the Obligor shall make any deductions, withholdings or payments required by law to be made by it and (iii) the Obligor shall timely pay the full amount required to be deducted, withheld or paid to the relevant governmental authority in accordance with applicable law.

8.2 Currency and Place of Payment shall be made in the currency or currencies specified in the demand for payment to the Lender at Lender's at the address or account that the Lender may specify by in such demand or by written notice to the Obligor from time to time.

8.3 Currency Indemnity If a judgment or order is rendered by any court or tribunal for the payment of any amount owing to the Lender under or in connection with this Agreement and the judgment or order is expressed in a currency (the "**Judgment Currency**") other than the currency payable under or in connection with this Agreement (the "**Agreed Currency**"), the Obligor shall indemnify and hold the Lender harmless against any deficiency in terms of the Agreed Currency in the amount received by the Lender arising or resulting from any variation as between (a) the rate at which the Agreed Currency is converted into the Judgment Currency for the purposes of the judgment or order, and (b) the rate at which the Lender is able to purchase the Agreed Currency in accordance with normal banking practice with the amount of the Judgment Currency actually received by the Lender on the date of receipt. The indemnity in this Section shall constitute a separate and independent liability from the other liabilities of the Obligor under this Agreement, shall apply irrespective of any indulgence granted by the Lender, and shall be secured by any security held by the Lender from the Obligor.

8.4 Set-Off The Lender and each of its affiliates is authorized at any time and from time to time to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by the Lender or affiliate to or for the credit or the account of the Obligor against any and all of the liabilities of the Obligor now or in the future existing under this Agreement, irrespective of whether or not the Lender has made any demand under this Agreement and although those liabilities of the Obligor may be contingent or unmatured or are owed to a branch or office of the Lender different from the branch or office holding any deposit or obligated to the Obligor. The rights of the Lender and its affiliates under this Section 8.4 are in addition to other rights and remedies (including other rights of set-off, consolidation of accounts and bankers' lien) that the Lender or its affiliates may have.

9. NOTICES

9.1 Notices in Writing Any communication to be made under this Agreement shall be made in accordance with the Loan Agreement.

10. ENTIRE AGREEMENT; SEVERABILITY

10.1 Entire Agreement This Agreement embodies all the agreements between the Obligor and the Lender relating to the Obligations. No party shall be bound by any representation or promise made by any person relating to this Agreement that is not embodied in it. It is specifically agreed that the Lender shall not be bound by any representation or promise made by the Borrower to the Obligor. Any waiver of, or consent to departure from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Lender, and only in the specific instance and for the specific purpose for which it has been given.

10.2 Severability If, in any jurisdiction, any provision of this Agreement or its application to any circumstance is restricted, prohibited or unenforceable, that provision shall, as to that jurisdiction, be ineffective only to the extent of that restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement, without affecting the validity or enforceability of that provision in any other jurisdiction and, if applicable, without affecting its application to other circumstances.

11. DELIVERY OF AGREEMENT

11.1 Counterparts This Agreement may be executed in any number of counterparts and all counterparts taken together shall be deemed to constitute one agreement.

11.2 Delivery To evidence the fact that it has executed this Agreement, the Obligor may send a signed copy of this Agreement or its signature to this Agreement by facsimile transmission or e-mail and the signature sent in that way shall be deemed to be its original signature for all purposes.

11.3 No Conditions Possession of this Agreement by the Lender shall be conclusive evidence against the Obligor that the Agreement was not delivered in escrow or pursuant to any agreement that it should not be effective until any condition precedent or subsequent has been complied with. This Agreement shall be operative and binding notwithstanding that it is not executed by any proposed signatory.

11.4 Receipt and Waiver The Obligor acknowledges receipt of a copy of this Agreement. The Obligor waives any notice of acceptance of this Agreement by the Lender. The Obligor also waives the right to receive a copy of any financing statement or financing change statement that may be registered in connection with this Agreement or any verification statement issued with respect to a registration, if waiver is not otherwise prohibited by law. The Obligor agrees that the Lender may from time to time provide information regarding this Agreement and the Obligations to persons that the Lender believes in good faith are entitled to the information under applicable law.

12. GOVERNING LAW

12.1 Governing Law This Agreement and any dispute arising from or in relation to this Agreement shall be governed by, and interpreted and enforced in accordance with, the law of the province of Ontario and the laws of Canada applicable in that province, excluding the conflict of law rules of that province.

12.2 Obligor's Exclusive Dispute Resolution Jurisdiction The Obligor agrees that the courts of the province of Ontario have exclusive jurisdiction over any dispute arising from or in relation to this Agreement and the Obligor irrevocably and unconditionally attorns to the exclusive jurisdiction of that province. The Obligor agrees that the courts of that province are the most appropriate and convenient forum to settle disputes and agrees not to argue to the contrary.

12.3 Lender Entitled to Concurrent Jurisdiction Despite Section 12.2, the Lender is permitted to take proceedings in relation to any dispute arising from or in relation to this Agreement in any court of another province or another state with jurisdiction and to the extent allowed by law may take concurrent proceedings in any number of jurisdictions.

13. SUCCESSORS AND ASSIGNS

13.1 Successors and Assigns The Obligor may not assign or transfer all or any part of its liabilities under this Agreement. This Agreement shall enure to the benefit of the Lender and its successors and assigns and be binding on the Obligor and its successors and any permitted assigns.

[remainder of page left intentionally blank; signature page follows]

133525508:v2

IN WITNESS OF WHICH, the Obligor has duly executed this Agreement.

ACERUS LABS INC.

By: ______________________
Name: Edward Gudaitis
Title: President

By: ______________________
Name:
Title

I/We have authority to bind the corporation.

[signature page for Guarantee and Indemnity by Acerus Labs Inc.]

Execution Version

GUARANTEE AND INDEMNITY

(Acerus Labs Inc.)

TO: First Generation Capital Inc. (the "**Lender**")

DATE: December 21, 2022

RECITALS:

A. The Obligor is an affiliate of the Borrower. The Obligor is required to deliver this Agreement under the terms of the Loan Documents. The Obligor will derive substantial direct and indirect benefits and advantages from the financial accommodations to the Borrower under the Loan Documents, and it will be to the Obligor's direct interest and economic benefit to deliver this Agreement in order to allow the Borrower to obtain those financial accommodations. The Obligor acknowledges the value of that benefit.

FOR VALUE RECEIVED and intending to be legally bound by this guarantee and indemnity (the "**Agreement**"), the undersigned (the "**Obligor**") agrees as follows:

1. INTERPRETATION

1.1 Capitalized Terms In this Agreement, except where the context otherwise requires:

(a) "**Borrower**" means Acerus Pharmaceuticals USA, LLC.

(b) "**Guarantee**" means the unlimited guarantee and indemnity dated as of the date hereof, of the indebtedness, liability and obligations of Acerus Pharmaceuticals Corporation given by the Borrower in favour of the Lender, as amended, supplemented, restated and replaced from time to time.

(c) "**Loan Agreement**" means the loan agreement dated as of the date hereof between, *inter alios,* the Borrower and Acerus Pharmaceuticals Corporation, as borrowers, the Obligor, as guarantor, and the Lender, as lender, as amended, supplemented, restated and replaced from time to time.

(d) "**Loan Documents**" means, collectively, the Loan Agreement, the Guarantee, and any other document or security relating to the Obligations, and "Loan Document" means each of them individually.

(e) "**Obligations**" means all debts, liabilities and obligations of the Borrower to the Lender, whether present or future, direct or indirect, absolute or contingent, matured or not, at any time owing or remaining unpaid by the Borrower to the Lender in any currency, whether arising from dealings between the Lender and the Borrower or from other dealings or proceedings by which the Lender may be or become in any manner whatever a creditor of the Borrower, and wherever incurred, and whether incurred by the Borrower alone or with another or others and whether as principal or surety (including, without limitation, obligations under or in

connection with Loan Documents or any of them), and all interest, fees, commissions and legal and other costs, charges and expenses owing or remaining unpaid by the Borrower to the Lender in any currency.

1.2 No *Contra Proferentum* This Agreement has been negotiated by the Obligor and the Lender with the benefit of legal representation, and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the construction or interpretation of this Agreement.

1.3 Other Interpretation Rules In this Agreement:

(a) The division into Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

(b) Unless otherwise specified or the context otherwise requires, (i) "including" or "includes" means "including (or includes) but is not limited to" and shall not be construed to limit any general statement preceding it to the specific or similar items or matters immediately following it, (ii) a reference to any legislation, statutory instrument or regulation or a section thereof is a reference to the legislation, statutory instrument, regulation or section as amended, restated and re-enacted from time to time, and (iii) words in the singular include the plural and vice-versa and words in one gender include all genders.

(c) Unless otherwise specified or the context otherwise requires, any reference in this Agreement to payment of the Obligations includes performance of the Obligations.

2. GUARANTEE AND INDEMNITY

2.1 Guarantee The Obligor unconditionally guarantees payment to the Lender of the Obligations.

2.2 Indemnity The Obligor also unconditionally agrees that, if the Borrower does not unconditionally and irrevocably pay any Obligations when due and those Obligations are not recoverable from the Obligor for any reason under Section 2.1, the Obligor shall indemnify the Lender immediately on demand against any cost, loss, damage, expense or liability suffered by the Lender as a result of the Borrower's failure to do so.

2.3 Separate Liabilities The liabilities of the Obligor under Sections 2.1 and 2.2 are separate and distinct from each other, but the provisions of this Agreement shall apply to the liabilities under both of those Sections unless the context otherwise requires.

2.4 Limit on Liability The liability of the Obligor under this Agreement is unlimited.

2.5 Irrevocable This Agreement is irrevocable by the Obligor and, subject to Section 3.4, the Obligor expressly and unconditionally waives any right to terminate this Agreement.

3. CONTINUING AGREEMENT AND REINSTATEMENT

3.1 Continuing Agreement This Agreement is a continuing guarantee and indemnity and will extend to the ultimate balance of the Obligations, regardless of any intermediate payment or discharge of the Obligations in whole or in part. Without limiting the foregoing, the Obligations may include advances and re-advances under revolving credit facilities, which permit borrowing, repayment of all or part of the amount borrowed and re-borrowing of amounts previously paid.

3.2 Payments in Gross Until this Agreement has been terminated in accordance with Section 3.4, all amounts of any kind received by the Lender from any source in respect of the Obligations shall be regarded for all purposes as payments in gross without any right on the part of the Obligor to claim the benefit of those amounts in reduction of its liabilities under this Agreement.

3.3 Reinstatement If at any time any payment of the Obligations is or must be rescinded or returned by the Lender as a result of insolvency or reorganization of the Borrower, the Obligor or any other person, or for any other reason whatsoever, the Obligations will be deemed to have continued in existence and this Agreement shall continue to be effective, or be reinstated, as if the payment had not occurred. The Lender may concede or compromise any claim that any payment ought to be rescinded or returned without diminishing the liability of the Obligor under this Section.

3.4 Termination If the Obligations have been indefeasibly paid in full in cash and if all obligations of the Lender to extend credit under any Loan Document have been cancelled, then the Lender shall, at the request and expense of the Obligor, execute and deliver whatever documents are reasonably required to acknowledge the termination of this Agreement.

4. WAIVER OF DEFENCES AND OTHER MATTERS

4.1 In Addition to Other Rights; No Marshalling This Agreement is in addition to and is not in any way prejudiced by or merged with any other guarantee, indemnity or security now or subsequently held by the Lender in respect of any Obligations. The Lender shall be under no obligation to marshal in favour of the Obligor any other guarantees or other securities or any money or other property that the Lender may be entitled to receive or may have a claim upon.

4.2 Liabilities Unconditional The liabilities of the Obligor under this Agreement are absolute and unconditional, and will not be affected by any act, omission, law, circumstance or thing that, but for this Section, would reduce, release or prejudice any of its liabilities under this Agreement, or that might constitute a legal or equitable defence to or a discharge, limitation or reduction of the Obligor's liabilities under this Agreement, including the following, whether or not known to it or the Lender or consented to by it or the Lender:

(a) any discontinuance, reduction, increase, extension or other variance of the credit granted by the Lender to the Borrower or any time, waiver or consent granted to, or any release of or compromise or other dealing of any kind with, the Borrower or any other person;

(b) any amendment, supplement or restatement (however fundamental) or replacement of any Loan Document;

(c) any unenforceability, illegality or invalidity of any obligation of any person under or in connection with any Loan Document, including any bar to recovery from the Borrower under any statute of limitations;

(d) the loss of capacity of the Borrower, any change in the name of the Borrower, or in the membership of the Borrower, if a partnership, or in the ownership, objects, capital structure or constitution of the Borrower, if a corporation, the sale of all or any part of the Borrower's business or the Borrower being amalgamated or merged with one or more other entities, and this Agreement shall, notwithstanding any such event, continue to apply to all Obligations whether previously or subsequently incurred; and in the case of a change in the membership of a Borrower that is a partnership or in the case of the Borrower being amalgamated or merged with one or more other entities, this Agreement shall also apply to the liabilities of the resulting or continuing entity, and the term "Borrower" shall include each resulting or continuing entity;

(e) any credit being granted or continued by the Lender purportedly to or for the Borrower after the death, loss of capacity, bankruptcy or insolvency of the Borrower;

(f) any lack or limitation of power, incapacity or disability of the Borrower or of the directors, partners or agents of the Borrower, or the Borrower not being a legal or suable entity, or any irregularity, defect or lack of formality in the obtaining of credit by the Borrower;

(g) any bankruptcy, insolvency or similar proceedings, including any stay of or moratorium on proceedings, any action or omission of the Lender in connection with any such proceedings, or any effect of any such proceedings on the Lender;

(h) any impossibility, impracticability, frustration of purpose, force majeure, illegality or act of governmental authority affecting any Loan Document;

(i) any taking or failure to take security, any loss of or loss of value of security for the Obligations, any invalidity, lack of perfection, unenforceability or release of any security, or any subordination, postponement or enforcement of, failure to enforce, or irregularity or deficiency in the enforcement of, any security or other right;

(j) the existence of any claim, set-off or other right that the Obligor may have against the Borrower, the Lender or any other person, whether in connection with the Loan Documents or otherwise; or

(k) any loss of, or adverse effect on, any right of the Obligor that is postponed pursuant to Section 6, whether or not caused by any act or omission of the Lender.

Each of the defences mentioned above is waived by the Obligor to the fullest extent permitted under applicable law.

4.3 Information Concerning Borrower The Obligor acknowledges that it is presently familiar with the Loan Documents, the financial condition of the Borrower and any other circumstances affecting the risk incurred by the Obligor in connection with this Agreement. The Obligor shall be solely responsible for keeping itself informed concerning those matters in the future. The Obligor acknowledges that the Lender has no obligation to provide any information concerning those matters now or in the future and that, if it does so at any time, it shall have no obligation to update the information or provide other information subsequently.

4.4 No Obligation to Enforce Other Rights The Obligor waives any right it may have of requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Obligor under this Agreement and the Obligor waives all benefits of discussion and division. These waivers apply irrespective of any law or any provision of any Loan Document to the contrary.

5. USE OF AMOUNTS RECEIVED

5.1 Use of Amounts Received Until this Agreement has been terminated in accordance with Section 3.4, the Lender (or any trustee or agent on its behalf) may:

(a) refrain from applying any money received or enforcing any other security or rights held by or on behalf of the Lender in respect of the Obligations, or apply any money and enforce any other security or rights in any manner and order as it sees fit;

(b) change any application of money received in whole or in part from time to time; and

(c) hold in a suspense account any money received from the Obligor or on account of the Obligor's liabilities under this Agreement.

6. POSTPONEMENT OF OBLIGOR'S RIGHTS

6.1 Postponement of Subrogation Etc. Until this Agreement has been terminated in accordance with Section 3.4, the Obligor shall not exercise any rights that it may have by reason of performance by it of its liabilities under this Agreement:

(a) to be indemnified by the Borrower;

(b) to claim contribution from any other guarantor of the Obligations; or

(c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under any Loan Document.

6.2 Postponement of Set-Off Etc. Until this Agreement has been terminated in accordance with Section 3.4, the Obligor shall not claim any set-off or counterclaim against the Borrower as a result of any liability of the Borrower to the Obligor, or claim or prove in the bankruptcy or insolvency of the Borrower in competition with the Lender.

6.3 Postponement and Assignment The Obligor assigns to the Lender all present and future debts, liabilities and obligations of the Borrower to the Obligor as security for payment of the Obligor's liabilities under this Agreement, and agrees that all money received by the Obligor in respect of those debts, liabilities and obligations shall be received in trust for the Lender and forthwith upon receipt shall be paid over to the Lender, all without in any way lessening or limiting the liabilities of the Obligor under this Agreement. The provisions of this Section 6.3 are independent of the other provisions of this Agreement and shall remain in full force and effect until this Agreement has been terminated in accordance with Section 3.4, notwithstanding that the other liabilities of the Obligor under this Agreement may have been discharged or terminated.

7. OBLIGATION TO MAKE PAYMENT

7.1 Payment Immediately After Demand The Obligor's liability to make a payment under this Agreement shall arise immediately after demand for payment has been made in writing on the Obligor. In connection with any demand, the Lender may treat all Obligations as due and payable and may demand immediate payment from the Obligor of the total amount of its liabilities under this Agreement, whether or not all Obligations are otherwise due and payable at the time of demand.

7.2 Right to Enforce Demands under this Agreement may be made from time to time, and the liabilities of the Obligor under this Agreement may be enforced, irrespective of:

(a) whether any demands, steps or proceedings are being or have been made or taken against the Borrower and/or any third party; or

(b) whether or in what order any security to which the Lender may be entitled in connection with any Loan Document is enforced.

7.3 Certificate as to Amount A certificate of the Lender specifying the outstanding amount of the Obligations shall be conclusive evidence of that amount against the Obligor in the absence of any manifest error.

7.4 Interest The Obligor's liabilities under this Agreement shall bear interest from the date of demand at the highest rate of interest per annum that is applicable to any part of the Obligations.

7.5 Rights Cumulative No failure on the part of the Lender to exercise, nor any delay in exercising, any right or remedy under any Loan Document or this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any

further or other exercise or the exercise of any other right or remedy. Neither the taking of any judicial or extra-judicial proceeding nor the exercise of rights under any security held from the Obligor shall extinguish the liability of the Obligor to pay and perform its liabilities under this Agreement, nor shall the acceptance of any payment or security create any novation. No covenant, representation or warranty of the Obligor in this Agreement shall merge in any judgment. The rights and remedies provided in this Agreement are cumulative and do not exclude any rights and remedies provided by law or otherwise.

7.6 Limitation Periods To the extent that any limitation period applies to any claim for payment of the Obligations or remedy for enforcement of the Obligations, the Obligor agrees that:

(a) any limitation period is expressly excluded and waived entirely if permitted by applicable law;

(b) if a complete exclusion and waiver of any limitation period is not permitted by applicable law, any limitation period is extended to the maximum length permitted by applicable law;

(c) any applicable limitation period shall not begin before an express demand for payment of the Obligations is made in writing by the Lender to the Obligor;

(d) any applicable limitation period shall begin afresh upon any payment or other acknowledgment of the Obligations by the Obligor; and

(e) this Agreement is a "business agreement" as defined in the *Limitations Act, 2002* (Ontario) if that Act applies.

8. PAYMENTS

8.1 Withholdings Etc. Any payment made by the Obligor under this Agreement shall be made without any deduction or withholding for or on account of tax and without any set-off or counterclaim of any kind. However, if the Obligor is required by law to deduct, withhold or pay any tax in respect of any payment under this Agreement, then (i) the Obligor shall pay additional sums under this Agreement as necessary so that, after making or allowing for all required deductions, withholdings and payments (including deductions, withholdings and payments applicable to additional sums payable under this Section), the Lender receives an amount equal to the sum it would have received had no deductions, withholdings or payments been required, (ii) the Obligor shall make any deductions, withholdings or payments required by law to be made by it and (iii) the Obligor shall timely pay the full amount required to be deducted, withheld or paid to the relevant governmental authority in accordance with applicable law.

8.2 Currency and Place of Payment shall be made in the currency or currencies specified in the demand for payment to the Lender at Lender's at the address or account that the Lender may specify by in such demand or by written notice to the Obligor from time to time.

8.3 Currency Indemnity If a judgment or order is rendered by any court or tribunal for the payment of any amount owing to the Lender under or in connection with this Agreement and the judgment or order is expressed in a currency (the "**Judgment Currency**") other than the currency payable under or in connection with this Agreement (the "**Agreed Currency**"), the Obligor shall indemnify and hold the Lender harmless against any deficiency in terms of the Agreed Currency in the amount received by the Lender arising or resulting from any variation as between (a) the rate at which the Agreed Currency is converted into the Judgment Currency for the purposes of the judgment or order, and (b) the rate at which the Lender is able to purchase the Agreed Currency in accordance with normal banking practice with the amount of the Judgment Currency actually received by the Lender on the date of receipt. The indemnity in this Section shall constitute a separate and independent liability from the other liabilities of the Obligor under this Agreement, shall apply irrespective of any indulgence granted by the Lender, and shall be secured by any security held by the Lender from the Obligor.

8.4 Set-Off The Lender and each of its affiliates is authorized at any time and from time to time to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by the Lender or affiliate to or for the credit or the account of the Obligor against any and all of the liabilities of the Obligor now or in the future existing under this Agreement, irrespective of whether or not the Lender has made any demand under this Agreement and although those liabilities of the Obligor may be contingent or unmatured or are owed to a branch or office of the Lender different from the branch or office holding any deposit or obligated to the Obligor. The rights of the Lender and its affiliates under this Section 8.4 are in addition to other rights and remedies (including other rights of set-off, consolidation of accounts and bankers' lien) that the Lender or its affiliates may have.

9. NOTICES

9.1 Notices in Writing Any communication to be made under this Agreement shall be made in accordance with the Loan Agreement.

10. ENTIRE AGREEMENT; SEVERABILITY

10.1 Entire Agreement This Agreement embodies all the agreements between the Obligor and the Lender relating to the Obligations. No party shall be bound by any representation or promise made by any person relating to this Agreement that is not embodied in it. It is specifically agreed that the Lender shall not be bound by any representation or promise made by the Borrower to the Obligor. Any waiver of, or consent to departure from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Lender, and only in the specific instance and for the specific purpose for which it has been given.

10.2 Severability If, in any jurisdiction, any provision of this Agreement or its application to any circumstance is restricted, prohibited or unenforceable, that provision shall, as to that jurisdiction, be ineffective only to the extent of that restriction, prohibition or

unenforceability without invalidating the remaining provisions of this Agreement, without affecting the validity or enforceability of that provision in any other jurisdiction and, if applicable, without affecting its application to other circumstances.

11. DELIVERY OF AGREEMENT

11.1 Counterparts This Agreement may be executed in any number of counterparts and all counterparts taken together shall be deemed to constitute one agreement.

11.2 Delivery To evidence the fact that it has executed this Agreement, the Obligor may send a signed copy of this Agreement or its signature to this Agreement by facsimile transmission or e-mail and the signature sent in that way shall be deemed to be its original signature for all purposes.

11.3 No Conditions Possession of this Agreement by the Lender shall be conclusive evidence against the Obligor that the Agreement was not delivered in escrow or pursuant to any agreement that it should not be effective until any condition precedent or subsequent has been complied with. This Agreement shall be operative and binding notwithstanding that it is not executed by any proposed signatory.

11.4 Receipt and Waiver The Obligor acknowledges receipt of a copy of this Agreement. The Obligor waives any notice of acceptance of this Agreement by the Lender. The Obligor also waives the right to receive a copy of any financing statement or financing change statement that may be registered in connection with this Agreement or any verification statement issued with respect to a registration, if waiver is not otherwise prohibited by law. The Obligor agrees that the Lender may from time to time provide information regarding this Agreement and the Obligations to persons that the Lender believes in good faith are entitled to the information under applicable law.

12. GOVERNING LAW

12.1 Governing Law This Agreement and any dispute arising from or in relation to this Agreement shall be governed by, and interpreted and enforced in accordance with, the law of the province of Ontario and the laws of Canada applicable in that province, excluding the conflict of law rules of that province.

12.2 Obligor's Exclusive Dispute Resolution Jurisdiction The Obligor agrees that the courts of the province of Ontario have exclusive jurisdiction over any dispute arising from or in relation to this Agreement and the Obligor irrevocably and unconditionally attorns to the exclusive jurisdiction of that province. The Obligor agrees that the courts of that province are the most appropriate and convenient forum to settle disputes and agrees not to argue to the contrary.

12.3 Lender Entitled to Concurrent Jurisdiction Despite Section 12.2, the Lender is permitted to take proceedings in relation to any dispute arising from or in relation to this Agreement in any court of another province or another state with jurisdiction and to the extent allowed by law may take concurrent proceedings in any number of jurisdictions.

13. SUCCESSORS AND ASSIGNS

13.1 Successors and Assigns The Obligor may not assign or transfer all or any part of its liabilities under this Agreement. This Agreement shall enure to the benefit of the Lender and its successors and assigns and be binding on the Obligor and its successors and any permitted assigns.

[remainder of page left intentionally blank; signature page follows]

133525489:v2

IN WITNESS OF WHICH, the Obligor has duly executed this Agreement.

ACERUS LABS INC.

By: ______________________
Name: Edward Gudaitis
Title: President

By: ______________________
Name:
Title

I/We have authority to bind the corporation.

[signature page for Guarantee and Indemnity by Acerus Labs Inc.]

Execution Version

GUARANTEE AND INDEMNITY

(Acerus Pharmaceuticals Corporation)

TO: First Generation Capital Inc. (the "**Lender**")

DATE: December 21, 2022

RECITALS:

A. The Obligor is the parent of the Borrower. The Obligor is required to deliver this Agreement under the terms of the Loan Documents. The Obligor will derive substantial direct and indirect benefits and advantages from the financial accommodations to the Borrower under the Loan Documents, and it will be to the Obligor's direct interest and economic benefit to deliver this Agreement in order to allow the Borrower to obtain those financial accommodations. The Obligor acknowledges the value of that benefit.

FOR VALUE RECEIVED and intending to be legally bound by this guarantee and indemnity (the "**Agreement**"), the undersigned (the "**Obligor**") agrees as follows:

1. INTERPRETATION

1.1 Capitalized Terms In this Agreement, except where the context otherwise requires:

(a) "**Borrower**" means Acerus Pharmaceuticals USA, LLC.

(b) “**Loan Agreement**” means the loan agreement dated as of the date hereof between, *inter alios,* the Obligor and the Borrower, as borrowers, and the Lender, as lender, as amended, supplemented, restated and replaced from time to time.

(c) "**Loan Documents**" means, collectively, the Loan Agreement, and any other document or security relating to the Obligations, and “Loan Document” means each of them individually.

(d) "**Obligations**" means all debts, liabilities and obligations of the Borrower to the Lender, whether present or future, direct or indirect, absolute or contingent, matured or not, at any time owing or remaining unpaid by the Borrower to the Lender in any currency, whether arising from dealings between the Lender and the Borrower or from other dealings or proceedings by which the Lender may be or become in any manner whatever a creditor of the Borrower, and wherever incurred, and whether incurred by the Borrower alone or with another or others and whether as principal or surety (including, without limitation, obligations under or in connection with Loan Documents or any of them), and all interest, fees, commissions and legal and other costs, charges and expenses owing or remaining unpaid by the Borrower to the Lender in any currency.

1.2 No *Contra Proferentum* This Agreement has been negotiated by the Obligor and the Lender with the benefit of legal representation, and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the construction or interpretation of this Agreement.

1.3 Other Interpretation Rules In this Agreement:

(a) The division into Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

(b) Unless otherwise specified or the context otherwise requires, (i) "including" or "includes" means "including (or includes) but is not limited to" and shall not be construed to limit any general statement preceding it to the specific or similar items or matters immediately following it, (ii) a reference to any legislation, statutory instrument or regulation or a section thereof is a reference to the legislation, statutory instrument, regulation or section as amended, restated and re-enacted from time to time, and (iii) words in the singular include the plural and vice-versa and words in one gender include all genders.

(c) Unless otherwise specified or the context otherwise requires, any reference in this Agreement to payment of the Obligations includes performance of the Obligations.

2. GUARANTEE AND INDEMNITY

2.1 Guarantee The Obligor unconditionally guarantees payment to the Lender of the Obligations.

2.2 Indemnity The Obligor also unconditionally agrees that, if the Borrower does not unconditionally and irrevocably pay any Obligations when due and those Obligations are not recoverable from the Obligor for any reason under Section 2.1, the Obligor shall indemnify the Lender immediately on demand against any cost, loss, damage, expense or liability suffered by the Lender as a result of the Borrower's failure to do so.

2.3 Separate Liabilities The liabilities of the Obligor under Sections 2.1 and 2.2 are separate and distinct from each other, but the provisions of this Agreement shall apply to the liabilities under both of those Sections unless the context otherwise requires.

2.4 Limit on Liability The liability of the Obligor under this Agreement is unlimited.

2.5 Irrevocable This Agreement is irrevocable by the Obligor and, subject to Section 3.4, the Obligor expressly and unconditionally waives any right to terminate this Agreement.

3. CONTINUING AGREEMENT AND REINSTATEMENT

3.1 Continuing Agreement This Agreement is a continuing guarantee and indemnity and will extend to the ultimate balance of the Obligations, regardless of any intermediate payment or discharge of the Obligations in whole or in part. Without limiting the foregoing, the Obligations may include advances and re-advances under revolving credit facilities, which permit borrowing, repayment of all or part of the amount borrowed and re-borrowing of amounts previously paid.

3.2 Payments in Gross Until this Agreement has been terminated in accordance with Section 3.4, all amounts of any kind received by the Lender from any source in respect of the Obligations shall be regarded for all purposes as payments in gross without any right on the part of the Obligor to claim the benefit of those amounts in reduction of its liabilities under this Agreement.

3.3 Reinstatement If at any time any payment of the Obligations is or must be rescinded or returned by the Lender as a result of insolvency or reorganization of the Borrower, the Obligor or any other person, or for any other reason whatsoever, the Obligations will be deemed to have continued in existence and this Agreement shall continue to be effective, or be reinstated, as if the payment had not occurred. The Lender may concede or compromise any claim that any payment ought to be rescinded or returned without diminishing the liability of the Obligor under this Section.

3.4 Termination If the Obligations have been indefeasibly paid in full in cash and if all obligations of the Lender to extend credit under any Loan Document have been cancelled, then the Lender shall, at the request and expense of the Obligor, execute and deliver whatever documents are reasonably required to acknowledge the termination of this Agreement.

4. WAIVER OF DEFENCES AND OTHER MATTERS

4.1 In Addition to Other Rights; No Marshalling This Agreement is in addition to and is not in any way prejudiced by or merged with any other guarantee, indemnity or security now or subsequently held by the Lender in respect of any Obligations. The Lender shall be under no obligation to marshal in favour of the Obligor any other guarantees or other securities or any money or other property that the Lender may be entitled to receive or may have a claim upon.

4.2 Liabilities Unconditional The liabilities of the Obligor under this Agreement are absolute and unconditional, and will not be affected by any act, omission, law, circumstance or thing that, but for this Section, would reduce, release or prejudice any of its liabilities under this Agreement, or that might constitute a legal or equitable defence to or a discharge, limitation or reduction of the Obligor's liabilities under this Agreement, including the following, whether or not known to it or the Lender or consented to by it or the Lender:

(a) any discontinuance, reduction, increase, extension or other variance of the credit granted by the Lender to the Borrower or any time, waiver or consent granted to, or any release of or compromise or other dealing of any kind with, the Borrower or any other person;

(b) any amendment, supplement or restatement (however fundamental) or replacement of any Loan Document;

(c) any unenforceability, illegality or invalidity of any obligation of any person under or in connection with any Loan Document, including any bar to recovery from the Borrower under any statute of limitations;

(d) the loss of capacity of the Borrower, any change in the name of the Borrower, or in the membership of the Borrower, if a partnership, or in the ownership, objects, capital structure or constitution of the Borrower, if a corporation, the sale of all or any part of the Borrower's business or the Borrower being amalgamated or merged with one or more other entities, and this Agreement shall, notwithstanding any such event, continue to apply to all Obligations whether previously or subsequently incurred; and in the case of a change in the membership of a Borrower that is a partnership or in the case of the Borrower being amalgamated or merged with one or more other entities, this Agreement shall also apply to the liabilities of the resulting or continuing entity, and the term "Borrower" shall include each resulting or continuing entity;

(e) any credit being granted or continued by the Lender purportedly to or for the Borrower after the death, loss of capacity, bankruptcy or insolvency of the Borrower;

(f) any lack or limitation of power, incapacity or disability of the Borrower or of the directors, partners or agents of the Borrower, or the Borrower not being a legal or suable entity, or any irregularity, defect or lack of formality in the obtaining of credit by the Borrower;

(g) any bankruptcy, insolvency or similar proceedings, including any stay of or moratorium on proceedings, any action or omission of the Lender in connection with any such proceedings, or any effect of any such proceedings on the Lender;

(h) any impossibility, impracticability, frustration of purpose, force majeure, illegality or act of governmental authority affecting any Loan Document;

(i) any taking or failure to take security, any loss of or loss of value of security for the Obligations, any invalidity, lack of perfection, unenforceability or release of any security, or any subordination, postponement or enforcement of, failure to enforce, or irregularity or deficiency in the enforcement of, any security or other right;

(j) the existence of any claim, set-off or other right that the Obligor may have against the Borrower, the Lender or any other person, whether in connection with the Loan Documents or otherwise; or

(k) any loss of, or adverse effect on, any right of the Obligor that is postponed pursuant to Section 6, whether or not caused by any act or omission of the Lender.

Each of the defences mentioned above is waived by the Obligor to the fullest extent permitted under applicable law.

4.3 Information Concerning Borrower The Obligor acknowledges that it is presently familiar with the Loan Documents, the financial condition of the Borrower and any other circumstances affecting the risk incurred by the Obligor in connection with this Agreement. The Obligor shall be solely responsible for keeping itself informed concerning those matters in the future. The Obligor acknowledges that the Lender has no obligation to provide any information concerning those matters now or in the future and that, if it does so at any time, it shall have no obligation to update the information or provide other information subsequently.

4.4 No Obligation to Enforce Other Rights The Obligor waives any right it may have of requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Obligor under this Agreement and the Obligor waives all benefits of discussion and division. These waivers apply irrespective of any law or any provision of any Loan Document to the contrary.

5. USE OF AMOUNTS RECEIVED

5.1 Use of Amounts Received Until this Agreement has been terminated in accordance with Section 3.4, the Lender (or any trustee or agent on its behalf) may:

(a) refrain from applying any money received or enforcing any other security or rights held by or on behalf of the Lender in respect of the Obligations, or apply any money and enforce any other security or rights in any manner and order as it sees fit;

(b) change any application of money received in whole or in part from time to time; and

(c) hold in a suspense account any money received from the Obligor or on account of the Obligor's liabilities under this Agreement.

6. POSTPONEMENT OF OBLIGOR’S RIGHTS

6.1 Postponement of Subrogation Etc. Until this Agreement has been terminated in accordance with Section 3.4, the Obligor shall not exercise any rights that it may have by reason of performance by it of its liabilities under this Agreement:

(a) to be indemnified by the Borrower;

(b) to claim contribution from any other guarantor of the Obligations; or

(c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under any Loan Document.

6.2 Postponement of Set-Off Etc. Until this Agreement has been terminated in accordance with Section 3.4, the Obligor shall not claim any set-off or counterclaim against the Borrower as a result of any liability of the Borrower to the Obligor, or claim or prove in the bankruptcy or insolvency of the Borrower in competition with the Lender.

6.3 Postponement and Assignment The Obligor assigns to the Lender all present and future debts, liabilities and obligations of the Borrower to the Obligor as security for payment of the Obligor's liabilities under this Agreement, and agrees that all money received by the Obligor in respect of those debts, liabilities and obligations shall be received in trust for the Lender and forthwith upon receipt shall be paid over to the Lender, all without in any way lessening or limiting the liabilities of the Obligor under this Agreement. The provisions of this Section 6.3 are independent of the other provisions of this Agreement and shall remain in full force and effect until this Agreement has been terminated in accordance with Section 3.4, notwithstanding that the other liabilities of the Obligor under this Agreement may have been discharged or terminated.

7. OBLIGATION TO MAKE PAYMENT

7.1 Payment Immediately After Demand The Obligor's liability to make a payment under this Agreement shall arise immediately after demand for payment has been made in writing on the Obligor. In connection with any demand, the Lender may treat all Obligations as due and payable and may demand immediate payment from the Obligor of the total amount of its liabilities under this Agreement, whether or not all Obligations are otherwise due and payable at the time of demand.

7.2 Right to Enforce Demands under this Agreement may be made from time to time, and the liabilities of the Obligor under this Agreement may be enforced, irrespective of:

(a) whether any demands, steps or proceedings are being or have been made or taken against the Borrower and/or any third party; or

(b) whether or in what order any security to which the Lender may be entitled in connection with any Loan Document is enforced.

7.3 Certificate as to Amount A certificate of the Lender specifying the outstanding amount of the Obligations shall be conclusive evidence of that amount against the Obligor in the absence of any manifest error.

7.4 Interest The Obligor's liabilities under this Agreement shall bear interest from the date of demand at the highest rate of interest per annum that is applicable to any part of the Obligations.

7.5 Rights Cumulative No failure on the part of the Lender to exercise, nor any delay in exercising, any right or remedy under any Loan Document or this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. Neither the taking of any judicial or extra-judicial proceeding nor the exercise of rights under any security held from the Obligor shall extinguish the liability of the Obligor to pay and perform its liabilities under this Agreement, nor shall the acceptance of any payment or security create any novation. No covenant, representation or warranty of the Obligor in this Agreement shall merge in any judgment. The rights and remedies provided in this Agreement are cumulative and do not exclude any rights and remedies provided by law or otherwise.

7.6 Limitation Periods To the extent that any limitation period applies to any claim for payment of the Obligations or remedy for enforcement of the Obligations, the Obligor agrees that:

(a) any limitation period is expressly excluded and waived entirely if permitted by applicable law;

(b) if a complete exclusion and waiver of any limitation period is not permitted by applicable law, any limitation period is extended to the maximum length permitted by applicable law;

(c) any applicable limitation period shall not begin before an express demand for payment of the Obligations is made in writing by the Lender to the Obligor;

(d) any applicable limitation period shall begin afresh upon any payment or other acknowledgment of the Obligations by the Obligor; and

(e) this Agreement is a "business agreement" as defined in the *Limitations Act, 2002* (Ontario) if that Act applies.

8. PAYMENTS

8.1 Withholdings Etc. Any payment made by the Obligor under this Agreement shall be made without any deduction or withholding for or on account of tax and without any set-off or counterclaim of any kind. However, if the Obligor is required by law to deduct, withhold or pay any tax in respect of any payment under this Agreement, then (i) the Obligor shall pay additional sums under this Agreement as necessary so that, after making or allowing for all required deductions, withholdings and payments (including deductions, withholdings and payments applicable to additional sums payable under this Section), the Lender receives an amount equal to the sum it would have received had no deductions, withholdings or payments been required, (ii) the Obligor shall make any deductions, withholdings or payments required by law to be made by it and (iii) the Obligor shall timely pay the full amount required to be deducted, withheld or paid to the relevant governmental authority in accordance with applicable law.

8.2 Currency and Place of Payment shall be made in the currency or currencies specified in the demand for payment to the Lender at Lender's at the address or account that the Lender may specify by in such demand or by written notice to the Obligor from time to time.

8.3 Currency Indemnity If a judgment or order is rendered by any court or tribunal for the payment of any amount owing to the Lender under or in connection with this Agreement and the judgment or order is expressed in a currency (the "**Judgment Currency**") other than the currency payable under or in connection with this Agreement (the "**Agreed Currency**"), the Obligor shall indemnify and hold the Lender harmless against any deficiency in terms of the Agreed Currency in the amount received by the Lender arising or resulting from any variation as between (a) the rate at which the Agreed Currency is converted into the Judgment Currency for the purposes of the judgment or order, and (b) the rate at which the Lender is able to purchase the Agreed Currency in accordance with normal banking practice with the amount of the Judgment Currency actually received by the Lender on the date of receipt. The indemnity in this Section shall constitute a separate and independent liability from the other liabilities of the Obligor under this Agreement, shall apply irrespective of any indulgence granted by the Lender, and shall be secured by any security held by the Lender from the Obligor.

8.4 Set-Off The Lender and each of its affiliates is authorized at any time and from time to time to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by the Lender or affiliate to or for the credit or the account of the Obligor against any and all of the liabilities of the Obligor now or in the future existing under this Agreement, irrespective of whether or not the Lender has made any demand under this Agreement and although those liabilities of the Obligor may be contingent or unmatured or are owed to a branch or office of the Lender different from the branch or office holding any deposit or obligated to the Obligor. The rights of the Lender and its affiliates under this Section 8.4 are in addition to other rights and remedies (including other rights of set-off, consolidation of accounts and bankers' lien) that the Lender or its affiliates may have.

9. NOTICES

9.1 Notices in Writing Any communication to be made under this Agreement shall be made in accordance with the Loan Agreement.

10. ENTIRE AGREEMENT; SEVERABILITY

10.1 Entire Agreement This Agreement embodies all the agreements between the Obligor and the Lender relating to the Obligations. No party shall be bound by any representation or promise made by any person relating to this Agreement that is not embodied in it. It is specifically agreed that the Lender shall not be bound by any representation or promise made by the Borrower to the Obligor. Any waiver of, or consent to departure from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Lender, and only in the specific instance and for the specific purpose for which it has been given.

10.2 Severability If, in any jurisdiction, any provision of this Agreement or its application to any circumstance is restricted, prohibited or unenforceable, that provision shall, as to that jurisdiction, be ineffective only to the extent of that restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement, without affecting the validity or enforceability of that provision in any other jurisdiction and, if applicable, without affecting its application to other circumstances.

11. DELIVERY OF AGREEMENT

11.1 Counterparts This Agreement may be executed in any number of counterparts and all counterparts taken together shall be deemed to constitute one agreement.

11.2 Delivery To evidence the fact that it has executed this Agreement, the Obligor may send a signed copy of this Agreement or its signature to this Agreement by facsimile transmission or e-mail and the signature sent in that way shall be deemed to be its original signature for all purposes.

11.3 No Conditions Possession of this Agreement by the Lender shall be conclusive evidence against the Obligor that the Agreement was not delivered in escrow or pursuant to any agreement that it should not be effective until any condition precedent or subsequent has been complied with. This Agreement shall be operative and binding notwithstanding that it is not executed by any proposed signatory.

11.4 Receipt and Waiver The Obligor acknowledges receipt of a copy of this Agreement. The Obligor waives any notice of acceptance of this Agreement by the Lender. The Obligor also waives the right to receive a copy of any financing statement or financing change statement that may be registered in connection with this Agreement or any verification statement issued with respect to a registration, if waiver is not otherwise prohibited by law. The Obligor agrees that the Lender may from time to time provide information regarding this Agreement and the Obligations to persons that the Lender believes in good faith are entitled to the information under applicable law.

12. GOVERNING LAW

12.1 Governing Law This Agreement and any dispute arising from or in relation to this Agreement shall be governed by, and interpreted and enforced in accordance with, the law of the province of Ontario and the laws of Canada applicable in that province, excluding the conflict of law rules of that province.

12.2 Obligor's Exclusive Dispute Resolution Jurisdiction The Obligor agrees that the courts of the province of Ontario have exclusive jurisdiction over any dispute arising from or in relation to this Agreement and the Obligor irrevocably and unconditionally attorns to the exclusive jurisdiction of that province. The Obligor agrees that the courts of that province are the most appropriate and convenient forum to settle disputes and agrees not to argue to the contrary.

12.3 Lender Entitled to Concurrent Jurisdiction Despite Section 12.2, the Lender is permitted to take proceedings in relation to any dispute arising from or in relation to this Agreement in any court of another province or another state with jurisdiction and to the extent allowed by law may take concurrent proceedings in any number of jurisdictions.

13. SUCCESSORS AND ASSIGNS

13.1 Successors and Assigns The Obligor may not assign or transfer all or any part of its liabilities under this Agreement. This Agreement shall enure to the benefit of the Lender and its successors and assigns and be binding on the Obligor and its successors and any permitted assigns.

[remainder of page left intentionally blank; signature page follows]

133525466:v2

IN WITNESS OF WHICH, the Obligor has duly executed this Agreement.

ACERUS PHARMACEUTICALS CORPORATION

By: ______________________
Name: Edward Gudaitis
Title: President & Chief Executive Officer

By: ______________________
Name:
Title

I/We have authority to bind the corporation.

[signature page for Guarantee and Indemnity by Acerus Pharmaceuticals Corporation]

Execution Version

GUARANTEE AND INDEMNITY

(Acerus Pharmaceuticals USA, LLC)

TO: First Generation Capital Inc. (the "**Lender**")

DATE: December 21, 2022

RECITALS:

A. The Obligor is a subsidiary of the Borrower. The Obligor is required to deliver this Agreement under the terms of the Loan Documents. The Obligor will derive substantial direct and indirect benefits and advantages from the financial accommodations to the Borrower under the Loan Documents, and it will be to the Obligor's direct interest and economic benefit to deliver this Agreement in order to allow the Borrower to obtain those financial accommodations. The Obligor acknowledges the value of that benefit.

FOR VALUE RECEIVED and intending to be legally bound by this guarantee and indemnity (the "**Agreement**"), the undersigned (the "**Obligor**") agrees as follows:

1. INTERPRETATION

1.1 Capitalized Terms In this Agreement, except where the context otherwise requires:

(a) "**Borrower**" means Acerus Pharmaceuticals Corporation.

(b) "**Loan Agreement**" means the loan agreement dated as of the date hereof between, *inter alios*, the Obligor and the Borrower, as borrowers, and the Lender, as lender, as amended, supplemented, restated and replaced from time to time.

(c) "**Loan Documents**" means, collectively, the Promissory Note, the Loan Agreement, and any other document or security relating to the Obligations, and "Loan Document" means each of them individually.

(d) "**Obligations**" means all debts, liabilities and obligations of the Borrower to the Lender, whether present or future, direct or indirect, absolute or contingent, matured or not, at any time owing or remaining unpaid by the Borrower to the Lender in any currency, whether arising from dealings between the Lender and the Borrower or from other dealings or proceedings by which the Lender may be or become in any manner whatever a creditor of the Borrower, and wherever incurred, and whether incurred by the Borrower alone or with another or others and whether as principal or surety (including, without limitation, obligations under or in connection with Loan Documents or any of them), and all interest, fees, commissions and legal and other costs, charges and expenses owing or remaining unpaid by the Borrower to the Lender in any currency.

(e) "**Promissory Note**" means the third amended and restated secured grid promissory note dated March 30, 2022 by the Borrower in favour of the Lender (amending and restating the Original Note (as defined therein)), as amended by Amendment #1 to Third Amended and Restated Secured Grid Promissory Note dated as of June 23, 2022, Amendment #2 to Third Amended and Restated Secured Grid Promissory Note dated as of August 4, 2022 and Amendment #3 to Third Amended and Restated Secured Grid Promissory Note dated as of the date hereof, as further amended, supplemented, restated and replaced from time to time.

1.2 No *Contra Proferentum* This Agreement has been negotiated by the Obligor and the Lender with the benefit of legal representation, and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the construction or interpretation of this Agreement.

1.3 Other Interpretation Rules In this Agreement:

(a) The division into Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

(b) Unless otherwise specified or the context otherwise requires, (i) "including" or "includes" means "including (or includes) but is not limited to" and shall not be construed to limit any general statement preceding it to the specific or similar items or matters immediately following it, (ii) a reference to any legislation, statutory instrument or regulation or a section thereof is a reference to the legislation, statutory instrument, regulation or section as amended, restated and re-enacted from time to time, and (iii) words in the singular include the plural and vice-versa and words in one gender include all genders.

(c) Unless otherwise specified or the context otherwise requires, any reference in this Agreement to payment of the Obligations includes performance of the Obligations.

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2.2 Indemnity The Obligor also unconditionally agrees that, if the Borrower does not unconditionally and irrevocably pay any Obligations when due and those Obligations are not recoverable from the Obligor for any reason under Section 2.1, the Obligor shall indemnify the Lender immediately on demand against any cost, loss, damage, expense or liability suffered by the Lender as a result of the Borrower's failure to do so.

2.3 Separate Liabilities The liabilities of the Obligor under Sections 2.1 and 2.2 are separate and distinct from each other, but the provisions of this Agreement shall apply to the liabilities under both of those Sections unless the context otherwise requires.

2.4 Limit on Liability The liability of the Obligor under this Agreement is unlimited.

2.5 Irrevocable This Agreement is irrevocable by the Obligor and, subject to Section 3.4, the Obligor expressly and unconditionally waives any right to terminate this Agreement.

3. CONTINUING AGREEMENT AND REINSTATEMENT

3.1 Continuing Agreement This Agreement is a continuing guarantee and indemnity and will extend to the ultimate balance of the Obligations, regardless of any intermediate payment or discharge of the Obligations in whole or in part. Without limiting the foregoing, the Obligations may include advances and re-advances under revolving credit facilities, which permit borrowing, repayment of all or part of the amount borrowed and re-borrowing of amounts previously paid.

3.2 Payments in Gross Until this Agreement has been terminated in accordance with Section 3.4, all amounts of any kind received by the Lender from any source in respect of the Obligations shall be regarded for all purposes as payments in gross without any right on the part of the Obligor to claim the benefit of those amounts in reduction of its liabilities under this Agreement.

3.3 Reinstatement If at any time any payment of the Obligations is or must be rescinded or returned by the Lender as a result of insolvency or reorganization of the Borrower, the Obligor or any other person, or for any other reason whatsoever, the Obligations will be deemed to have continued in existence and this Agreement shall continue to be effective, or be reinstated, as if the payment had not occurred. The Lender may concede or compromise any claim that any payment ought to be rescinded or returned without diminishing the liability of the Obligor under this Section.

3.4 Termination If the Obligations have been indefeasibly paid in full in cash and if all obligations of the Lender to extend credit under any Loan Document have been cancelled, then the Lender shall, at the request and expense of the Obligor, execute and deliver whatever documents are reasonably required to acknowledge the termination of this Agreement.

4. WAIVER OF DEFENCES AND OTHER MATTERS

4.1 In Addition to Other Rights; No Marshalling This Agreement is in addition to and is not in any way prejudiced by or merged with any other guarantee, indemnity or security now or subsequently held by the Lender in respect of any Obligations. The Lender shall be under no obligation to marshal in favour of the Obligor any other guarantees or other securities or any money or other property that the Lender may be entitled to receive or may have a claim upon.

4.2 Liabilities Unconditional The liabilities of the Obligor under this Agreement are absolute and unconditional, and will not be affected by any act, omission, law, circumstance or thing that, but for this Section, would reduce, release or prejudice any of its liabilities under this Agreement, or that might constitute a legal or equitable defence to or a discharge, limitation or reduction of the Obligor's liabilities under this Agreement, including the following, whether or not known to it or the Lender or consented to by it or the Lender:

(a) any discontinuance, reduction, increase, extension or other variance of the credit granted by the Lender to the Borrower or any time, waiver or consent granted to, or any release of or compromise or other dealing of any kind with, the Borrower or any other person;

(b) any amendment, supplement or restatement (however fundamental) or replacement of any Loan Document;

(c) any unenforceability, illegality or invalidity of any obligation of any person under or in connection with any Loan Document, including any bar to recovery from the Borrower under any statute of limitations;

(d) the loss of capacity of the Borrower, any change in the name of the Borrower, or in the membership of the Borrower, if a partnership, or in the ownership, objects, capital structure or constitution of the Borrower, if a corporation, the sale of all or any part of the Borrower's business or the Borrower being amalgamated or merged with one or more other entities, and this Agreement shall, notwithstanding any such event, continue to apply to all Obligations whether previously or subsequently incurred; and in the case of a change in the membership of a Borrower that is a partnership or in the case of the Borrower being amalgamated or merged with one or more other entities, this Agreement shall also apply to the liabilities of the resulting or continuing entity, and the term "Borrower" shall include each resulting or continuing entity;

(e) any credit being granted or continued by the Lender purportedly to or for the Borrower after the death, loss of capacity, bankruptcy or insolvency of the Borrower;

(f) any lack or limitation of power, incapacity or disability of the Borrower or of the directors, partners or agents of the Borrower, or the Borrower not being a legal or suable entity, or any irregularity, defect or lack of formality in the obtaining of credit by the Borrower;

(g) any bankruptcy, insolvency or similar proceedings, including any stay of or moratorium on proceedings, any action or omission of the Lender in connection with any such proceedings, or any effect of any such proceedings on the Lender;

(h) any impossibility, impracticability, frustration of purpose, force majeure, illegality or act of governmental authority affecting any Loan Document;

(i) any taking or failure to take security, any loss of or loss of value of security for the Obligations, any invalidity, lack of perfection, unenforceability or release of any security, or any subordination, postponement or enforcement of, failure to enforce, or irregularity or deficiency in the enforcement of, any security or other right;

(j) the existence of any claim, set-off or other right that the Obligor may have against the Borrower, the Lender or any other person, whether in connection with the Loan Documents or otherwise; or

(k) any loss of, or adverse effect on, any right of the Obligor that is postponed pursuant to Section 6, whether or not caused by any act or omission of the Lender.

Each of the defences mentioned above is waived by the Obligor to the fullest extent permitted under applicable law.

4.3 Information Concerning Borrower The Obligor acknowledges that it is presently familiar with the Loan Documents, the financial condition of the Borrower and any other circumstances affecting the risk incurred by the Obligor in connection with this Agreement. The Obligor shall be solely responsible for keeping itself informed concerning those matters in the future. The Obligor acknowledges that the Lender has no obligation to provide any information concerning those matters now or in the future and that, if it does so at any time, it shall have no obligation to update the information or provide other information subsequently.

4.4 No Obligation to Enforce Other Rights The Obligor waives any right it may have of requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Obligor under this Agreement and the Obligor waives all benefits of discussion and division. These waivers apply irrespective of any law or any provision of any Loan Document to the contrary.

5. USE OF AMOUNTS RECEIVED

5.1 Use of Amounts Received Until this Agreement has been terminated in accordance with Section 3.4, the Lender (or any trustee or agent on its behalf) may:

(a) refrain from applying any money received or enforcing any other security or rights held by or on behalf of the Lender in respect of the Obligations, or apply any money and enforce any other security or rights in any manner and order as it sees fit;

(b) change any application of money received in whole or in part from time to time; and

(c) hold in a suspense account any money received from the Obligor or on account of the Obligor's liabilities under this Agreement.

6. POSTPONEMENT OF OBLIGOR’S RIGHTS

6.1 Postponement of Subrogation Etc. Until this Agreement has been terminated in accordance with Section 3.4, the Obligor shall not exercise any rights that it may have by reason of performance by it of its liabilities under this Agreement:

(a) to be indemnified by the Borrower;

(b) to claim contribution from any other guarantor of the Obligations; or

(c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under any Loan Document.

6.2 Postponement of Set-Off Etc. Until this Agreement has been terminated in accordance with Section 3.4, the Obligor shall not claim any set-off or counterclaim against the Borrower as a result of any liability of the Borrower to the Obligor, or claim or prove in the bankruptcy or insolvency of the Borrower in competition with the Lender.

6.3 Postponement and Assignment The Obligor assigns to the Lender all present and future debts, liabilities and obligations of the Borrower to the Obligor as security for payment of the Obligor's liabilities under this Agreement, and agrees that all money received by the Obligor in respect of those debts, liabilities and obligations shall be received in trust for the Lender and forthwith upon receipt shall be paid over to the Lender, all without in any way lessening or limiting the liabilities of the Obligor under this Agreement. The provisions of this Section 6.3 are independent of the other provisions of this Agreement and shall remain in full force and effect until this Agreement has been terminated in accordance with Section 3.4, notwithstanding that the other liabilities of the Obligor under this Agreement may have been discharged or terminated.

7. OBLIGATION TO MAKE PAYMENT

7.1 Payment Immediately After Demand The Obligor's liability to make a payment under this Agreement shall arise immediately after demand for payment has been made in writing on the Obligor. In connection with any demand, the Lender may treat all Obligations as due and payable and may demand immediate payment from the Obligor of the total amount of its liabilities under this Agreement, whether or not all Obligations are otherwise due and payable at the time of demand.

7.2 Right to Enforce Demands under this Agreement may be made from time to time, and the liabilities of the Obligor under this Agreement may be enforced, irrespective of:

(a) whether any demands, steps or proceedings are being or have been made or taken against the Borrower and/or any third party; or

(b) whether or in what order any security to which the Lender may be entitled in connection with any Loan Document is enforced.

7.3 Certificate as to Amount A certificate of the Lender specifying the outstanding amount of the Obligations shall be conclusive evidence of that amount against the Obligor in the absence of any manifest error.

7.4 Interest The Obligor's liabilities under this Agreement shall bear interest from the date of demand at the highest rate of interest per annum that is applicable to any part of the Obligations.

7.5 Rights Cumulative No failure on the part of the Lender to exercise, nor any delay in exercising, any right or remedy under any Loan Document or this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any

further or other exercise or the exercise of any other right or remedy. Neither the taking of any judicial or extra-judicial proceeding nor the exercise of rights under any security held from the Obligor shall extinguish the liability of the Obligor to pay and perform its liabilities under this Agreement, nor shall the acceptance of any payment or security create any novation. No covenant, representation or warranty of the Obligor in this Agreement shall merge in any judgment. The rights and remedies provided in this Agreement are cumulative and do not exclude any rights and remedies provided by law or otherwise.

7.6 Limitation Periods To the extent that any limitation period applies to any claim for payment of the Obligations or remedy for enforcement of the Obligations, the Obligor agrees that:

(a) any limitation period is expressly excluded and waived entirely if permitted by applicable law;

(b) if a complete exclusion and waiver of any limitation period is not permitted by applicable law, any limitation period is extended to the maximum length permitted by applicable law;

(c) any applicable limitation period shall not begin before an express demand for payment of the Obligations is made in writing by the Lender to the Obligor;

(d) any applicable limitation period shall begin afresh upon any payment or other acknowledgment of the Obligations by the Obligor; and

(e) this Agreement is a "business agreement" as defined in the *Limitations Act, 2002* (Ontario) if that Act applies.

8. PAYMENTS

8.1 Withholdings Etc. Any payment made by the Obligor under this Agreement shall be made without any deduction or withholding for or on account of tax and without any set-off or counterclaim of any kind. However, if the Obligor is required by law to deduct, withhold or pay any tax in respect of any payment under this Agreement, then (i) the Obligor shall pay additional sums under this Agreement as necessary so that, after making or allowing for all required deductions, withholdings and payments (including deductions, withholdings and payments applicable to additional sums payable under this Section), the Lender receives an amount equal to the sum it would have received had no deductions, withholdings or payments been required, (ii) the Obligor shall make any deductions, withholdings or payments required by law to be made by it and (iii) the Obligor shall timely pay the full amount required to be deducted, withheld or paid to the relevant governmental authority in accordance with applicable law.

8.2 Currency and Place of Payment shall be made in the currency or currencies specified in the demand for payment to the Lender at Lender's at the address or account that the Lender may specify by in such demand or by written notice to the Obligor from time to time.

8.3 Currency Indemnity If a judgment or order is rendered by any court or tribunal for the payment of any amount owing to the Lender under or in connection with this Agreement and the judgment or order is expressed in a currency (the "**Judgment Currency**") other than the currency payable under or in connection with this Agreement (the "**Agreed Currency**"), the Obligor shall indemnify and hold the Lender harmless against any deficiency in terms of the Agreed Currency in the amount received by the Lender arising or resulting from any variation as between (a) the rate at which the Agreed Currency is converted into the Judgment Currency for the purposes of the judgment or order, and (b) the rate at which the Lender is able to purchase the Agreed Currency in accordance with normal banking practice with the amount of the Judgment Currency actually received by the Lender on the date of receipt. The indemnity in this Section shall constitute a separate and independent liability from the other liabilities of the Obligor under this Agreement, shall apply irrespective of any indulgence granted by the Lender, and shall be secured by any security held by the Lender from the Obligor.

8.4 Set-Off The Lender and each of its affiliates is authorized at any time and from time to time to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by the Lender or affiliate to or for the credit or the account of the Obligor against any and all of the liabilities of the Obligor now or in the future existing under this Agreement, irrespective of whether or not the Lender has made any demand under this Agreement and although those liabilities of the Obligor may be contingent or unmatured or are owed to a branch or office of the Lender different from the branch or office holding any deposit or obligated to the Obligor. The rights of the Lender and its affiliates under this Section 8.4 are in addition to other rights and remedies (including other rights of set-off, consolidation of accounts and bankers' lien) that the Lender or its affiliates may have.

9. NOTICES

9.1 Notices in Writing Any communication to be made under this Agreement shall be made in accordance with the Loan Agreement.

10. ENTIRE AGREEMENT; SEVERABILITY

10.1 Entire Agreement This Agreement embodies all the agreements between the Obligor and the Lender relating to the Obligations. No party shall be bound by any representation or promise made by any person relating to this Agreement that is not embodied in it. It is specifically agreed that the Lender shall not be bound by any representation or promise made by the Borrower to the Obligor. Any waiver of, or consent to departure from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Lender, and only in the specific instance and for the specific purpose for which it has been given.

10.2 Severability If, in any jurisdiction, any provision of this Agreement or its application to any circumstance is restricted, prohibited or unenforceable, that provision shall, as to that jurisdiction, be ineffective only to the extent of that restriction, prohibition or

unenforceability without invalidating the remaining provisions of this Agreement, without affecting the validity or enforceability of that provision in any other jurisdiction and, if applicable, without affecting its application to other circumstances.

11. DELIVERY OF AGREEMENT

11.1 Counterparts This Agreement may be executed in any number of counterparts and all counterparts taken together shall be deemed to constitute one agreement.

11.2 Delivery To evidence the fact that it has executed this Agreement, the Obligor may send a signed copy of this Agreement or its signature to this Agreement by facsimile transmission or e-mail and the signature sent in that way shall be deemed to be its original signature for all purposes.

11.3 No Conditions Possession of this Agreement by the Lender shall be conclusive evidence against the Obligor that the Agreement was not delivered in escrow or pursuant to any agreement that it should not be effective until any condition precedent or subsequent has been complied with. This Agreement shall be operative and binding notwithstanding that it is not executed by any proposed signatory.

11.4 Receipt and Waiver The Obligor acknowledges receipt of a copy of this Agreement. The Obligor waives any notice of acceptance of this Agreement by the Lender. The Obligor also waives the right to receive a copy of any financing statement or financing change statement that may be registered in connection with this Agreement or any verification statement issued with respect to a registration, if waiver is not otherwise prohibited by law. The Obligor agrees that the Lender may from time to time provide information regarding this Agreement and the Obligations to persons that the Lender believes in good faith are entitled to the information under applicable law.

12. GOVERNING LAW

12.1 Governing Law This Agreement and any dispute arising from or in relation to this Agreement shall be governed by, and interpreted and enforced in accordance with, the law of the province of Ontario and the laws of Canada applicable in that province, excluding the conflict of law rules of that province.

12.2 Obligor's Exclusive Dispute Resolution Jurisdiction The Obligor agrees that the courts of the province of Ontario have exclusive jurisdiction over any dispute arising from or in relation to this Agreement and the Obligor irrevocably and unconditionally attorns to the exclusive jurisdiction of that province. The Obligor agrees that the courts of that province are the most appropriate and convenient forum to settle disputes and agrees not to argue to the contrary.

12.3 Lender Entitled to Concurrent Jurisdiction Despite Section 12.2, the Lender is permitted to take proceedings in relation to any dispute arising from or in relation to this Agreement in any court of another province or another state with jurisdiction and to the extent allowed by law may take concurrent proceedings in any number of jurisdictions.

13. SUCCESSORS AND ASSIGNS

13.1 Successors and Assigns The Obligor may not assign or transfer all or any part of its liabilities under this Agreement. This Agreement shall enure to the benefit of the Lender and its successors and assigns and be binding on the Obligor and its successors and any permitted assigns.

[remainder of page left intentionally blank; signature page follows]

133480300:v2

IN WITNESS OF WHICH, the Obligor has duly executed this Agreement.

ACERUS PHARMACEUTICALS USA, LLC

By: ______________________
Name: Edward Gudaitis
Title: President

By: ______________________
Name:
Title

I/We have authority to bind the corporation.

[signature page for Guarantee and Indemnity by Acerus Pharmaceuticals USA, LLC]

This is Exhibit "L" referred to in the Affidavit of Naveed Z. Manzoor
sworn by Naveed Z. Manzoor of the Town of Oakville,
in the Province of Ontario, before me at the City of Toronto,
in the Province of Ontario, on January 25, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

DocuSigned by:

Philip

36124C4218DD47C...

Commissioner for Taking Affidavits

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

SEARCH CONDUCTED ON : ACERUS PHARMACEUTICALS CORPORATION

FILE CURRENCY : 19JAN 2023

ENQUIRY NUMBER 20230120123339.05 CONTAINS 4 PAGE(S), 1 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

CENTRO - SE - BL

303-425 UNIVERSITY AVE
TORONTO ON M5G1T6

CERTIFIED BY/CERTIFIÉES PAR
V. Quintanilla W.
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES
(crfj6 05/2022)

CONTINUED... 2

Ontario

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : ACERUS PHARMACEUTICALS CORPORATION
FILE CURRENCY : 19JAN 2023

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER 771866631

	CAUTION FILING	PAGE NO.	OF	TOTAL PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
01		001		1		20210426 0928 9234 6867	P PPSA	5

02 DEBTOR NAME — DATE OF BIRTH / FIRST GIVEN NAME / INITIAL / SURNAME
03 BUSINESS NAME ACERUS PHARMACEUTICALS CORPORATION
ONTARIO CORPORATION NO.
04 ADDRESS 2486 DUNWIN DRIVE MISSISSAUGA ON L5L 1J9

05 DEBTOR NAME — DATE OF BIRTH / FIRST GIVEN NAME / INITIAL / SURNAME
06 BUSINESS NAME
ONTARIO CORPORATION NO.
07 ADDRESS

08 SECURED PARTY / LIEN CLAIMANT FIRST GENERATION CAPITAL INC.
09 ADDRESS 40 KING STREET WEST TORONTO ON M5H 3Y2

COLLATERAL CLASSIFICATION

	CONSUMER GOODS	INVENTORY	EQUIPMENT	ACCOUNTS	OTHER	MOTOR VEHICLE INCLUDED	AMOUNT	DATE OF MATURITY	OR	NO FIXED MATURITY DATE
10		X	X	X	X	X				

	YEAR	MAKE	MODEL	V.I.N.
11 MOTOR				
12 VEHICLE				

13 GENERAL
14 COLLATERAL
15 DESCRIPTION

16 REGISTERING AGENT STIKEMAN ELLIOTT LLP
17 ADDRESS 5300 COMMERCE COURT WEST, 199 BAY STREET TORONTO ON M5L 1B9

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 3

CERTIFIED BY/CERTIFIÉES PAR
V. Quintanilla W.
REGISTRAR OF PERSONAL PROPERTY SECURITY/ LE REGISTRATEUR DES SÛRETÉS MOBILIÈRES

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : ACERUS PHARMACEUTICALS CORPORATION
FILE CURRENCY : 19JAN 2023

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

	CAUTION FILING	PAGE NO.	OF TOTAL PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER
01		001	1		20211214 0956 9234 0324	

21 RECORD REFERENCED — FILE NUMBER: 771866631

22 PAGE AMENDED: 1 | NO SPECIFIC PAGE AMENDED | CHANGE REQUIRED: A AMENDMENT | RENEWAL YEARS | CORRECT PERIOD

23 REFERENCE DEBTOR/ TRANSFEROR — FIRST GIVEN NAME | INITIAL | SURNAME
24 BUSINESS NAME: ACERUS PHARMACEUTICALS CORPORATION

25 OTHER CHANGE
26 REASON/ DESCRIPTION: AMENDED TO CHANGE THE ADDRESS OF THE DEBTOR
27
28

02/ 05 DEBTOR/ TRANSFEREE — DATE OF BIRTH | FIRST GIVEN NAME | INITIAL | SURNAME
03/ 06 BUSINESS NAME: ACERUS PHARMACEUTICALS CORPORATION — ONTARIO CORPORATION NO.
04/07 ADDRESS: 7025 LANGER DRIVE, SUITE 205 MISSISSAUGA ON L5N 0E8

29 ASSIGNOR
08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE
09 ADDRESS

COLLATERAL CLASSIFICATION
10 CONSUMER GOODS | INVENTORY | EQUIPMENT | ACCOUNTS | OTHER | MOTOR VEHICLE INCLUDED | AMOUNT | DATE OF MATURITY | OR | NO FIXED MATURITY DATE

11 MOTOR VEHICLE — YEAR | MAKE | MODEL | V.I.N.
12
13 GENERAL COLLATERAL DESCRIPTION
14
15

16 REGISTERING AGENT OR SECURED PARTY/ LIEN CLAIMANT: STIKEMAN ELLIOTT LLP
17 ADDRESS: 5300 COMMERCE COURT WEST, 199 BAY STREET TORONTO ON M5L 1B9

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 4

CERTIFIED BY/CERTIFIÉES PAR
V. Quintanilla W.
REGISTRAR OF PERSONAL PROPERTY SECURITY/ LE REGISTRATEUR DES SÛRETÉS MOBILIÈRES
(crj2fv 05/2022)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : ACERUS PHARMACEUTICALS CORPORATION
FILE CURRENCY : 19JAN 2023

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
771866631	20210426 0928 9234 6867	20211214 0956 9234 0324		

2 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.

CERTIFIED BY/CERTIFIÉES PAR

V. Quintanilla W.

REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES

(crlj6 05/2022)

Ontario

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

SEARCH CONDUCTED ON : ACERUS BIOPHARMA INC.

FILE CURRENCY : 19JAN 2023

ENQUIRY NUMBER 20230120123344.44 CONTAINS 3 PAGE(S), 1 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

CENTRO - SE - BL

303-425 UNIVERSITY AVE
TORONTO ON M5G1T6

CERTIFIED BY/CERTIFIÉES PAR
V. Quintanilla W.
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES
(crfj6 05/2022)

CONTINUED... 2

Ontario

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : ACERUS BIOPHARMA INC.
FILE CURRENCY : 19JAN 2023

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER
789285879

01 CAUTION FILING | PAGE NO. 001 | OF TOTAL PAGES 1 | MOTOR VEHICLE SCHEDULE | REGISTRATION NUMBER 20221214 0904 1590 2874 | REGISTERED UNDER P PPSA | REGISTRATION PERIOD 5

02 DEBTOR NAME — DATE OF BIRTH | FIRST GIVEN NAME | INITIAL | SURNAME
03 BUSINESS NAME: ACERUS BIOPHARMA INC. — ONTARIO CORPORATION NO.
04 ADDRESS: 7025 LANGER DRIVE, SUITE 205 MISSISSAUGA ON L5N 0E8

05 DEBTOR NAME — DATE OF BIRTH | FIRST GIVEN NAME | INITIAL | SURNAME
06 BUSINESS NAME — ONTARIO CORPORATION NO.
07 ADDRESS

08 SECURED PARTY / LIEN CLAIMANT: FIRST GENERATION CAPITAL INC.
09 ADDRESS: 40 KING STREET WEST TORONTO ON M5H 3Y2

COLLATERAL CLASSIFICATION

	CONSUMER GOODS	INVENTORY	EQUIPMENT	ACCOUNTS	OTHER	MOTOR VEHICLE INCLUDED	AMOUNT	DATE OF MATURITY	OR	NO FIXED MATURITY DATE
10		X	X	X	X	X				

11 MOTOR — YEAR | MAKE | MODEL | V.I.N.
12 VEHICLE

13 GENERAL
14 COLLATERAL
15 DESCRIPTION

16 REGISTERING AGENT: BORDEN LADNER GERVAIS LLP
17 ADDRESS: 22 ADELAIDE STREET WEST, SUITE 3400 TORONTO ON M5H 4E3

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 3

CERTIFIED BY/CERTIFIÉES PAR
V. Quintanilla W.
REGISTRAR OF PERSONAL PROPERTY SECURITY/ LE REGISTRATEUR DES SÛRETÉS MOBILIÈRES
(crj1fv 05/2022)

Ontario

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : ACERUS BIOPHARMA INC.
FILE CURRENCY : 19JAN 2023

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
789285879	20221214 0904 1590 2874			

1 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.

CERTIFIED BY/CERTIFIÉES PAR

V. Quintanilla W.

REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES

(crfj6 05/2022)

Ontario

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

SEARCH CONDUCTED ON : ACERUS LABS INC.

FILE CURRENCY : 19JAN 2023

ENQUIRY NUMBER 20230120123349.85 CONTAINS 3 PAGE(S), 1 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

CENTRO - SE - BL

303-425 UNIVERSITY AVE
TORONTO ON M5G1T6

CERTIFIED BY/CERTIFIÉES PAR
V. Quintanilla W.
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES
(crfj6 05/2022)

CONTINUED... 2

Ontario

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : ACERUS LABS INC.
FILE CURRENCY : 19JAN 2023

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER 789285897

01 CAUTION FILING | PAGE NO. 001 OF TOTAL PAGES 1 | MOTOR VEHICLE SCHEDULE | REGISTRATION NUMBER 20221214 0904 1590 2875 | REGISTERED UNDER P PPSA | REGISTRATION PERIOD 5

02 DEBTOR NAME — DATE OF BIRTH | FIRST GIVEN NAME | INITIAL | SURNAME
03 BUSINESS NAME: ACERUS LABS INC. — ONTARIO CORPORATION NO.
04 ADDRESS: 7025 LANGER DRIVE, SUITE 205 MISSISSAUGA ON L5N 0E8

05 DEBTOR NAME — DATE OF BIRTH | FIRST GIVEN NAME | INITIAL | SURNAME
06 BUSINESS NAME — ONTARIO CORPORATION NO.
07 ADDRESS

08 SECURED PARTY / LIEN CLAIMANT: FIRST GENERATION CAPITAL INC.
09 ADDRESS: 40 KING STREET WEST TORONTO ON M5H 3Y2

COLLATERAL CLASSIFICATION

	CONSUMER GOODS	INVENTORY	EQUIPMENT	ACCOUNTS	OTHER	MOTOR VEHICLE INCLUDED	AMOUNT	DATE OF MATURITY	OR	NO FIXED MATURITY DATE
10		X	X	X	X	X				

11 MOTOR
12 VEHICLE — YEAR | MAKE | MODEL | V.I.N.

13 GENERAL
14 COLLATERAL
15 DESCRIPTION

16 REGISTERING AGENT: BORDEN LADNER GERVAIS LLP
17 ADDRESS: 22 ADELAIDE STREET WEST, SUITE 3400 TORONTO ON M5H 4E3

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 3

CERTIFIED BY/CERTIFIÉES PAR
V. Quintanilla W.
REGISTRAR OF PERSONAL PROPERTY SECURITY/ LE REGISTRATEUR DES SÛRETÉS MOBILIÈRES

(crj1fv 05/2022)

Ontario

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : ACERUS LABS INC.
FILE CURRENCY : 19JAN 2023

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
789285897	20221214 0904 1590 2875			

1 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.

CERTIFIED BY/CERTIFIÉES PAR
V. Quintanilla W.
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES

(crfj6 05/2022)

Ontario

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

SEARCH CONDUCTED ON : ACERUS PHARMACEUTICALS USA, LLC

FILE CURRENCY : 19JAN 2023

ENQUIRY NUMBER 20230120123356.27 CONTAINS 1 PAGE(S), 0 FAMILY(IES).

NO REGISTRATIONS ARE REPORTED IN THIS ENQUIRY RESPONSE.

CENTRO - SE - BL

303-425 UNIVERSITY AVE
TORONTO ON M5G1T6

CERTIFIED BY/CERTIFIÉES PAR
V. Quintanilla W.
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES

(crfj6 05/2022)

Ontario

This is Exhibit "M" referred to in the Affidavit of Naveed Z. Manzoor
sworn by Naveed Z. Manzoor of the Town of Oakville,
in the Province of Ontario, before me at the City of Toronto,
in the Province of Ontario, on January 25, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

DocuSigned by:

Philip V

36124C4218DD47C...

Commissioner for Taking Affidavits

Delaware

The First State

CERTIFICATE

SEARCHED JANUARY 20, 2023 AT 2:47 P.M.
FOR DEBTOR, ACERUS PHARMACEUTICALS USA, LLC

1 OF 1	*FINANCING STATEMENT*	*20220613784*

EXPIRATION DATE: 12/22/2027

DEBTOR:	*ACERUS PHARMACEUTICALS USA, LLC*		
	500 OFFICE CENTER DRIVE, SUITE 400	*ADDED*	*12-22-22*
	FORT WASHINGTON, PA US 19034		
SECURED:	*FIRST GENERATION CAPITAL INC.*		
	40 KING STREET WEST	*ADDED*	*12-22-22*
	TORONTO, ON CA M5H3Y2		

F I L I N G H I S T O R Y

20220613784 FILED 12-22-22 AT 12:10 P.M. FINANCING STATEMENT

E N D O F F I L I N G H I S T O R Y

THE UNDERSIGNED FILING OFFICER HEREBY CERTIFIES THAT THE ABOVE LISTING IS A RECORD OF ALL PRESENTLY EFFECTIVE FINANCING STATEMENTS, LAPSED FINANCING STATEMENTS, FEDERAL TAX LIENS AND UTILITY SECURITY INSTRUMENTS FILED IN THIS OFFICE WHICH NAME THE ABOVE DEBTOR, ACERUS PHARMACEUTICALS USA, LLC AS OF JANUARY 18, 2023 AT 11:59 P.M.

Jeffrey W. Bullock, Secretary of State

SECRETARY'S OFFICE 1793 DELAWARE 1855

20241196814-UCC11
SR# 20230208192

Authentication: 202540650
Date: 01-20-23

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
(949) 359-4228

B. E-MAIL CONTACT AT FILER (optional)
CAORDERS@UNISEARCH.COM

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

UNISEARCH, INC. - CA
4 VENTURE, SUITE 280
IRVINE, CA 92618
US

Delaware Department of State
U.C.C. Filing Section
Filed: 12:10 PM 12/22/2022
U.C.C. Initial Filing No: 2022 0613784

Service Request No: 20224351745

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME				
ACERUS PHARMACEUTICALS USA, LLC				
OR 1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
500 OFFICE CENTER DRIVE, SUITE 400	FORT WASHINGTON	PA	19034	US

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR 2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME				
FIRST GENERATION CAPITAL INC.				
OR 3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
40 KING STREET WEST	TORONTO	ON	M5H 3Y2	CA

4. COLLATERAL: This financing statement covers the following collateral:
All assets.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:
☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:
☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:
TO BE FILED W/ DE SOS

This is Exhibit "N" referred to in the Affidavit of Naveed Z. Manzoor
sworn by Naveed Z. Manzoor of the Town of Oakville,
in the Province of Ontario, before me at the City of Toronto,
in the Province of Ontario, on January 25, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

DocuSigned by:

Philip V

36124C4218DD47C...

Commissioner for Taking Affidavits

AMENDED AND RESTATED PROMISSORY NOTE

$4,907,876.02

New York, New York
as of June 6, 2022

FOR VALUE RECEIVED, ACERUS PHARMACEUTICALS CORPORATION, an Ontario company (the "Maker"), DOES HEREBY PROMISE TO PAY to the lenders set forth on Schedule 1 attached hereto (the "Securityholders") at the office of the Securityholder Representative at 408 NE 31st Street, Unit 2501, Miami, FL 33137, or such other place as the Securityholder Representative may designate in writing, in lawful money of the United States of America in immediately available funds, on the Maturity Date, the principal amount of FOUR MILLION NINE HUNDRED SEVEN THOUSAND EIGHT HUNDRED SEVENTY-SIX UNITED STATES DOLLARS AND TWO CENTS ($4,907,876.02). **This Amended and Restated Promissory Note amends and restates in its entirety, but is not a novation of, that certain Promissory Note dated as of March 7, 2022 (the "Original Issue Date").**

1. Definitions. For the purposes hereof, the following terms shall have the indicated meanings:

"Event of Default" shall have the meaning specified in Section 6.

"Maturity Date" shall mean July 8, 2022.

"Note" shall mean this Amended and Restated Promissory Note.

"Securityholder Representative" shall mean Dr. Samuel Herschkowitz, solely in his capacity as the representative, agent and attorney-in-fact of the Securityholders.

Capitalized terms used and not otherwise defined shall have the meanings set forth in that certain Agreement and Plan of Merger dated as of the date hereof by and among the Maker, Lazarus Merger Sub, Inc., Serenity Pharmaceuticals LLC, the Key Securityholders (as defined therein) and the Securityholder Representative.

2. Interest. The unpaid principal amount of this Note outstanding shall bear interest at the Applicable Federal Rate from the Original Issue Date until paid in full and shall be paid together with the principal on the Maturity Date. If an Event of Default shall occur and fail to be cured within thirty (30) days following the occurrence of such Event of Default, interest shall accrue thereafter on the unpaid principal amount of this Note at a rate per annum equal to the 1 month LIBOR plus ten percent, and be payable on demand. For purposes hereof, "Applicable Federal Rate" means the applicable federal rate for short-term instruments as published by the U.S. Internal Revenue Service as of the date of this Note; and LIBOR means the London Interbank Offered Rate as published in The Wall Street Journal on any date of determination.

3. Payments. All payments of principal in respect of this Note shall be made for the benefit of the Securityholders, in lawful money of the United States of America in immediately available funds to such accounts as the Securityholder Representative may designate in writing. Maker shall direct payment to the Cash Paying Agent for further distribution to the Securityholders in accordance with Schedule 1 and the instructions of the Securityholder Representative. All payments on account of the indebtedness evidenced by this Note shall be applied first to the payment of all fees and expenses, including collection costs, due to the Securityholder Representative under this Note or any documents executed in connection herewith, and the remainder to the principal due hereunder.

4. Prepayments. The Maker may, upon prior written notice to the Securityholder Representative, at any time and from time to time, voluntarily prepay this Note in whole or in part in an amount equal to the sum of (x) the aggregate principal amount of this Note being prepaid and (y) all accrued interest on the amount being prepaid.

5. Representations and Warranties. The Maker hereby represents and warrants to the Securityholders that:

(a) the Maker is a duly organized and validly existing corporation in good standing under the laws of its jurisdiction of formation and has the power and authority to own and operate its properties and to transact the business in which it is now engaged;

(b) the Maker has the power and authority to execute and deliver this Note, and this Note constitutes the duly authorized, legally valid and binding obligation of the Maker, enforceable against the Maker in accordance with its terms;

(c) the execution, delivery and performance by the Maker of this Note does not violate any law, governmental rule or regulation, court order, agreement to which the Maker is subject or by which its properties are bound, or its charter documents or bylaws;

(d) there is no action, suit, proceeding or governmental investigation pending or, to the knowledge of the Maker, threatened against the Maker or any of its assets which, if adversely determined, would have a material adverse effect on the business, operations, properties, assets, or financial condition of the Maker, or the ability of the Maker to comply with its obligations hereunder;

(e) Borrower reaffirms all of its obligations under the Note, as originally issued and as amended and restated herein; and

(f) this is the final extension for this Note.

6. Events of Default. In the case of the happening and during the continuance of any of the following events (herein called "Events of Default"):

(a) The Maker shall fail to pay any amount owing hereunder when due;

(b) The Maker shall commence any case, proceeding or other action seeking to have an order for relief entered on its behalf as debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property or shall file an answer or other pleading in any such case, proceeding or other action admitting the material allegations of any petition, complaint or similar pleading filed against it or consenting to the relief sought therein;

(c) any involuntary case, proceeding or other action against the Maker shall be commenced seeking to have an order for relief entered against it as debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property, and such case, proceeding or other action (i) results in the entry of any order for relief against it or (ii) shall remain undismissed for a period of thirty (30) days;

then, this Note shall automatically become due and payable, without presentment, demand, protest, or other notice of any kind, all of which are hereby expressly waived, anything in this Note to the contrary notwithstanding. Such remedy shall be in addition to any other remedy available to the Securityholders pursuant to applicable law or otherwise.

7. Assignments. This Note may not be sold, assigned or transferred by Maker, or, without the consent of Maker, by any Securityholder.

8. Withholding Taxes. If and to the extent that the Maker in good faith determines that it is required by the applicable law of any relevant jurisdiction to deduct and with-hold any taxes or similar amounts from payments to the Securityholder hereunder, it shall advise the affected payee as to the basis of such determination prior to actually deducting and withholding such taxes and shall afford the payee a reasonable opportunity to provide any forms or take any other steps which would result in an exemption from, or entitlement to a reduced rate of, any such withholding taxes. In the event the Maker shall so deduct or withhold taxes from amounts payable hereunder, the Maker (i) shall pay to or deposit with the appropriate taxing authority in a timely manner the full amount of taxes it has deducted or withheld; (ii) shall provide evidence of payment of such taxes to, or the deposit thereof with, the appropriate taxing authority and a statement setting forth the amount of taxes deducted or withheld, the applicable rate, and any other information or documentation reasonably requested by the Securityholder Representative; and (iii) shall forward to the Securityholder Representative any official tax receipts or other documentation with respect to the payment or deposit of the deducted or withheld taxes as may be issued from time to time by the appropriate taxing authority.

9. Miscellaneous.

(a) The Securityholder Representative shall not by any act or omission be deemed to waive any of its rights or remedies hereunder or in connection herewith unless such waiver is in writing and signed by the Securityholder Representative, and then only to the extent specifically set forth therein; a waiver of one event shall not be construed as continuing or as a bar to or waiver of such right or remedy in relation to a subsequent event.

(b) The Maker agrees to pay all reasonable out-of-pocket expenses of the Securityholder Representative incurred in connection with the enforcement of this Note, the documents and instruments referred to herein and any amendments, waivers or consents relating hereto or thereto including, without limitation, the reasonable fees and expenses of counsel to the Securityholder Representative.

(c) The Maker hereby waives diligence, presentment, protest, demand and notice of every kind and, to the full extent permitted by law, the right to plead any statute of limitations as a defense to any demand hereunder.

(d) If any provision in or obligation under this Note shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(e) THE VALIDITY OF THIS NOTE, ITS CONSTRUCTION, INTERPRETATION AND ENFORCEMENT, AND THE RIGHTS OF THE PARTIES HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

(f) THE MAKER HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE COURTS OF THE STATE OF NEW YORK AND TO THE NON-EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSES OF ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF OR BASED UPON THIS NOTE OR THE SUBJECT MATTER HEREOF. THE MAKER TO THE EXTENT PERMITTED BY APPLICABLE LAW (A) HEREBY WAIVES, AND AGREES NOT TO ASSERT, BY WAY OF MOTION, AS A DEFENSE, OR OTHERWISE, IN ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH COURTS, ANY CLAIM THAT IT IS NOT SUBJECT PERSONALLY TO THE JURISDICTION OF THE ABOVE-NAMED COURTS, THAT THE SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM, THAT THE VENUE OF THE SUIT, ACTION OR PROCEEDING IS IMPROPER OR THAT THIS NOTE OR THE SUBJECT MATTER HEREOF MAY NOT BE ENFORCED IN OR BY SUCH COURT, AND (B) HEREBY WAIVES THE RIGHT TO ASSERT IN ANY SUCH ACTION, SUIT OR PROCEEDING ANY OFFSETS OR COUNTERCLAIMS EXCEPT

COUNTERCLAIMS THAT ARE COMPULSORY OR OTHERWISE ARISE FROM THE SAME SUBJECT MATTER. FINAL JUDGMENT AGAINST THE MAKER IN ANY SUCH ACTION, SUIT OR PROCEEDING SHALL BE CONCLUSIVE, AND MAY BE ENFORCED IN ANY OTHER JURISDICTION (A) BY SUIT, ACTION OR PROCEEDING ON THE JUDGMENT, A CERTIFIED OR TRUE COPY OF WHICH SHALL BE CONCLUSIVE EVIDENCE OF THE FACT AND THE AMOUNT OF INDEBTEDNESS OR LIABILITY OF THE SUBMITTING PARTY THEREIN DESCRIBED OR (B) IN ANY OTHER MANNER PROVIDED BY OR PURSUANT TO THE LAWS OF SUCH OTHER JURISDICTION.

(g) THE MAKER HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS NOTE OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. THE MAKER REPRESENTS THAT IT HAS REVIEWED THIS WAIVER KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS NOTE MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Note has been executed as of the day and year first above written.

Maker

ACERUS PHARMACEUTICALS CORPORATION

By: ______________________________
Name: Edward Gudaitis
Title: President and Chief Executive Officer

Securityholder Representative

By: ______________________________
Name: Samuel Herschkowitz

ACERUS PHARMACEUTICALS CORPORATION

September 30, 2022

Re: Amendment to Amended and Restated Promissory Note (this "**Amendment**")

We refer to that certain Amended and Restated Promissory Note, in the stated principal amount of $4,907,876.02, dated as of June 6, 2022 (as amended by that certain letter agreement dated July 8, 2022, certain letter agreement dated July 18, 2022, certain letter agreement dated July 29, 2022, and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Note**"), issued by Acerus Pharmaceuticals Corporation, an Ontario company (the "**Maker**") to the lenders set forth on Schedule 1 attached thereto (the "**Securityholder**"). Capitalized terms used but not defined herein shall have the meanings set forth in the Note.

Notwithstanding anything to the contrary set forth in the Note, the Maker and the Securityholder Representative, on behalf of all Securityholders, in consideration of the premises and the mutual agreements contained herein, the parties hereto hereby agree as follows:

Section 1. Amendments to Note: As of the date hereof:

(a) The definition of "Maturity Date" is hereby deleted in its entirety and replaced with the following definition:

""Maturity Date" shall mean the last day of twelfth calendar quarter following the Initial NOCTIVA Payment Calendar Quarter."

(b) The following definition "Business Day" is hereby added in Section 1 as a new definition in an alphabetical order.

""Business Day" shall mean a day (other than Saturday or Sunday) on which banks are generally open for business in New York, New York."

(c) Section 2 of the Note is hereby deleted in its entirety and replaced with the following paragraph:

"Interest. The principal amount and accrued interest under this Note shall be paid to the Securityholders, commencing from the calendar quarter (such first calendar quarter, the "**Initial NOCTIVA Payment Calendar Quarter**") immediately following calendar quarter in which the achievement of the First Commercial Sale in the United States and pursuant to Section 3, in the following amount on the corresponding date set forth in the following table:

Amount (in USD and in '000)	Payment Date
200	Last Business Day of the Initial NOCTIVA Payment Calendar Quarter
225	Last Business Day of **first** calendar quarter following the Initial NOCTIVA Payment Calendar Quarter

250	Last Business Day of **second** calendar quarter following the Initial NOCTIVA Payment Calendar Quarter
300	Last Business Day of **third** calendar quarter following the Initial NOCTIVA Payment Calendar Quarter
350	Last Business Day of **fourth** calendar quarter following the Initial NOCTIVA Payment Calendar Quarter
450	Last Business Day of **fifth** calendar quarter following the Initial NOCTIVA Payment Calendar Quarter
550	Last Business Day of **sixth** calendar quarter following the Initial NOCTIVA Payment Calendar Quarter
650	Last Business Day of **seventh** calendar quarter following the Initial NOCTIVA Payment Calendar Quarter
750	Last Business Day of **eighth** calendar quarter following the Initial NOCTIVA Payment Calendar Quarter
900	Last Business Day of **ninth** calendar quarter following the Initial NOCTIVA Payment Calendar Quarter
1,100	Last Business Day of **tenth** calendar quarter following the Initial NOCTIVA Payment Calendar Quarter
1,500	Last Business Day of **eleventh** calendar quarter following the Initial NOCTIVA Payment Calendar Quarter
525	Maturity Date
Total Amount: 7,750	

For the avoidance of doubt, upon the payment in full of the total amount set forth in the foregoing table, all amounts, including principal and interest, owed by the Maker to the Securityholders under this Note shall be deemed to be paid in full.

If an Event of Default shall occur and fail to be cured within thirty (30) days following the occurrence of such Event of Default, interest shall accrue thereafter on the unpaid principal amount of this Note at a rate per annum equal to the 1 month Term SOFR plus ten percent, and be payable on demand. "Term SOFR" means, as of any date of determination, the forward looking SOFR term rate administrated by CME Group Benchmark Administration Limited and published on the applicable Reuters screen page."

Section 2. Miscellaneous.

(a) Upon the effectiveness of this Amendment, each reference in the Note to "this Note", "hereof", "herein", "hereunder", or similar terms shall mean and be a reference to the Note as amended hereby.

(b) THE VALIDITY OF THIS AMENDMENT, ITS CONSTRUCTION, INTERPRETATION AND ENFORCEMENT, AND THE RIGHTS OF THE PARTIES HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH

THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

(c) Section 9 of the Note hereby is incorporated by reference as if fully set forth in this Amendment mutatis mutandis.

(d) This Amendment may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Amendment that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Amendment. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to this Amendment shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be duly executed as of the day and year first above written.

Maker:
ACERUS PHARMACEUTICALS CORPORATION

DocuSigned by:
By: Edward Gudaitis
060E6C2ECAAB47D...
Name: Edward Gudaitis
Title: President and Chief Executive Officer

Securityholder Representative:

DocuSigned by:
By: ______________________
932DFA8458E7440...
Name: Samuel Herschkowitz

This is Exhibit "O" referred to in the Affidavit of Naveed Z. Manzoor
sworn by Naveed Z. Manzoor of the Town of Oakville,
in the Province of Ontario, before me at the City of Toronto,
in the Province of Ontario, on January 25, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

Philip

Commissioner for Taking Affidavits

ACERUS ANNOUNCES INITIATION OF STRATEGIC REVIEW

- *Ernst & Young Orenda Corporate Finance Inc. (“EY”) engaged as independent financial advisors*

Toronto, Canada: – September 21, 2022: Acerus Pharmaceuticals Corporation (the “**Company**” or “**Acerus**”) (TSX: ASP; OTCQB: ASPCF) today announced that the Board of Directors has determined to undertake a strategic review of capital and business alternatives, including a possible debt or equity financing, asset sale, M&A, or licensing transaction.

The Board has struck a committee of independent directors to supervise this strategic review process. Ernst & Young Orenda Corporate Finance Inc. (“EY”) has been engaged as independent financial advisors to the Company. Parties interested in pursuing a transaction with Acerus should contact EY via one of the persons listed below to get further details and should plan to deliver a non-binding letter of interest no later than October 26, 2022.

Michael Hayes
Senior Vice-President
michael.hayes@parthenon.ey.com
416 575 9089

Jatinder Wadhwa
Senior Vice-President
Jatinder.Wadhwa@ca.ey.com
416 943 2063

Allen Yao
Vice-President
Allen.Yao@parthenon.ey.com
416 943 3470

About Acerus

Acerus Pharmaceuticals Corporation is a specialty pharmaceutical company focused on the commercialization and development of innovative prescription products that improve patient experience, with a primary focus in the field of men’s health. The Company commercializes its products via its own salesforce in the United States and Canada, and through a global network of licensed distributors in other territories.

Acerus' shares trade on TSX under the symbol ASP and on OTCQB under the symbol ASPCF. For more information, visit www.aceruspharma.com and follow us on Twitter and LinkedIn.

Notice regarding forward-looking statements

Information in this press release that is not current or historical factual information may constitute forward-looking information within the meaning of securities laws. Implicit in this information are assumptions regarding our future operational results. These assumptions, although considered reasonable by the company at the time of preparation, may prove to be incorrect. Readers are cautioned that actual performance of the company is subject to a number of risks and uncertainties, , and could differ materially from what is currently expected as set out above. For more exhaustive information on these risks and uncertainties you should refer to our annual information form dated March 14, 2022 that is available on www.sedar.com. Forward-looking information contained in this press release is based on our current estimates, expectations and projections, which we believe are reasonable as of the current date. You should not place undue importance on forward-looking information and should not rely upon this information as of any other date. While we may elect to, we are under no obligation and do not undertake to update this information at any particular time, whether as a result of new information, future events or otherwise, except as required by applicable securities laws.

# # #

Company Contact
ir@aceruspharma.com

Investor Relations Contact
Chris Witty
Acerus Investor Relations
(646) 438-9385
cwitty@darrowir.com

This is Exhibit "P" referred to in the Affidavit of Naveed Z. Manzoor
sworn by Naveed Z. Manzoor of the Town of Oakville,
in the Province of Ontario, before me at the City of Toronto,
in the Province of Ontario, on January 25, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

DocuSigned by:

Philip

36124C4218DD47C...

Commissioner for Taking Affidavits

Acerus Pharmaceuticals Corporation and Subsidiaries (collectively, the "Applicants")
Cash Flow Forecast for the Period January 23, 2023 to April 9, 2023
$CDN in Thousands

	Notes	1	2	3	4	5	6	7	8	9	10	11	
Week # / Ending		**Jan 29**	**Feb 05**	**Feb 12**	**Feb 19**	**Feb 26**	**Mar 05**	**Mar 12**	**Mar 19**	**Mar 26**	**Apr 02**	**Apr 09**	**Total**
Receipts													
Product Sales	1	$ -	$ 449	$ 536	$ 199	$ 203	$ 224	$ 176	$ 163	$ 149	$ 170	$ 122	$ 2,391
Total Receipts		**$ -**	**$ 449**	**$ 536**	**$ 199**	**$ 203**	**$ 224**	**$ 176**	**$ 163**	**$ 149**	**$ 170**	**$ 122**	**$ 2,391**
Disbursements													
Direct Selling Costs	2	210	240	-	-	291	375	140	142	133	123	114	1,768
Payroll & Contractor costs	3	92	37	4	92	-	129	4	92	-	196	4	650
Contract manufacturing costs	4	-	261	-	-	-	72	-	-	-	838	-	1,172
Other Product Related Expenses	5	529	551	563	20	20	551	20	20	20	557	529	3,382
Other SG&A	6	5	24	-	5	-	24	-	5	-	24	-	88
Professional Fees	7	462	125	234	50	45	147	170	45	75	147	45	1,545
Total Disbursements		1,299	1,238	801	168	356	1,298	334	305	228	1,885	692	8,604
Net cash receipts/(disbursements)		**$ (1,299)**	**$ (789)**	**$ (265)**	**$ 31**	**$ (152)**	**$ (1,074)**	**$ (158)**	**$ (143)**	**$ (79)**	**$ (1,715)**	**$ (570)**	**$ (6,213)**
Cash Balance													
Opening Balance	8	$ 1,662	$ 363	$ 252	$ 1,343	$ 1,375	$ 1,222	$ 1,504	$ 1,347	$ 1,204	$ 1,125	$ 2,123	$ 1,662
Net Cash Receipts/(disbursements)		(1,299)	(789)	(265)	31	(152)	(1,074)	(158)	(143)	(79)	(1,715)	(570)	$ (6,213)
DIP draws/(repayment)		-	678	1,356	-	-	1,356	-	-	-	2,713	678	$ 6,782
Ending Cash Balance		**$ 363**	**$ 252**	**$ 1,343**	**$ 1,375**	**$ 1,222**	**$ 1,504**	**$ 1,347**	**$ 1,204**	**$ 1,125**	**$ 2,123**	**$ 2,231**	**$ 2,231**
DIP Facility													
Opening Balance	9	$ -	$ -	$ 678	$ 2,035	$ 2,035	$ 2,035	$ 3,391	$ 3,391	$ 3,391	$ 3,391	$ 6,104	$ -
DIP Draws/(Repayment)	9	-	678	1,356	-	-	1,356	-	-	-	2,713	678	$ 6,782
Closing Balance		**$ -**	**$ 678**	**$ 2,035**	**$ 2,035**	**$ 2,035**	**$ 3,391**	**$ 3,391**	**$ 3,391**	**$ 3,391**	**$ 6,104**	**$ 6,782**	**$ 6,782**

In the Matter of the CCAA of Acerus Pharmaceuticals Corporation, Acerus Biopharma Inc., Acerus Labs Inc., and Acerus Pharmaceuticals Usa, LLC (collectively, the "Applicants")

Notes to the Unaudited Cash Flow Forecast of the Applicants

Disclaimer:

In preparing this cash flow forecast (the "**Cash Flow Forecast**"), the Applicants with the assistance of FAAN Advisors Group Inc. ("**FAAN"**), and in consultation with Ernst & Young Inc. (the "**Proposed Monitor**"), have relied upon unaudited financial information and the Applicants have not attempted to further verify the accuracy or completeness of such information. The Cash Flow Forecast includes estimates concerning the operations of the Applicants and additional assumptions discussed below with respect to the requirements and impact of a *Companies' Creditors Arrangement Act* ("**CCAA**") filing (the "**Probable and Hypothetical Assumptions**" or the "**Assumptions**"). Since the Cash Flow Forecast is based on Assumptions about future events and conditions that are not ascertainable, the actual results achieved during the Cash Flow Forecast period will vary from the Cash Flow Forecast, even if the Assumptions materialize, and such variation may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized.

The Proposed Monitor has reviewed the Cash Flow Forecast to the standard required of a Court appointed Monitor pursuant to section 23(1)(b) of the CCAA, which requires a Monitor to review the debtor's cash flow statements as to its reasonableness and to file a report with the Court on the Monitor's findings.

Pursuant to this standard, the Proposed Monitor's review of the Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to information supplied to it by certain key members of the Applicants and other employees of the Applicants. Since the Probable and Hypothetical Assumptions need not be supported, the Proposed Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast. The Proposed Monitor also reviewed the support provided by the Applicants for the Probable and Hypothetical Assumptions and the preparation and presentation of the Cash Flow Forecast.

Based on the Proposed Monitor's review, nothing has come to the Monitor's attention that causes the Proposed Monitor to believe, in any material respect, that:

(a) The Probable and Hypothetical Assumptions are not consistent with the purpose of the Cash Flow Forecast;
(b) As at the date of this report, the Probable and Hypothetical Assumptions are not suitably supported and consistent with the plans of the Applicants or do not provide a reasonable basis for the Cash Flow Forecast, given the Probable and Hypothetical Assumptions; or
(c) The Cash Flow Forecast does not reflect the Probable and Hypothetical Assumptions.

Overview:

The Cash Flow Forecast includes the receipts and disbursements of the Applicants during the Cash Flow Forecast period. The Applicants, with the assistance of FAAN, and in consultation with the Proposed Monitor, have prepared the Cash Flow Forecast based primarily on estimated receipts and disbursements related to the ongoing operations and the CCAA proceedings.

Assumptions:

1. **Product Sales**
   The Cash Flow Forecast reflects the continued sale of Natesto™ during the CCAA Proceedings. Cash receipts are forecast based on accounts receivable and projected sales during the forecast period, before rebates and other direct selling costs, as described in Note 2.

2. **Direct Selling Costs**
   Represents rebates to health plans and co-pay card holders, fees charged by wholesalers and incentives offered to pharmacy partners.

3. **Payroll and Contractor Costs**
   Payroll and contractor payments are forecast based on historical run rates and anticipated staffing levels. Salaried employees receive semi-monthly pay. Included in Week 13 are anticipated payments under a proposed key employee retention plan, subject to court approval.

4. **Contract Manufacturing Costs**
   Represents estimated payments to third party contract manufacturers for the production of commercial batches of the Applicants' products.

5. **Other Product Related Expenses**
   Included in these expenses are fees charged by regulatory agencies, clinical trial costs, and costs to maintain intellectual property rights, and certain indirect selling costs.

6. **Other SG&A**
   Includes office lease, insurance and other administrative expenses.

7. **Restructuring Costs**
   Restructuring costs include primarily professional fee payments and expenses to the Applicants' Canadian and U.S. legal counsel, the proposed Monitor and its counsel and the proposed Chief Restructuring Officer in connection with the Applicants' restructuring proceedings.

8. **Beginning Balance**
   Represents the projected opening cash balance as at January 23, 2023.

9. **Debt in Possession Facility ("DIP") Draws and Repayments**
   Reflects projected draws and repayments under the DIP facility, subject to Court approval.

This is Exhibit "Q" referred to in the Affidavit of Naveed Z. Manzoor
sworn by Naveed Z. Manzoor of the Town of Oakville,
in the Province of Ontario, before me at the City of Toronto,
in the Province of Ontario, on January 25, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

DocuSigned by:

Philip

36124C4218DD47C...

Commissioner for Taking Affidavits

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION, ACERUS BIOPHARMA INC., ACERUS LABS INC., AND ACERUS PHARMACEUTICALS USA, LLC

Applicants

CONSENT OF THE PROPOSED MONITOR

Ernst & Young Inc. hereby consents to act as Court-appointed Monitor of the Applicants in this proceeding should such an Initial Order be granted by the Court.

DATED AT TORONTO, ONTARIO this 24th day of January, 2023

ERNST & YOUNG INC., IN ITS CAPACITY AS PROPOSED MONITOR OF THE APPLICANTS

Per: ______________________

Name: Alexander Morrison
Title: Senior Vice-President

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION, ACERUS BIOPHARMA INC., ACERUS LABS INC., AND ACERUS PHARMACEUTICALS USA, LLC

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

CONSENT OF THE PROPOSED MONITOR

FASKEN MARTINEAU DuMOULIN LLP
Barristers and Solicitors
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Stuart Brotman (LSO: 43430D)
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Mitch Stephenson (LSO: 73064H)
mstephenson@fasken.com
Tel: 416 868 3502

Lawyers for the Proposed Monitor

This is Exhibit "R" referred to in the Affidavit of Naveed Z. Manzoor
sworn by Naveed Z. Manzoor of the Town of Oakville,
in the Province of Ontario, before me at the City of Toronto,
in the Province of Ontario, on January 25, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

DocuSigned by:

Philip Y

36124C4218DD47C...

Commissioner for Taking Affidavits

20 Adelaide Street
East, Unit 920
Toronto, Ontario,
M5C 2T6

January 25, 2023

Acerus Pharmaceuticals Corporation
7025 Langer Drive, Suite 205
Mississauga, Ontario L5N 0E8

Attention: Mr. Steve Gregory

Dear Mr. Gegory:

Re: **Acerus Pharmaceuticals Corporation, Acerus Biopharma Inc., Acerus Labs Inc., and Acerus Pharmaceuticals USA, LLC** (collectively, the "**Company**")

This letter confirms and sets forth the terms and conditions of the engagement between FAAN Advisors Group Inc. ("**FAAN**") and the Company, including the scope of the services to be performed and the basis of compensation for those services. Upon execution of this letter by each of the parties below and receipt of the retainer described below, this letter will constitute an agreement between the Company and FAAN (the "**Agreement**").

1. <u>Description of Services</u>.

The Company hereby engages FAAN, and FAAN shall provide the services to serve as Chief Restructuring Officer the Company ("**CRO**"). This engagement will be led by FAAN's managing director, Naveed Z. Manzoor, with support, as required, to be provided by other FAAN personnel. FAAN, including its personnel, are collectively referred to as the "**Engagement Personnel**".

The Engagement Personnel shall be responsible for the following duties.

(a) Assisting the Company in the required preparations for potentially commencing an insolvency proceeding under the Companies' Creditors Arrangement Act ("**CCAA Proceedings**");

(b) Serving as the Company's primary contact with and providing information to the proposed CCAA monitor, Ernst & Young Inc., and other professionals involved in the CCAA Proceedings regarding the business and affairs of the Company;

(c) Assisting in the preparation of and evaluating the Company-prepared projected cash flows and financing requirements in the context of its planned CCAA Proceedings;

(d) Negotiating with prospective purchasers and other interested parties during the Company's sale and investment solicitation process in the CCAA Proceedings;

(e) Managing the CCAA Proceedings on the Company's behalf, including dealing with the administration of financing including updating forecasts and information that may be required for financing, and dealing with any insolvency related claims and reconciliation process during the CCAA;

(f) Dealing with other key stakeholders including employees lenders, vendors and suppliers;

(g) Providing information to and serving as a contact with the Company's Canadian and US legal advisors;

(h) Participating in the Company's management and executive team;

(i) Making decisions with respect to the day-to-day aspects of the management and operations of the Company's business;

(j) Overseeing the Company's finance department, including acting a signing authority over the Company's bank accounts;

(k) Overseeing the Company's accounts payable payment processing; and

(l) Other such other services as requested or directed by the Company's Board of Directors, which services are to be agreed to by FAAN and not duplicative of work others are performing for the Company.

During the performance of this Agreement, FAAN shall be an independent contractor and not an agent or employee of the Company and this Agreement is not intended and will not operate to make any Engagement Personnel an employee of the Company for any purpose.

Unless as amended pursuant to a Court order, the Engagement Personnel shall report to and operate under the direction of the Company's Board of Directors.

Upon Court-approval of FAAN's appointment as CRO in the CCAA Proceedings, the Consulting Agreement dated November 14, 2022 between FAAN and the Company shall terminate.

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

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

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

4. Compensation. FAAN will be paid by the Company for the services of the CRO at a monthly work fee of [redacted] plus applicable taxes and out-of-pocket expenses reasonably incurred in connection with or arising out of FAAN's activities under or contemplated by this Agreement. Out-of-pocket expenses shall include, but not be limited to, fees, disbursements and other charges associated with the Engagement Personnel's reasonable travel and lodging expenses, reasonable legal services provided to FAAN (if any), and other necessary expenses. FAAN shall invoice the Company bi-weekly and invoices are payable upon receipt.

(a) In addition to the monthly fee set out above, FAAN shall be entitled to a fee (the "**Success Fee**") in the [redacted] upon closing of:

i. Any transaction or series of transactions that constitute a material recapitalization or restructuring of the equity and/or senior secured debt of the Company, including accrued and/or accreted interest thereon, which recapitalization or restructuring is in each case effected pursuant to an exchange transaction, tender offer, or a plan of arrangement or compromise under the CCAA or other applicable similar legislation or statute; and/or

ii. Any transaction or series of transactions that is accepted and approved by the Court that constitutes a material disposition to one or more parties (including, without limitation, any person, group of persons, partnership, corporation or other entity, and also including, among others, any of the existing creditors of the Company) of (a) all or a majority of the equity securities of any entity comprising the Company which contain all or substantially all of the assets of the Company , and/or (b) all or substantially all of the material assets or operations of the entities comprising the Company, which (a) and (b) shall include, without limitation, a sale or exchange of assets, capital stock with or without a purchase option, a merger, consolidation or other business combination, an exchange or tender offer, a recapitalization, reverse vesting order transaction, the formation of a joint venture, partnership or similar entity, or any similar transaction, and including any credit bid by any secured lenders of the Company or any acquisition by existing shareholders or employees.

(b) The Success Fee shall apply to the event(s) noted in paragraph 4(i) or 4(ii) that occurs (a) during the term or this Agreement; or (b) within twelve (12) months following the end of the term (unless the Agreement has been terminated by the Company for cause) and will be paid upon closing of the event(s) noted above. For greater certainty, the Success Fee (a) shall only be earned once (i.e. not for every transaction); and (b) if the event(s) referred to in (i) and (ii) occur as a series of transactions, be payable upon closing of the last of such transaction.

(c) The Company shall promptly remit to FAAN, a retainer in the amount [redacted] (plus applicable taxes), which shall be credited against any amounts due and owing to FAAN at the successful conclusion of this mandate or the termination of this Agreement. Any portion of the retainer remaining after being credited against the fees owed will be returned to the Company upon the satisfaction of all obligations hereunder.

(d) In the event the Company initiates a debtor-in-possession bankruptcy, insolvency or creditor enforcement proceeding (an "**Restructuring Proceeding**") under the Companies' Creditors Arrangement Act, the Bankruptcy and Insolvency Act or otherwise, the Company shall seek and obtain the approval of the Court of the retention of FAAN as the CRO of the Company, in its initial application for a Restructuring Proceeding and on terms acceptable to FAAN, and shall seek the Court's approval of this Agreement (including, without limitation, the payment of FAAN's fees and expenses and the provision of indemnification to FAAN) failing which FAAN may suspend or discontinue its efforts on behalf of the Company.

5. Termination.

(a) This Agreement will commence on the date the services referred to in Section 1 begin and may be terminated by the Company without cause by providing 30-days' written notice to FAAN. In the case of just cause, this Agreement may be terminated immediately by the Company.

(b) FAAN normally does not withdraw from an engagement unless the Company misrepresents or fails to disclose material facts, fails to pay fees or expenses, or makes it unethical or unreasonably difficult for FAAN to continue performance of the engagement, or other just cause exists. In the event that FAAN intends to withdraw from this engagement without cause, it shall provide 30 days' written notice.

(c) On termination of the Agreement, any fees and expenses due to FAAN for services provided up to and including the effective date of termination shall be remitted promptly by the Company (including fees and expenses that accrued prior to, but invoiced subsequent to, the effective date of termination).

(d) The provisions of this Agreement that expressly state that they are to continue in effect after the termination of this Agreement, or which by their nature would survive the termination of this Agreement shall survive and continue to bind the parties.

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

7. No Third Party Beneficiary. The Company acknowledges that all advice (written or oral) provided by FAAN to the Company in connection with this Agreement is intended solely for the benefit and use of the Company in considering the matters to which this Agreement relates. The Company may choose to reproduce, disseminate, quote or refer to such information as it wishes, in its sole and absolute discretion, provided that in no event may such information be attributed to FAAN. The Company may communicate any information

concerning the services of FAAN and the advice provided by FAAN to its legal and financial advisors.

8. Exclusivity and Conflicts. FAAN is an independent firm that has several clients and engagements, some of which will be active during the rendering of services by the Engagement Personnel in connection with this matter. FAAN is not currently aware of any relationship that would create a conflict of interest with the Company or those parties-in-interest of which you have made us aware. It is possible that FAAN may have rendered or will render services to, or have business associations with, other entities or people which had or have or may have relationships with the Company, including creditors of the Company. In the event the Company accepts the terms of this Agreement, FAAN will not represent, and has not represented, the interests of any entities or parties which are in conflict with the interests of the Company in connection with this matter.

9. Indemnification/Limitations on Liability. FAAN shall incur no liability for any acts or omissions of the Engagement Personnel related to the performance or non- performance of services at the direction of the Company and consistent with the requirements of this engagement and this Agreement, provided that such actions or omissions are not carried out in a manner that is dishonest or grossly negligent and/or the Engagement Personnel has not engaged in willful misconduct.

   The Company shall indemnify the Engagement Personnel acting as officers (the "Indemnified Professionals") to the same extent as the most favorable indemnification it extends to its officers or directors, whether under the Company's bylaws, its certificate of incorporation, by contract or otherwise, and no reduction or termination in any of the benefits provided under any such indemnities shall affect the benefits provided to the Indemnified Professionals. The provisions of this section are in the nature of contractual obligations and no change in applicable law or the Company's charter, bylaws or other organizational documents or policies shall affect the Indemnified Professionals' rights hereunder.

   In the context of any Insolvency Proceeding involving the Company, the Company shall also seek, as part of any plan confirmation, discharge order or final sale order, a full and final release of FAAN from all potentially affected parties, which release shall be consistent with the terms of other releases sought for professionals in respect of the CCAA Proceedings. The Company shall use reasonable commercial efforts to obtain such approval by the Court.

10. Miscellaneous. This Agreement: (a) shall be governed and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein without giving effect 'to such Province's rules concerning conflicts of laws that might provide for any other choice of law; (b) incorporates the entire understanding of the parties with respect to the subject matter hereof; (c) may not be amended or modified except in writing executed by each of the parties hereto; (d) may be executed by facsimile and in counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same agreement; and (e) notwithstanding anything herein to the contrary, upon the completion of the restructuring process presently being undertaken in respect of the Company, FAAN may reference or list the Company's name and/or a general description of the services in FAAN's marketing materials.

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

Very truly yours,

FAAN ADVISORS GROUP INC.

Per:___________________________

Naveed Z. Manzoor, Managing Director

Accepted and agreed:

ACERUS PHARMACEUTICALS CORPORATION
ACERUS BIOPHARMA INC.
ACERUS LABS INC.
ACERUS PHARMACEUTICALS USA, LLC

Per: ____

(I have the authority to bind the above Corporations)

This is Exhibit “S” referred to in the Affidavit of Naveed Z. Manzoor
sworn by Naveed Z. Manzoor of the Town of Oakville,
in the Province of Ontario, before me at the City of Toronto,
in the Province of Ontario, on January 25, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

DocuSigned by:
Philip V
36124C4218DD47C...

Commissioner for Taking Affidavits

DIP FACILITY LOAN AGREEMENT
DATED AS OF JANUARY [●], 2023

WHEREAS the Borrowers (as defined below) have requested that the DIP Lender (as defined below) provides financing to fund certain of the Borrowers' cash requirements during the pendency of the proceeding (the "**CCAA Proceeding**") of the Obligors (as defined below) under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") to be commenced before the Ontario Superior Court of Justice (Commercial List) (the "**Court**") in accordance with the terms and conditions set out herein;

AND WHEREAS the DIP Lender has agreed to provide the DIP Facility (as defined below) in accordance with the terms and subject to the conditions set out herein.

NOW THEREFORE in consideration of the foregoing and their respective covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

1. **Defined Terms**: Capitalized terms that are not defined in the body of this Agreement have the meanings ascribed to them in Schedule A.

2. **Currency**: Unless otherwise stated, all monetary denominations shall be in lawful currency of the United States of America.

3. **Borrowers**: Acerus Pharmaceuticals Corporation and Acerus Pharmaceuticals USA, LLC (collectively, the "**Borrowers**", and any reference to the Borrowers shall be deemed to mean, "the Borrowers or any one of them").

4. **Borrower Agent**: Unless otherwise specified, any notices or other communications provided by Acerus Pharmaceuticals Corporation (the "**Borrower Agent**") to the DIP Lender shall be deemed to be provided by the Borrower Agent for itself and on behalf of the other Obligors and any notice or other communication provided by the DIP Lender to the Borrower Agent shall be deemed to be provided by the DIP Lender to the Obligors.

5. **Guarantors:** All present and future subsidiaries of the Borrowers, including, without limitation, Acerus Biopharma Inc. and Acerus Labs Inc. (together, the "**Guarantors**", and any reference to the Guarantors shall be deemed to mean, "the Guarantors or any one of them"; and collectively with the Borrowers, the "**Obligors**").

6. **DIP Lender**: First Generation Capital Inc. (the "**DIP Lender**")

7. **DIP Facility and Maximum Loan Amount**: Subject to the terms and conditions hereof, the DIP Lender agrees to provide to the Borrowers a debtor-in-possession super-priority non-revolving credit facility (the "**DIP Facility**") in an amount up to $7,000,000 (the "**Maximum Loan Amount**"). The DIP Facility is a non-revolving, multiple draw credit facility. The principal amount of any Advance that is repaid may not be re-borrowed and

the available Maximum Loan Amount shall be automatically reduced by such repaid amount.

8. **DIP Advances**: Advances under the DIP Facility (each, an "**Advance**") require a written notice to be delivered by the Borrowers to the DIP Lender (an "**Advance Notice**"), substantially in the form attached at Schedule B hereto, which Advance Notice has been approved by the Monitor and executed by an officer of the Borrowers, setting out: (a) the proposed amount of the requested Advance; (b) the date the Advance is requested; (c) the Borrower that will receive the Advance; (d) the use for the proceeds of the Advance, together with a certification that such use is in accordance with the DIP Budget; (e) certification that the representations and warranties contained herein are true and correct as of such date; and (f) certification that no Default or Event of Default has occurred or will occur after giving effect to the Advance. Each Advance Notice shall be delivered by the Borrowers to the DIP Lender not less than three (3) Business Days prior to the requested date of the Advance. Each Advance shall be in the minimum amount of $250,000.

9. **Use of Proceeds**: The proceeds of the DIP Facility shall be used by the Borrowers solely in accordance with, and subject to, the DIP Budget and the Court Orders, to fund the ordinary course working capital and other general corporate purposes of the Borrowers, including to pay (i) Permitted Fees and Expenses, (ii) the reasonable and documented fees and expenses of (A) the Obligors' CCAA counsel, (B) the Monitor and its counsel, and (C) the Obligors' U.S. counsel in respect of any Chapter 15 Proceedings, and (iii) the CRO. No proceeds may be used for any other purpose, except with the prior written approval of the DIP Lender, in its sole discretion.

10. **Evidence of Indebtedness**: The DIP Lender shall maintain a register evidencing Advances and repayments under the DIP Facility and all other amounts owing from time to time hereunder (including the amount of PIK Interest) in the form of the grid attached at Schedule C hereto. The DIP Lender's register constitutes *prima facie* evidence, absent manifest error, of the DIP Obligations; provided that the failure of the DIP Lender to record the same shall not affect the obligations of the Borrowers to pay such amounts to the DIP Lender.

11. **Interest**: All amounts owing hereunder on account of principal, and overdue interest, fees and expenses, shall bear interest at the rate equal to the Applicable Interest Rate. Interest at such rate shall be calculated on the basis of the actual number of days elapsed in a year of 365 days or 366 days, as the case may be, shall be payable in kind quarterly, in arrears, on the last Business Day of each and every quarter commencing on March 31, 2023 until the unpaid principal balance, together with all accrued interest on such amount, has been repaid in full, and shall be capitalized and added to, and shall become a part of, the DIP Obligations without any further act by or on behalf of the DIP Lender (such capitalized interest, the "**PIK Interest**").

    Notwithstanding the foregoing, at the sole option of the Borrowers, any interest under this Agreement may be paid in cash quarterly, in advance, on the last Business Day of any quarter.

During the pendency of an Event of Default that is continuing, all amounts owing hereunder shall bear interest at the rate equal to the Applicable Interest Rate plus an additional two per cent (2%) per annum, calculated as aforesaid.

For the purposes of the *Interest Act* (Canada) and disclosure thereunder, whenever any interest or fee to be paid under this Agreement is to be calculated on the basis of a period that is less than a calendar year, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by the number of days in the period that is less than a calendar year.

12. **Fees and Expenses**: The Borrowers shall pay all reasonable costs and expenses of the DIP Lender (including all reasonable fees, expenses and disbursements of outside counsel and any financial advisor) in connection with the DIP Facility, including the preparation of the DIP Loan Documents, the administration of the DIP Facility, the enforcement of any of the DIP Lender's rights and remedies available hereunder and under any other DIP Loan Documents and in connection with the CCAA Proceeding and the Chapter 15 Proceedings (collectively, "**Permitted Fees and Expenses**").

13. **DIP Budget**: Prior to the Comeback Motion, the Borrower Agent shall have provided the DIP Lender with a 13-week period detailed cash flow forecast (the "**DIP Budget**"), in form and substance satisfactory to the DIP Lender, in its sole discretion. On Wednesday of each week thereafter, the Borrower Agent, with the assistance of the Monitor, shall provide the DIP Lender with an updated rolling 13-week cash flow forecast substantially in the form of the DIP Budget (the "**Updated Cash Flow**") and a variance report (the "**Cash Flow Variance Report**"), certified by an officer of the Borrower Agent, showing on a line-by-line basis the actual receipts and disbursements and the total available liquidity for the last day of the prior week on a weekly and cumulative basis and noting therein all variances on a line-by-line basis from the amounts in the DIP Budget, with explanations for all material variances. The DIP Lender may, in its sole discretion, agree to substitute the Updated Cash Flow for the then-current DIP Budget, in which case the Updated Cash Flow shall thereafter be deemed to be the effective DIP Budget for the purposes hereof. For the avoidance of doubt, the then-current DIP Budget shall continue to be the effective DIP Budget for the purposes hereof, unless and until the DIP Lender has, in its sole discretion, provided notice to the Borrower Agent that the DIP Lender accepts the applicable Updated Cash Flow as the effective DIP Budget for the purposes hereof.

14. **Conditions Precedent to First Tranche Advances**: The DIP Lender's agreement to make each Advance prior to the satisfaction or waiver of the conditions precedent in Section 15 (collectively, the "**First Tranche Advances**") under the DIP Facility up to a maximum aggregate amount of $500,000 (the "**Maximum First Tranche Amount**") under the DIP Facility is subject to the satisfaction of the following conditions precedent:

    (a) This Agreement and the other DIP Loan Documents shall have been executed and delivered by the parties hereto and thereto;

(b) The DIP Lender shall be satisfied that the entering into of this Agreement and the other DIP Loan Documents has been approved by the Obligors;

(c) The DIP Lender shall be satisfied that service has been effected on a list of Persons acceptable to the DIP Lender;

(d) The Court shall have issued the Initial Order in form and substance satisfactory to the DIP Lender, in its sole discretion, that, among other things, approves this Agreement and the other DIP Loan Documents and grants the DIP Charge;

(e) No motion to amend, vary or stay the Initial Order shall have been made or threatened in a manner adverse to the DIP Lender, as determined by the DIP Lender;

(f) The DIP Lender shall have received an Advance Notice in accordance with the terms hereof, which requested Advance shall not result in the Maximum First Tranche Amount being exceeded;

(g) The DIP Lender shall have received an irrevocable direction from the Borrower Agent directing the DIP Lender to pay, with proceeds of the Advance, the Permitted Fees and Expenses incurred to date;

(h) All representations and warranties contained in this Agreement and the other DIP Loan Documents shall be true and correct on the date of such requested Advance with the same effect as if made on and as of such date, except to the extent that such representations and warranties relate specifically to an earlier date;

(i) No Default or Event of Default shall have occurred or will occur as a result of the requested Advance; and

(j) The DIP Lender shall have received such additional information and documents as it may reasonably require.

The conditions stated in this Section 14 are inserted for the sole benefit of the DIP Lender and may only be waived by the DIP Lender, and any such waiver may be made in whole or in part, with or without terms or conditions and in respect of all or any portion of the First Tranche Advances, without affecting the right of the DIP Lender to assert terms and conditions in whole or in part in respect of any other future First Tranche Advances.

15. **Conditions Precedent to Second Tranche Advance(s)**: The DIP Lender's agreement to make each additional Advance prior to the satisfaction or waiver of the conditions precedent in Section 16 (collectively, the "**Second Tranche Advances**") under the DIP Facility (after the First Tranche Advances) up to a maximum aggregate amount of $2,500,000 (inclusive of the First Tranche Advances) (the "**Maximum Second Tranche Amount**") is subject to the satisfaction of the following conditions precedent:

(a) The conditions in Section 14 shall have been satisfied or waived and the DIP Loan Documents shall be in full force and effect;

(b) The Court shall have heard the Comeback Motion and entered an order in respect of the Comeback Motion that is acceptable to the DIP Lender, in its sole discretion;

(c) The Initial Order shall not have been amended, restated, modified, varied, vacated, stayed or set aside, without the prior written consent of the DIP Lender, in its sole discretion;

(d) No motion to amend, vary or stay any Court Order made in the CCAA Proceeding shall have been made or threatened in a manner adverse to the DIP Lender, as determined by the DIP Lender, in its sole discretion;

(e) The stay of proceedings provided by the Initial Order shall remain in effect pursuant to stay extension orders that are in form and substance satisfactory to the DIP Lender, in its sole discretion;

(f) The U.S. Bankruptcy Court shall have entered an order or orders granting provisional relief pursuant to section 1519 of the United States Bankruptcy Code in the Chapter 15 Proceedings, giving full force and effect to the Initial Order on a provisional basis, that is acceptable to the DIP Lender, in its sole discretion;

(g) The DIP Lender shall have received an Advance Notice in accordance with the terms hereof, which requested Advance shall not result in (i) the Maximum Second Tranche Amount being exceeded or (ii) the DIP Obligations exceeding the amount secured by the DIP Charge on the assets of the Obligors located in the United States pursuant to the Initial Order as given effect to by order or orders of the U.S. Bankruptcy Court under section 1519 of the United States Bankruptcy Code;

(h) The DIP Lender shall have received an irrevocable direction from the Borrower Agent directing the DIP Lender to pay, with proceeds of the requested Advance, the Permitted Fees and Expenses incurred but unpaid to date;

(i) All representations and warranties contained in this Agreement and the other DIP Loan Documents shall be true and correct on the date of such requested Advance with the same effect as if made on and as of such date, except to the extent that such representations and warranties relate specifically to an earlier date;

(j) No Default or Event of Default shall have occurred or will occur as a result of the requested Advance;

(k) No Material Adverse Effect shall have occurred since the Filing Date;

(l) To the extent required in accordance with Section 13, the DIP Lender shall have received an updated DIP Budget and Cash Flow Variance Report, which shall be in form and substance satisfactory to the DIP Lender, in its sole discretion, and the proposed uses of the requested Advance shall be consistent with the DIP Budget and acceptable to the DIP Lender, acting reasonably; and

(m) Naveed Manzoor of FAAN Advisors Group Inc. shall have been retained as chief restructuring officer of the Obligors (the "**CRO**").

The conditions stated in this Section 15 are inserted for the sole benefit of the DIP Lender and may only be waived by the DIP Lender, and any such waiver may be made in whole or in part, with or without terms or conditions and in respect of all or any portion of the Second Tranche Advances, without affecting the right of the DIP Lender to assert terms and conditions in whole or in part in respect of any other future Second Tranche Advance.

16. **Conditions Precedent to Additional Advances**: The DIP Lender's agreement to make each additional Advance under the DIP Facility (after the First Tranche Advances and Second Tranche Advances) up to the Maximum Loan Amount (inclusive of the First Tranche Advances and Second Tranche Advances) in aggregate is subject to the satisfaction of the following conditions precedent:

(a) The conditions in Section 15 shall have been satisfied or waived and the DIP Loan Documents shall be in full force and effect;

(b) The U.S. Bankruptcy Court shall have entered the Recognition Order in form and substance satisfactory to the DIP Lender, in its sole discretion, in the Chapter 15 Proceedings; and

(c) The DIP Lender shall have received an Advance Notice in accordance with the terms hereof, which requested Advance shall not result in the Maximum Loan Amount being exceeded.

The conditions stated in this Section 16 are inserted for the sole benefit of the DIP Lender and may only be waived by the DIP Lender, and any such waiver may be made in whole or in part, with or without terms or conditions and in respect of all or any portion of the additional Advances, without affecting the right of the DIP Lender to assert terms and conditions in whole or in part in respect of any other future Advance.

17. **DIP Charge**: All indebtedness, liabilities and obligations of the Obligors under or in connection with the DIP Facility, this Agreement and the other DIP Loan Documents, including without limitation, all principal, interest (including PIK Interest), fees, expenses (including the Permitted Fees and Expenses) and other amounts owing in respect of fees and expenses of the DIP Lender (collectively, the "**DIP Obligations**") shall be secured by a Court-ordered super-priority charge on the Collateral in favour of the DIP Lender (the "**DIP Charge**"). The DIP Charge shall be effective without the need for any further documentation, registrations or filings, including in any personal property security registration system or real property system.

18. **Priority of DIP Charge**: The DIP Charge shall rank ahead of any and all Encumbrances on the Collateral, other than the Priority Charge.

19. **Repayment and Maturity Date**: All DIP Obligations owing to the DIP Lender shall be due and payable on the earliest of the following:

(a) December 31, 2024;

(b) the date on which the Initial Order expires without being extended or on which the CCAA Proceeding is terminated or dismissed; and

(c) an Event of Default in respect of which the DIP Lender has elected to accelerate the DIP Obligations;

(such earliest date, the "**Maturity Date**").

Unless otherwise expired pursuant to this Agreement, the DIP Lender's commitment to make Advances under the DIP Facility shall expire on the Maturity Date and all then outstanding DIP Obligations shall be repaid on the Maturity Date, without the DIP Lender being required to make demand upon the Borrowers or to give notice that the DIP Facility has expired and that the obligations hereunder are due and payable.

20. **Mandatory Prepayments**: The Borrowers shall apply each of the following amounts in accordance with Section 22:

(a) the Net Proceeds from the sale of any of the Collateral other than in the ordinary course of business;

(b) the Net Proceeds from the sale of any equity interests in an Obligor or the receipt of capital contributions by an Obligor;

(c) the net cash proceeds received from the incurrence by an Obligor of any Indebtedness (except as permitted hereunder); and

(d) insurance proceeds (net of deductibles) or expropriation awards received by an Obligor.

Each such prepayment shall be accompanied by the amount of accrued interest on the amount prepaid. Any mandatory prepayment made hereunder shall permanently reduce the Maximum Loan Amount and may not be re-borrowed.

21. **Optional Prepayment**: The Borrowers may voluntarily prepay any principal amount of the DIP Obligations. The Borrower Agent shall give written notice to the DIP Lender of each voluntary prepayment not less than ten (10) Business Days prior to such voluntary prepayment. Such notice shall be irrevocable and shall specify:

(a) the date on which the prepayment is to take place;

(b) the principal amount of the prepayment; and

(c) the Borrower that will make the prepayment.

Each such prepayment shall be accompanied by the amount of accrued interest on the amount prepaid. Any voluntary prepayment made hereunder shall permanently reduce the Maximum Loan Amount and may not be re-borrowed.

22. **Application of Payments/Proceeds of Collateral**: All payments made by or on behalf of the Borrowers (whether before or after the Maturity Date), and all proceeds of the Collateral, shall be paid to the DIP Lender and applied as follows, subject to applicable Law:

(a) firstly, in payment of all Permitted Fees and Expenses; and

(b) secondly, in payment of all outstanding DIP Obligations.

23. **Payments**: All payments hereunder shall be made for value in the full amount due at or before 1:00 pm (Toronto time) on the day such amount is due by deposit or transfer thereof to an account designated by the DIP Lender. Payments received after such time shall be deemed to have been made on the next following Business Day. If any payment is due on a day which is not a Business Day, such payment shall be due on the next following Business Day and interest shall accrue until but excluding the actual date of payment.

Each payment to be made by the Borrowers shall be made in full without deduction, set-off or counterclaim of any kind or for any reason. All payments required hereunder shall be made in lawful currency of the United States of America.

If any fees and expenses incurred by the Obligors after the date of this Agreement are not paid by the Obligors, the DIP Lender may, but shall have no duty to, pay all such fees and expenses whereupon such amounts shall be added to and form part of the DIP Obligations and shall reduce the availability under the DIP Facility.

24. **Representations and Warranties**: Each Obligor represents and warrants to the DIP Lender, upon which the DIP Lender relies in entering into this Agreement and the other DIP Loan Documents, that:

(a) The transactions contemplated by this Agreement and the other DIP Loan Documents have been duly authorized, executed and delivered by or on behalf of the Obligors, and upon the granting of the Initial Order:

(i) are within the powers of the Obligors;

(ii) constitute legal, valid and binding obligations of the Obligors, subject only to any limitation under applicable laws relating to (i) bankruptcy, insolvency, arrangement or creditors' rights generally, and (ii) the discretion that a court may exercise in the granting of equitable remedies;

(iii) do not require any consent or approval under, result in a breach or violation of, or conflict with, any of the terms or provisions of its constating documents or by-laws or any contracts (including the Promissory Note and the Loan Agreement) or instruments to which it is a party or pursuant to which any of its assets and property may be affected, other than breaches that are stayed by the Initial Order;

(iv) there is no requirement for the Obligors to make any filing with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to the execution, delivery and performance by the Obligors of the transactions contemplated by this Agreement, other than such as has been obtained;

(b) The Business has been and will continue to be conducted in material compliance with applicable Law of each jurisdiction in which the Business is carried on, subject to the provisions of each Court Order made after the Filing Date;

(c) The Obligors have obtained all Authorizations for the operation of the Business, which Authorizations are in full force and effect, and no proceedings have been commenced to revoke or amend any such Authorizations, except where the failure to possess or maintain in good standing and in full force and effect such Authorizations, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect;

(d) The Obligors have (i) good and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), (iii) valid licensed rights in (in the case of licensed interests in intellectual property) and (iv) good title to (in the case of all other personal property), the Collateral. The Collateral is free and clear of Encumbrances other than Permitted Encumbrances;

(e) As of the date hereof, except as set out in Schedule D hereto, there is no action, suit or proceeding, at law or in equity, by any Person, nor any arbitration, administrative or other proceeding by or before (or to the best of the knowledge of the Borrower any investigation by) any Governmental Authority pending, or, to the best of the knowledge of the Obligors, threatened against or affecting the Obligors or their respective properties or rights or any of their assets or properties, and the Obligors do not know of any valid basis for any such action, suit, proceeding, arbitration or investigation. As of the date hereof, the Obligors are not subject to any judgment, order or decree entered in any lawsuit or proceeding;

(f) No Default or Event of Default has occurred and is continuing; and

(g) All factual information provided by or on behalf of the Obligors to the DIP Lender for the purposes of or in connection with this Agreement or any transaction contemplated herein is true and accurate in all material respects on the date as of which such information is dated or certified and is not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not materially misleading at such time in light of the circumstances under which such information was provided.

The representations and warranties in this Agreement and in any certificates or documents delivered to the DIP Lender shall not merge and shall survive and continue in full force and effect so long as any amounts are owing by the Obligors to the DIP Lender under this Agreement or the other DIP Loan Documents.

25. **Affirmative Covenants**: Each Obligor agrees and covenants to perform and do each of the following until the DIP Obligations are indefeasibly repaid and the DIP Facility is cancelled:

(a) Pay when due all principal interest, fees and other amounts payable by the Obligors under this Agreement and the other DIP Loan Documents;

(b) Comply with the requirements of all applicable Laws, judgments, orders (including all orders of the Court, including the Initial Order), decisions and awards;

(c) Deliver to the DIP Lender (i) Updated Cash Flows and Cash Flow Variance Reports in accordance with Section 13 and (ii) such other reporting and other information from time to time as is reasonably requested by the DIP Lender;

(d) Deliver to DIP Lender, concurrently with the delivery thereof to the Monitor (i) copies of all monthly internal financial statements, liquidity and updates to the DIP Budget that are reported weekly, together with any related or supporting information provided to the Monitor and (ii) any written reports, commentary or analysis received by the Obligors from the Monitor regarding the financial position of the Obligors or otherwise;

(e) Provide the DIP Lender with a weekly status update regarding the status of the CCAA Proceeding, including any information which may otherwise be confidential, subject to same being maintained as confidential by the DIP Lender;

(f) Keep the DIP Lender apprised on a timely basis of all material developments with respect to the Business and affairs of the Obligors (including any changes to the strategy of the Obligors);

(g) Notify the DIP Lender forthwith of the occurrence of any Default or Event of Default;

(h) Allow the DIP Lender, its directors, officers, employees, agents, advisors and representatives full access to the Obligors' premises and all information and documentation of the Obligors and their Affiliates on reasonable notice and during normal business hours and cause management thereof to fully cooperate with any such directors, officers, employees, agents, advisors and representatives;

(i) Preserve, renew, maintain and keep in full force and effect its corporate existence and its Authorizations required in respect of the Business or any of the Collateral;

(j) Maintain in full force all policies of insurance that are now in effect (or renewals thereof) under which the Obligors, the Business or any of the Collateral is insured; and

(k) Pay when due all applicable Taxes and other amounts that are Priority Payables, permitting and licences fees and other amounts necessary to preserve the Collateral to avoid any Encumbrance on the Collateral that is not a Permitted Encumbrance.

26. **Negative Covenants**: Each Obligor covenants and agrees not to do the following, other than with the prior written consent of the DIP Lender, in its sole discretion:

(a) Utilize any Advance except in accordance with the permitted uses hereunder and the DIP Budget;

(b) Except as contemplated by this Agreement, the DIP Budget or any Court Order, make any payment of any Indebtedness or obligations existing as at the Filing Date (the "**Pre-Existing Debt**");

(c) Create, incur or permit to exist any Indebtedness other than Pre-Existing Debt, Advances and accounts payable in the ordinary course of business in accordance with the DIP Budget;

(d) Except for Permitted Encumbrances, create or permit to exist any Encumbrance or provide or seek or support a motion by another Person to provide any Encumbrance, upon any of the Collateral;

(e) Sell, exchange, lease, release, abandon or otherwise dispose of any Collateral other than in the ordinary course of business;

(f) Purchase or acquire, or make any commitment to purchase or acquire, any shares, capital stock, equity interest, or any obligations or other securities of, or any interest in, any Person;

(g) Make or commit to make any acquisition of assets (other than in the ordinary course of business) or of any business or part thereof;

(h) Except for the liability of the Obligors under the DIP Loan Documents, make any investments in or loans to or guarantee (or provide any other financial assistance with respect to) the Indebtedness or obligations of any other Person or entity or permit its Affiliates to do so;

(i) Enter into any key employee bonus or retention plans, other than the KERP;

(j) Make or permit any dividends, distributions, or other payments (in cash, property or obligations) on, or other payments or distributions on account of, any portion of any direct or indirect ownership interest in the Obligors or other rights to acquire any such ownership interest, or otherwise make or permit any payments to be made to any holder of any such direct or indirect ownership interest or any rights to acquire such direct or indirect ownership interest;

(k) Change its jurisdiction of incorporation, chief executive office or registered office;

(l) Change its name, fiscal year end or accounting policies or amalgamate, consolidate with, merge into, dissolve or enter into any similar transaction with any other Person or permit a change of control of any Obligor;

(m) Modify, repudiate or terminate any material contract which would reasonably be expected to result in a material adverse change in the financial condition, operation or prospects of the Obligors;

(n) Make any material change in the nature of the Business;

(o) Create or acquire any new subsidiary; or

(p) Permit the net variance (as compared to the DIP Budget) in the aggregate receipts of the Obligors and aggregate operating disbursements (excluding professional fees and expenses and other one-time restructuring charges) of the Obligors for the prior four-week period to exceed 15%.

27. **Events of Default**: The occurrence of any one or more of the following events shall constitute an event of default (each, an "**Event of Default**") under this Agreement:

(a) Failure of the Borrowers to pay any amounts to the DIP Lender when due and owing hereunder or otherwise;

(b) Failure of the Borrowers to comply with Section 26(p);

(c) Except as otherwise set forth in this Section 27, failure of the Obligors to perform or comply with any term or covenant of this Agreement or any other DIP Loan Document and, if capable of being remedied, such failure remains unremedied for five (5) days;

(d) Any representation or warranty made or given hereunder or under any other DIP Loan Document by the Obligors is incorrect in any material respect or misleading when made or deemed to be made;

(e) A Borrower fails to pay or remit any amount with respect to a Priority Payable when due;

(f) The Initial Order is amended, restated or otherwise varied without the consent of the DIP Lender or any Court Order is issued, dismissed, stayed, reversed, vacated, amended or restated and such issuance, dismissal, stay, reversal, vacation, amendment or restatement adversely affects or would reasonably be expected to adversely affect the interests of the DIP Lender, including any Court Order:

(i) terminating, lifting or amending the stay imposed by the CCAA Proceeding;

(ii) initiating any proceeding with respect to any Obligor under the *Bankruptcy and Insolvency Act* (Canada) or any equivalent legislation;

(iii) appealing or granting leave to appeal the Initial Order;

(iv) granting any other claim or Encumbrance of equal or priority status to that of the DIP Charge, except for the Priority Charge; or

(v) staying, reversing, vacating or otherwise modifying the DIP Loan Documents, the DIP Charge or prejudicially affecting the DIP Lender or the Collateral;

(g) The failure of any order granting provisional relief pursuant to section 1519 of the United States Bankruptcy Code or the Recognition Order, after having been entered, to be in full force and effect, including by the entry of an order reversing, amending, supplementing, staying for a period in excess of five (5) days, vacating or otherwise modifying any order granting provisional relief pursuant to section 1519 of the United States Bankruptcy Code or the Recognition Order in a manner that is adverse to the DIP Lender;

(h) The appointment of a receiver and manager, receiver, interim receiver or similar official or any process of any court becomes enforceable against an Obligor, or any of its property is seized or levied upon, or a creditor takes possession of any property of an Obligor;

(i) Any violation or breach of any Court Order by any Obligor;

(j) Subject to any other Court Order or the prior written consent of the DIP Lender, any Obligor ceases to carry on or maintain the Business or its assets and property in the ordinary course of the Business or any court order enjoins, restrains, or prevents any Obligor from conducting any material part of the Business;

(k) Any proceeding, motion or application is commenced or filed by an Obligor, or if commenced by another Person, supported or otherwise consented to by an Obligor, seeking the invalidation, subordination or other challenge of the terms of the DIP Facility, the DIP Charge, this Agreement, any other DIP Loan Document, the Promissory Note, the Loan Agreement, the Promissory Note Security or the Loan Agreement Security;

(l) The DIP Charge ceases to rank ahead of any and all Encumbrances on the Collateral, other than the Priority Charge;

(m) The DIP Lender determines, in its sole discretion, acting reasonably, that a material adverse change has occurred after the date hereof in respect of the business, affairs or financial condition of the Obligors or their ability to comply with their obligations under this Agreement, any other DIP Loan Document or any Court Order;

(n) The denial or repudiation by any Obligor of the legality, validity, binding nature or enforceability of this Agreement or any of the other DIP Loan Documents;

(o) The Obligors fail to complete any action or step required to be completed by the following milestone dates set forth below:

(i) the Comeback Motion shall have been heard by the Court and an amendment and restatement of the Initial Order shall have been granted by the Court in a form acceptable to the DIP Lender, within ten (10) days of the Filing Date; and

(ii) the commencement of a sale and investment solicitation process for the Collateral or the Borrowers reasonably acceptable to the DIP Lender, within fifteen (15) Business Days of the Filing Date;

(p) Ernst & Young Inc. is not appointed as the Monitor of the Obligors, with the rights set out in the draft Initial Order approved by the DIP Lender in the CCAA Proceeding, without the DIP Lender's prior written consent, or once appointed, Ernst & Young Inc. ceases to be the Monitor of the Obligors, without the DIP Lender's prior written consent; or

(q) Naveed Manzoor of FAAN Advisors Group Inc. ceases to be the chief restructuring officer of the Obligors, without the DIP Lender's prior written consent.

28. **Remedies**: Upon the occurrence of an Event of Default, the DIP Lender may, in its sole discretion, elect to terminate the DIP Lender's commitment to make further Advances to the Borrowers and set-off, consolidate or accelerate all amounts outstanding under the DIP Facility and any DIP Loan Documents and declare such amounts to be immediately due and payable without any periods of grace. Upon the occurrence of an Event of Default, the DIP Lender may, subject to the terms of the Initial Order and any other orders granted in the CCAA Proceeding:

(a) apply to the Court for the appointment of a receiver, an interim receiver or a receiver and manger over the Collateral;

(b) apply for a Court Order, on terms satisfactory to the Monitor and the DIP Lender, providing the Monitor with the power, in the name of and on behalf of the Obligors, to take all necessary steps in the CCAA Proceeding to realize on the Collateral;

(c) exercise the powers and rights of a secured creditor; and/or

(d) exercise all such other rights and remedies available to the DIP Lender under this Agreement, the other DIP Loan Documents, the Court Orders and applicable Law.

Nothing shall prevent the DIP Lender from applying to the Court for such relief as the DIP Lender may determine is necessary or appropriate at any time. No failure or delay by the DIP Lender in exercising any of its rights hereunder or at Law shall be deemed a waiver of any kind. The rights, powers and remedies under this Agreement, the other DIP Loan Documents and the DIP Charge are cumulative and are in addition to and not in substitution for any other rights, powers and remedies available at Law or in equity or otherwise. No single or partial exercise by the DIP Lender of any right, power or remedy precludes or otherwise affects the exercise of any other right, power or remedy to which the DIP Lender may be entitled.

29. **Further Assurances:** The Obligors shall, at their own expense, from time to time do, execute and deliver, or cause to be done, executed and delivered, all such further acts, documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) as the DIP Lender may reasonably request for the purpose of giving effect to this Agreement and the other DIP Loan Documents.

30. **Joint & Several Liability:** Each Borrower shall be jointly and severally liable for all DIP Obligations regardless of which Borrower actually receives Advances under the DIP Facility or the amount of any such Advance received or the manner in which the DIP Lender accounts for such Advances on its books and records.

31. **Indemnity**: Each Borrower shall indemnify and hold harmless the DIP Lender, and its Affiliates and the officers, directors, employees, representatives, advisors, managers, solicitors and agents of the DIP Lender and its Affiliates (collectively, the "**Indemnified Persons**") from and against any and all actions, lawsuits, proceedings (including any investigations or inquiries), losses, damages, liabilities or expenses of any kind or nature whatsoever which may be incurred by or suited against or involve any of the Indemnified Persons as a result of, in connection with or in any way related to the DIP Facility, the proposed or actual use of the Advances, this Agreement or the other DIP Loan Documents. Notwithstanding the foregoing, the Borrowers shall have no obligation to indemnify any Indemnified Person against such loss, liability, cost or expense to the extent that they are found by final judgment of a court of competent jurisdiction to arise from the gross negligence or willful misconduct of such Indemnified Person. The DIP Lender shall not be responsible or liable to the Obligors or any other Person for any indirect, consequential special or punitive damages.

32. **Judgement Currency**: If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or under any other DIP Loan Documents in Canadian dollars into another currency, the parties hereto agree, to the fullest extent permitted by law, that the rate of exchange used shall be that at which, in accordance with normal banking procedures, the DIP Lender could purchase Canadian dollars with such other currency at the buying spot rate of exchange on the Business Day immediately preceding that on which any such judgment, or any relevant part thereof, is given. The obligations of the Obligors in respect of any sum due to the DIP Lender hereunder and under the other DIP Loan Documents shall, notwithstanding any judgment in a currency other than Canadian dollars, be discharged only to the extent that on the Business Day following receipt by the DIP Lender of any sum adjudged to be so due in such other

currency the DIP Lender may, in accordance with normal banking procedures, purchase Canadian dollars with such other currency. If the amount of Canadian dollars so purchased is less than the sum originally due to the DIP Lender in Canadian dollars, the Obligors agree, to the fullest extent that they may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify the DIP Lender against such loss.

33. **Withholdings and Tax Indemnity**: Any and all payments by or on account of any obligation of the Obligors hereunder or under any other DIP Loan Document shall be made free and clear of and without deduction or withholding for any Taxes; provided that, if any Obligor is required by applicable Law to deduct or withhold any Taxes from such payments, then:

(a) if such tax is an Indemnified Tax, the amount payable by the Obligors shall be increased so that after making all required deductions or withholdings (including deductions or withholdings applicable to additional amounts payable under this Section 33), the DIP Lender receives an amount equal to the amount it would have received had no such deductions or withholdings been made; and

(b) the Obligors shall make such deductions and timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Law.

In addition, the Obligors shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Law. The Borrowers shall indemnify the DIP Lender, within ten days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed on or attributable to amounts payable hereunder or under any other DIP Loan Document) paid by the DIP Lender on or with respect to an amount payable by the Obligors under or in respect of this Agreement or under any other DIP Loan Document together with any penalties, interest and expenses arising in connection therewith and with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate from the DIP Lender as to the amount of such payment or liability delivered to the Borrower Agent shall be conclusive absent manifest error. Promptly after any payment of Indemnified Taxes or Other Taxes by the Obligors to a Governmental Authority (but in any event within 30 days after the date of such payment), the Obligors shall deliver to the DIP Lender the original or certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the relevant return reporting such payment or other evidence of such payment reasonably satisfactory to the DIP Lender.

34. **Entire Agreement:** This Agreement and the other DIP Loan Documents, constitute the entire agreement between the parties related to the subject matter hereof and, as the definitive documents, supersede all prior correspondence, agreements, negotiations, discussions and understandings. To the extent that there is any inconsistency between this Agreement and the other DIP Loan Documents, this Agreement shall prevail.

35. **Amendments and Waivers:** No waiver or delay on the part of the DIP Lender in exercising any right or privilege hereunder or under any other DIP Loan Document shall

operate as a waiver hereof or thereof unless made in writing and delivered in accordance with the terms of this Agreement. A waiver, amendment, release or modification of this Agreement or any other DIP Loan Document shall not be established by conduct, custom or course of dealing and shall occur, if applicable, solely by an instrument in writing duly executed by the DIP Lender, in the case of a waiver or release, and the parties hereto, in the case of an amendment or other modification.

36. **Enurement**: This Agreement be binding upon and enure to the benefit of the Obligors and the DIP Lender and their respective successors and permitted assigns.

37. **Assignment**: The DIP Lender may assign this Agreement and its rights and obligations hereunder and under the other DIP Loan Documents (and grant participation herein and therein), in whole or in part, to any Person acceptable to the DIP Lender, in its sole discretion, in consultation with the Monitor. The Obligors shall not be permitted to assign this Agreement or any other DIP Loan Document nor any right and obligation hereunder or thereunder without the written consent of the DIP Lender, in its sole discretion.

38. **Severability:** Any provision in this Agreement or any other DIP Loan Document which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof or effecting the validity of enforceability of such provision in any other jurisdiction.

39. **No Third Party Beneficiary**: No Person, other than the Obligors and the DIP Lender, are entitled to rely upon this Agreement, and the parties expressly agree that this Agreement does not confer any rights upon any Person not a signatory hereto.

40. **Press Releases**: The Obligors shall not issue any press release naming the DIP Lender without its prior approval, unless the Obligors are required to do so by applicable Law.

41. **Counterparts:** This Agreement may be executed in any number of counterparts and delivered by e-mail, including in PDF format, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

42. **Notices**: Any notice, direction or other communication given under this Agreement shall be in writing and given by delivering it or sending it as indicated below to:

(a) **the Obligors at:**

Acerus Pharmaceuticals Corporation
7025 Langer Drive, Suite 205
Mississauga ON L5N 0E8

Attention: Mr. Ed Gudaitis, Chief Executive Officer
Email: egudaitis@aceruspharma.com
Facsimile: (905) 569-1809

Attention:	Mr. Naveed Manzoor, Chief Restructuring Officer
Email:	nmansoor@aceruspharma.com
Facsimile:	(905) 569-1809

With a copy to:

Stikeman Elliott LLP
199 Bay Street, Suite 5300
Toronto, Ontario
M5L 1B9

Attention:	Liz Pillon and Lee Nicholson
Email:	lpillon@stikeman.com and leenicholson@stikeman.com

(b) **the DIP Lender at:**

First Generation Capital Inc.
40 King Street West
Toronto ON M5H 3Y2

Attention:	Mr. Ian Ihnatowycz
Email:	ian@generationcapitalmgmt.com
Facsimile:	(416) 304-9919

With a copy to:

Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, Ontario
M5H 4E3

Attention:	Howard Silverman
Email:	hsilverman@blg.com

Attention:	Christine Mason
Email:	cmason@blg.com

Attention:	Alex L. MacFarlane
Email:	amacfarlane@blg.com

Any such communication shall be deemed to have been validly and effectively given (i) if personally delivered, on the date of such delivery if such date is a Business Day and such delivery was made prior to 4:00 p.m. (local time in the place of receipt) and otherwise on the next Business Day; or (ii) if transmitted by facsimile, email, or similar means of recorded communication on the date of such transmission if such date is a Business Day and such transmission was made prior to 4:00 p.m. (local time in the place of receipt) and otherwise on the Business Day following the date of transmission. Any party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to such party at its changed address.

43. **English Language:** The parties hereto confirm that this Agreement and all related documents have been drawn up in the English language at their request. *Les parties aux présentes confirment que le présent acte et tous les documents y relatifs furent rédigés en anglais à leur demande.*

44. **Interpretation**: In this Agreement, words signifying the singular include the plural and vice versa, and words signifying gender include all genders. Every use of the word "including" in this Agreement is to be construed as meaning "including, without limitation". The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. References in this Agreement to a Section or Schedule are to be construed as references to a Section or Schedule of or to this Agreement unless the context requires otherwise. Subject to any limitations set forth herein, references to contracts, agreements or instruments are deemed to include all amendments, supplements, restatements or replacements to or of such contracts, agreements or instruments. References to a Person includes that Person's successors and permitted assigns. Reference in this Agreement to a statute refers to such statute and all rules and regulations made under it as the same may have been or may from time to time be amended, re-enacted or replaced.

45. **Governing Law and Jurisdiction:** This Agreement shall be governed by, and construed in accordance with, the Laws of the Province of Ontario and the federal Laws of Canada applicable therein. The parties hereby attorn and submit to the non-exclusive jurisdiction of the Court.

[remainder of page left intentionally blank; signature pages follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

AS DIP LENDER:

FIRST GENERATION CAPITAL INC.

By: ______________________________

Name:
Title:

AS BORROWER:

ACERUS PHARMACEUTICALS CORPORATION

By: ____________________________________
Name:
Title:

AS BORROWER:

ACERUS PHARMACEUTICALS USA, LLC

By: ____________________________________
Name:
Title:

AS GUARANTOR:

ACERUS BIOPHARMA INC.

By: ____________________________________
Name:
Title:

AS GUARANTOR:

ACERUS LABS INC.

By: ____________________________________
Name:
Title:

SCHEDULE A

DEFINITIONS

"**Administration Charge**" means the super-priority charge to be granted by the Court in an amount not exceeding Cdn.$300,000 securing the fees and expenses of: (i) the Obligors' CCAA counsel, (ii) the Obligors' U.S. counsel in respect of any Chapter 15 Proceedings, and (iii) the Monitor and its counsel;

"**Advance**" has the meaning given to that term in Section 8;

"**Advance Notice**" has the meaning given to that term in Section 8;

"**Affiliate**" of any Person means, at the time such determination is made, any other Person controlling, controlled by or under common control with such first Person, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of such Person, whether through the ownership of voting securities or otherwise;

"**Agreement**" means this DIP Facility Loan Agreement, including all Schedules, as it may be modified, amended, revised, restated, replaced, supplemented or otherwise changed from time to time and at any time hereafter;

"**Applicable Interest Rate**" means eight percent (8%) per annum;

"**Authorization**" means, with respect to any Person, any order, permit, approval, consent, waiver, licence (including, without limitation, any of the foregoing relating to the Business) or similar authorization of any Governmental Authority related to the Obligors, the Collateral or the Business;

"**Borrower Agent**" has the meaning given to that term in Section 4;

"**Borrowers**" has the meaning given to that term in Section 3;

"**Business**" means the commercialization and development of innovative prescription products that improve patient experience, with a primary focus on men's health, and the directly related activities of such business conducted by the Obligors;

"**Business Day**" means any day of the year, other than a Saturday, Sunday or any day on which major commercial banks are closed in Toronto, Ontario;

"**Cash Flow Variance Report**" has the meaning given to that term in Section 13;

"**CCAA**" has the meaning given to that term in the recitals;

"**CCAA Proceeding**" has the meaning given to that term in the recitals;

"**Cdn.$**" means the lawful currency of Canada;

“**Chapter 15 Proceedings**” means proceedings under Chapter 15 of the United States Bankruptcy Code 11 U.S.C. §§101-1532;

“**Collateral**” means all present and after-acquired assets and property of the Obligors, real and personal, tangible and intangible and all proceeds therefrom, but excluding consumer goods and the last day of the term of any lease or agreement to lease;

“**Comeback Motion**” means the comeback motion in the CCAA Proceeding;

“**Court**” has the meaning given to that term in recitals;

“**Court Order**” means an order of the Court, including the Initial Order;

“**CRO**” has the meaning given to that term in Section 15(m);

“**Default**” means any event, circumstance or omission that constitutes an Event of Default or that, after the giving of notice, the passage of time or the failure to remedy such event, circumstance or omission within a period of time, would constitute an Event of Default;

“**DIP Budget**” has the meaning given to that term in Section 13;

“**DIP Charge**” has the meaning given to that term in Section 17;

“**DIP Facility**” has the meaning given to that term in Section 7;

“**DIP Lender**” has the meaning given to that term in Section 6;

“**DIP Loan Documents**” means this Agreement, the Guarantees and any other agreements, instruments or other documents in respect of the DIP Facility contemplated by this Agreement or required by the DIP Lender;

“**DIP Obligations**” has the meaning given to that term in Section 17;

“**Directors’ Charge**” means the super-priority charge to be granted by the Court in an amount not exceeding Cdn.$200,000 securing the customary obligations and liabilities that the officers and directors of the Obligors may incur in such capacities from and after the Filing Date;

“**Encumbrance**” means any encumbrance, lien, charge, hypothec, pledge, mortgage, title retention agreement, security interest of any nature, adverse claim, exception, reservation, easement, encroachment, servitude, restriction on use, right of occupation, any matter capable of registration against title, option, right of first offer or refusal or similar right, restriction on voting (in the case of any voting or equity interest), right of pre-emption or privilege or any contract to create any of the foregoing;

“**Event of Default**” has the meaning given to that term in Section 27;

“**Excluded Taxes**” means any of the following Taxes imposed on or with respect to the DIP Lender or any other recipient of any payment to be made by or on account of any DIP Obligations, or required to be withheld or deducted from a payment to any such recipient, (a) income, net profits, or capital taxes imposed on or measured by net income, and franchise taxes imposed (i) by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or conducts business, in which its principal office is located or in which its applicable lending office is located, but not including Taxes payable by the DIP Lender as a result of the fact that the Applicable Interest Rate results in the deemed receipt of interest notwithstanding that no such interest was paid to the DIP Lender or (ii) that are Other Connection Taxes and (b) any branch profits taxes or any similar tax imposed by the jurisdiction where an Obligor is located;

"**Filing Date**" means the date the Initial Order is made granting the Obligors protection under the CCAA;

"**First Tranche Advances**" has the meaning given to that term in Section 14;

"**Governmental Authority**" means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, body, board, tribunal or dispute settlement panel or other law or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

"**Guarantees**" means the unconditional guarantees by the Guarantors of the DIP Obligations of the Borrowers and the unconditional guarantees by each Borrower of the DIP Obligations of the other Borrower;

"**Guarantors**" has the meaning given to that term in Section 5;

"**Indebtedness**" of any Person means, at any date, without duplication, (a) all obligations of such Person for borrowed money, including by way of overdraft and drafts or orders accepted as representing extensions of credit, (b) all obligations of such Person evidenced by bonds, debentures, the face amount of all bankers' acceptances, letters of credit, letters of guarantee and similar instruments, notes, letters of credit or other similar instruments, including obligations under any arrangement providing for the leasing of any property, which property has been or is to be sold or transferred in contemplation of such leasing, (c) all obligations of such Person to pay the deferred purchase price of property or services, (d) all obligations of such Person as lessee which are capitalized in accordance with generally accepted accounting principles (or other applicable accounting standards) consistently applied in Canada, (e) all indebtedness, liabilities and obligations secured by an Encumbrance on any asset of such Person, whether or not the same is otherwise indebtedness, liabilities or obligations of such Person, which, for greater certainty will not include rent paid or payable by such Person in the ordinary course, (f) all indebtedness, liabilities and obligations of others which is, directly or indirectly, guaranteed by such Person or which such Person has agreed (contingently or otherwise) to purchase or otherwise acquire, (g) all indebtedness, liabilities and obligations in respect of financial instruments which are classified as a liability on the balance sheet of such Person, (h) all obligations of such Person to otherwise assure a creditor against loss, (i) all hedging obligations and (j) all obligations of such Person for trade accounts and contracts;

"**Indemnified Persons**" has the meaning given to that term in Section 31;

"**Indemnified Taxes**" means (a) Taxes other than Excluded Taxes and (b) to the extent not otherwise described in (a), Other Taxes;

"**Initial Order**" means an order of the Court, in form and substance satisfactory to the DIP Lender, in its sole discretion, approving, *inter alia*, this Agreement, the DIP Facility, the other DIP Loan Documents, and the DIP Charge, such order obtained on application made on notice to such Persons as the DIP Lender approves, as the same may be amended or amended and restated, with the consent of the DIP Lender, in its sole discretion;

"**KERP**" means a key employee retention program providing compensation to the Borrowers' key employees in an amount not exceeding Cdn.$455,250 during the CCAA Proceeding, which shall be approved by the Monitor, and the terms and conditions, including, without limitation, the milestones associated with such compensation, of which shall be acceptable to the DIP Lender;

"**KERP Charge**" means the super-priority charge to be granted by the Court in an amount not exceeding Cdn.$455,250, securing amounts due under the KERP;

"**Law**" means any federal, provincial, county, territorial, district, municipal, local, foreign, supranational or international. law, statute, ordinance, regulation, by-law, rule, code, treaty or rule of common law or otherwise of, or any order, judgment, injunction, decree or similar authority enacted, issued, promulgated, enforced or entered by, any Governmental Authority;

"**Loan Agreement**" means the loan agreement dated as of December 21, 2022 between, *inter alios,* the Borrowers, as borrowers, and the DIP Lender, as lender, as amended, restated or otherwise modified form time to time;

"**Loan Agreement Security**" means the security granted pursuant to the Loan Agreement and any other security granted to First Generation Capital Inc. as security for the obligations under or in connection with the Loan Agreement;

"**Material Adverse Effect**" means a material adverse effect on the business, operations, results of operations, assets, liabilities or financial condition of the Obligors;

"**Maturity Date**" has the meaning given to that term in Section 19;

"**Maximum First Tranche Amount**" has the meaning given to that term in Section 14;

"**Maximum Loan Amount**" has the meaning given to that term in Section 7;

"**Maximum Second Tranche Amount**" has the meaning given to that term in Section 15;

"**Monitor**" means Ernst & Young Inc., as the Court-appointed Monitor of the Obligors in the CCAA Proceeding;

"**Net Proceeds**" means the applicable gross sale price, less applicable Taxes, customary closing adjustments, reasonable legal fees and expenses and other expenses incurred in respect of the relevant sale, all subject to DIP Lender approval;

"**Obligors**" has the meaning given to that term in Section 5;

"**Other Connection Taxes**" means, with respect to the DIP Lender and any other recipient of any payment to be made by or on account of any DIP Obligations, Taxes imposed as a result of a present or former connection between such recipient and the jurisdiction imposing the Tax (other than a connection arising from the execution, delivery, enforcement of, or performance under, or receipt of payments under any DIP Loan Document, or from the sale or assignment of an interest in any Advance or DIP Loan Document);

"**Other Taxes**" means any and all present or future stamp, recording, filing, documentary or similar taxes or any other excise or property taxes, charges or similar levies arising from any payment (or deemed payment) made hereunder or under any other DIP Loan Document or from the execution, delivery or enforcement of, or performance under or otherwise with respect to this Agreement or any other DIP Loan Document (other than Excluded Taxes and Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 37));

"**Permitted Encumbrance**" means the Security Interest (as defined in the Promissory Note), the Security (as defined in the Loan Agreement), the Priority Charge, the Directors' Charge and the KERP Charge;

"**Permitted Fees and Expenses**" has the meaning given to that term in Section 12;

"**Person**" means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, Governmental Authority, and where the context requires, any of the foregoing when they are acting as trustee, executor, administrator or other legal representative;

"**PIK Interest**" has the meaning given to that term in Section 11;

"**Pre-Existing Debt**" has the meaning given to that term in Section 26(b);

"**Priority Charge**" means the Administration Charge;

"**Priority Payables**" means harmonized sales tax, sales Tax and any amount payable or accrued by the Obligors which is secured by an Encumbrance (other than a Priority Charge) which ranks or is capable of ranking prior to or *pari passu* with the DIP Charge, including amounts accrued or owing for wages, vacation pay, termination pay (only where it is a priority payable), employee deductions, or Taxes, and other statutory or other claims that have or may have priority over, or rank *pari passu* with, the DIP Charge;

"**Promissory Note**" means the third amended and restated secured grid promissory note dated March 30, 2022 by Acerus Pharmaceuticals Corporation in favour of the DIP Lender (amending and restating the Original Note (as defined therein)), as amended by Amendment #1 to Third

Amended and Restated Secured Grid Promissory Note dated as of June 23, 2022, Amendment #2 to Third Amended and Restated Secured Grid Promissory Note dated as of August 4, 2022 and Amendment #3 to Third Amended and Restated Secured Grid Promissory Note dated as of December 21, 2022, as further amended, supplemented, restated and replaced from time to time;

"**Promissory Note Security**" means the security granted pursuant to the Promissory Note and any other security granted to First Generation Capital Inc. as security for the obligations under or in connection with the Promissory Note;

"**Recognition Order**" means an order of the U.S. Bankruptcy Court, in form and substance satisfactory to the DIP Lender, in its sole discretion, recognizing the CCAA Proceeding as a foreign main proceeding and granting the DIP Charge up to the maximum amount of the DIP Obligations on the assets of the Obligors located in the United States;

"**Second Tranche Advances**" has the meaning given to that term in Section 15;

"**Tax**" and "**Taxes**" means any taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, excise, withholding, business, franchising, property, development, occupancy, payroll, health, social services, education, employment and all social security taxes, all surtaxes, all customs, duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees and all employment insurance and health insurance, and other government pension plan premiums or contributions;

"**Updated Cash Flow**" has the meaning given to that term in Section 13; and

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

SCHEDULE B

ADVANCE NOTICE

To: First Generation Capital Inc.
40 King Street West
Toronto, Ontario
M5H 3Y2

This Advance Notice is delivered pursuant to the DIP Facility Loan Agreement dated January **[●]**, 2023 made among Acerus Pharmaceuticals Corporation and Acerus Pharmaceuticals USA, LLC, as borrowers (the "**Borrowers**"), Acerus Biopharma Inc. and Acerus Labs Inc., as Guarantors, and First Generation Capital Inc., as DIP Lender (as amended, restated, varied, amended and restated or supplemented from time to time, the "**DIP Loan Agreement**"). All terms used herein as defined terms and not otherwise defined shall have the respective meanings ascribed thereto in the DIP Loan Agreement.

1. The Borrowers hereby request Advance as follows:

Date of Advance:	_____________, 20__
Amount of Advance:	$____________
Recipient of Advance:	[Acerus Pharmaceuticals Corporation] / [Acerus Pharmaceuticals USA, LLC]
Use of Proceeds:	[●]

2. The Borrowers hereby certify that as at the date of this Advance Notice and the date of the Advance requested hereby:

(a) the proposed use of the proceeds of the Advance requested hereby is in accordance with the DIP Budget;

(b) the representations and warranties contained in the DIP Loan Agreement are true and correct in all material respects (except for any such representations and warranties which are specifically expressed to have been given only as at the date of the DIP Loan Agreement);

(c) all terms and conditions precedent to an Advance contained in the DIP Loan Agreement have been satisfied; and

(d) Default or Event of Default has occurred or will occur after giving effect to the Advance:

[signature page follows]

Dated this ______ day of ___________, 20__

ACERUS PHARMACEUTICALS CORPORATION

By: ______________________________

Name:
Title:

ACERUS PHARMACEUTICALS USA, LLC

By: ______________________________

Name:
Title:

SCHEDULE C

GRID

ADVANCES AND REPAYMENT OF PRINICPAL

Advance Date	Days	Interest	Advances	Repayments	Carrying Amount
		$	$	$	$
		$	$	$	$

SCHEDULE E

LITIGATION

Schenk Litigation

Valeant Pharmaceuticals International, Inc. and Valeant International Bermuda ("**Valeant**") are defendants in Ontario Superior Court of Justice Action No. CV-11-438382, which claims a declaration that Valeant is contractually obligated to compensate the plaintiff, Reiner Schenk ("**Schenk**") pursuant to the terms of a contract between Schenk and Biovail Corporation. The main action was commenced by Notice of Action issued on October 31, 2011 and a Statement of Claim was issued on December 14, 2011. Acerus Pharmaceuticals Corporation ("**Acerus**") was named as one of the defendants in the main action, but the action was discontinued as against Acerus on December 14, 2011. On October 29, 2013, Valeant commenced a third party claim against Acerus (among others) claiming contribution, indemnity and other relief over to the full extent that Valeant may be held liable to Schenk, and damages for breach of fiduciary duty, breach of contract and intentional interference with economic relations in any amount for which Valeant is found liable to Schenk. Acerus has defended the third-party claim, denying any liability to Valeant. The parties have concluded examinations for discovery and attended a pre-trial conference in February 2020. The trial was scheduled to commence in April 2020 and was anticipated to be two weeks long. However, in an effort to reduce the transmission of COVID-19, the Ontario Superior Court suspended all regular operations in March 2020. Accordingly, the trial was adjourned to a later date. The parties attended a further pre-trial conference in December 2021. In January 2023, the parties commenced settlement discussions with a view to resolving the action out of court.

Jones Day litigation

On December 11, 2019, Jones Day commenced an action in the New York State Supreme Court against Serenity Pharmaceuticals LLC ("**Serenity**") (now Acerus Pharmaceuticals USA, LLC), and certain members of its senior management, for alleged unpaid legal bills. On September 21, 2020, Serenity filed an answer with counterclaims against Jones Day. Serenity's counterclaim alleges breach of contract in connection with Jones Day's representation of Serenity in a prior lawsuit, fraud in respect of certain billing issues and malpractice. Also on September 21, 2020, the senior management members filed a motion to dismiss Jones Day's complaint as against them. Jones Day also brought a motion to dismiss Serenity's counterclaims. On May 12, 2020, a decision was rendered in both motions. Serenity's motion was dismissed, and Jones Day's motion was granted with respect to the counterclaims in fraud and malpractice but dismissed in respect of the breach of contract claim. On August 31, 2022, the senior management members filed a motion for summary judgment to dismiss Jones Day's complaint against them. On September 8, 2022, Jones Day filed a motion to amend its complaint to add Acerus as a new defendant. Serenity and the senior management members opposed the motion to amend because it seeks to both add Acerus as a defendant and also pierce Serenity's corporate veil to seek damages against the senior management members. Defendants' motion for summary judgment and Plaintiff's motion to amend its complaint are both pending. Decisions on both motions will likely be issued sometime in 2023.

As a separate matter, the parties are engaged in motion practice related to discovery. Jones Day is seeking sanctions for an alleged violation of a court order regarding document production. However, according to New York law, all discovery is stayed while a motion for summary judgment is pending. In addition, the discovery order has been appealed and a decision on the discovery order is expected to be issued sometime within the next six months.

Robert Motz

Acerus received a demand letter in November 2022 from counsel to Robert Motz, that alleges that Acerus owes Robert Motz certain contractual entitlements (severance payments) under his employment agreement. No other actions have been taken in respect of such allegations since that date.

Court File No.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION, ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC.

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF NAVEED Z. MANZOOR
(SWORN JANUARY 25, 2023)

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Elizabeth Pillon (LSO #35638M)
Tel: (416) 869-5230
Email: lpillon@stikeman.com

Lee Nicholson (LSO #66412I)
Tel : (416) 869-5604
Email: leenicholson@stikeman.com

Philip Yang (LSO #82084O)
Tel: (416) 869-5593
Email: pyang@stikeman.com

Lawyers for the Applicants

TAB 3

Court File No. ●

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	THURSDAY, THE 26TH DAY
	)	
JUSTICE OSBORNE	)	OF JANUARY, 2023

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION, ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC.

Applicants

INITIAL ORDER

THIS APPLICATION, made by Acerus Pharmaceuticals Corporation, Acerus Biopharma Inc., Acerus Labs Inc. and Acerus Pharmaceuticals USA, LLC (collectively, the "**Applicants**"), for an initial order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day by judicial videoconference via Zoom.

ON READING the affidavit of Naveed Manzoor sworn January 25, 2023 (the "**Manzoor Affidavit**") and the Exhibits thereto, the pre-filing report of Ernst & Young Inc. ("**EY**"), in its capacity as proposed monitor of the Applicants dated 25, 2023 (the "**Pre-Filing Repor**t"), the consent of EY to act as the Monitor (the "**Monitor**"), on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, counsel for EY, counsel for First Generation Capital Inc. ("**FGC**"), and counsel for the DIP Lender (as defined below),

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

POSSESSION OF PROPERTY AND OPERATIONS

3. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are authorized and empowered to continue to retain and employ their employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

4. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize their existing central cash management system currently in place or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person or Persons (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any plan of arrangement or compromise under the CCAA with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order subject to compliance with the DIP Budget (as defined in the DIP Facility Agreement), as may be amended from time to time:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

6. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled, subject to compliance with the DIP Budget, as may be amended from time to time, but not required to pay all reasonable expenses incurred by the Applicants in carrying on their Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicants following the date of this Order.

7. **THIS COURT ORDERS** that the Applicants shall, in accordance with legal requirements, remit or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

8. **THIS COURT ORDERS** that, from and after the date of this Order, the Applicants shall not make any payments pursuant to this Order other than those contemplated by the DIP Budget, as may be amended from time to time, and subject to permitted variances under the DIP Facility Agreement (as defined below), or upon further Order of this Court.

9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, mortgages, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to continue negotiations with stakeholders in an effort to pursue restructuring options for the Applicants including without limitation all avenues of refinancing of their Business or Property, in whole or in part, subject to prior approval of this Court being obtained before any material refinancing.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

11. **THIS COURT ORDERS** that until and including February 4, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting their Business or their Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting their Business or their Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

12. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants or the Monitor, or affecting their Business or their Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (c) prevent the filing of any registration to preserve or perfect a security interest, or (d) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

13. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

14. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, email addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

15. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

16. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

17. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

18. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $200,000, as security for the indemnity provided in paragraph 17 of this Order. The Directors' Charge shall have the priority as set out in paragraphs 46 and 48 herein.

19. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the

benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 17 of this Order.

APPROVAL AND SEALING OF THE CRO ENGAGEMENT LETTER

20. **THIS COURT ORDERS** that the agreement dated as of January 23, 2023 pursuant to which the Applicants have engaged FAAN Advisors, ("**FAAN**"), to act as Chief Restructuring Officer (the "**CRO**") through the services of Naveed Manzoor ("**Manzoor**") and other employees or agents of FAAN (as applicable), an unredacted copy of which is attached as Confidential Exhibit "B" to the Pre-Filing Report as may be amended by the parties thereto with the consent of the Monitor (the "**CRO Engagement Letter**"), and the appointment of the CRO pursuant to the terms thereof, are hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby.

21. **THIS COURT ORDERS** that, during the Stay Period, the CRO is authorized to exercise and perform the powers, responsibilities and duties as described in the CRO Engagement Letter and subject to the terms thereof, together with such other powers, responsibilities and duties as may be agreed upon by the CRO and the Applicants, in consultation with the DIP Lender (collectively, the "**CRO Powers**"). In exercising the CRO Powers, the CRO shall be deemed to be acting for and on behalf of the Applicants and not its personal or corporate capacity.

22. **THIS COURT ORDERS** that the CRO, Manzoor, or such other employees or agents of FAAN, shall not be, or deemed to be a director, officer or employee of the Applicants.

23. **THIS COURT ORDERS** that the CRO shall not, as a result of the performance of its obligations and duties in accordance with the terms of the CRO Engagement Letter and this Order, be deemed to be in Possession (as defined below) of any of the Property within the meaning of any Environmental Legislation (as defined below); provided, however, if the CRO is nevertheless later found to be in Possession of any Property, then the CRO, as the case may be, shall be deemed to be a Person who has been lawfully appointed to take, or has lawfully taken, possession or control of such Property for the purposes of section 14.06(1.1)(c) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and shall be entitled to the benefits and protections in relation to Applicants and such Property as provided by section 14.06(2) of the BIA to a "trustee" in relation to an insolvent Person and its property.

24. **THIS COURT ORDERS** that the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the CRO, provided further that in no event shall the liability of the CRO exceed the quantum of the fees paid to the CRO.

25. **THIS COURT ORDERS** that no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the CRO, and all rights and remedies of any Person against or in respect of the CRO are hereby stayed and suspended, except with the written consent of the CRO and the Monitor, or with leave of this Court on notice to the Applicants, the Monitor, the DIP Lender and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicants, the Monitor, the DIP Lender and the CRO at least ten (10) days prior to the return date of any such motion for leave.

26. **THIS COURT ORDERS** that the obligations of the Applicants to the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the BIA in respect of the Applicants.

27. **THIS COURT ORDERS** that payment obligations of the Applicants to the CRO in respect of any fees and disbursements of the CRO shall be entitled to the benefit of and shall form part of the Administration Charge (as defined below) set out herein.

28. **THIS COURT ORDERS** that the unredacted copy of the CRO Engagement Letter included as Confidential Exhibit "B" to the Pre-Filing Report shall be sealed and kept confidential pending further order of this Court.

APPOINTMENT OF MONITOR

29. **THIS COURT ORDERS** that Ernst & Young Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

30. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants' receipts and disbursements and the Applicants' compliance with the DIP Budget;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) assist the Applicants, to the extent required by the Applicants or the CRO, in their dissemination of financial and other information to the DIP Lender and its counsel on a weekly basis of financial and other information as agreed to between the Applicants and the DIP Lender, or as may reasonably be requested by the DIP Lender;

(d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as may reasonably be requested by the DIP Lender;

(e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

(f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(g) perform such other duties as are required by this Order or by this Court from time to time.

31. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

32. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act, 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Mining Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order, or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

33. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

34. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

35. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a weekly basis. In addition, the Applicants are hereby authorized

to pay to the Monitor and counsel to the Monitor, retainers in the amounts of $150,000 and $50,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

36. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

37. **THIS COURT ORDERS** that the Applicants' counsel, the Monitor and its counsel and the CRO shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $150,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority as set out in paragraphs 46 and 48 hereof.

DIP FINANCING

38. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from FGC, in its capacity as the debtor-in-possession lender (the "**DIP Lender**") in order to finance the Applicants working capital requirements, and other general corporate purposes and capital expenditures.

39. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the DIP Facility Loan Agreement between the Applicants and the DIP Lender dated as of January 25, 2023, appended as Exhibit "S" to the Manzoor Affidavit (the "**DIP Facility Agreement**").

40. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to borrow, in accordance with the terms and conditions of the DIP Facility Agreement, interim financing of up to US$500,000 during the Stay Period.

41. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such agreements, instruments, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively with the DIP Facility Agreement, the "**Definitive Documents**"), as may be contemplated by the DIP Facility Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the

Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Definitive Documents (collectively, the "**DIP Obligations**") as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

42. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property as security for the DIP Obligations, which DIP Lender's Charge shall be in the aggregate amount of the DIP Obligations outstanding at any given time under the Definitive Documents. The DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority as set out in paragraphs 46 and 48 hereof.

43. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the DIP Lender under this Order or at law, the DIP Lender shall not incur any liability or obligation as a result of the carrying out of the provisions of this Order, save and except for any gross negligence or willful misconduct on its part.

44. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon three business days' notice to the Applicants, the CRO and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

45. **THIS COURT ORDERS AND DECLARES** that FGC and the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise under the CCAA, or any proposal filed under the BIA, with respect to any advances made by FGC, as secured lender to the Applicants, and under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

46. **THIS COURT ORDERS** that the priorities of the Administration Charge, the DIP Lender's Charge, and the Directors' Charge (collectively, the "**Charges**"), as among them, shall be as follows:

First - Administration Charge (to the maximum amount of $150,000);

Second – DIP Lender's Charge; and

Third - Directors' Charge (to the maximum amount of $200,000).

47. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

48. **THIS COURT ORDERS** that the Charges shall constitute a charge on the Property and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

49. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or the proposed amended and restated initial order included in the Applicants' Application Record if granted by the Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the

prior written consent of the CRO, the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

50. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal, provincial or other statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Facility Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the Applicants pursuant to this Order, the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

51. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

52. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (b) within five days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than $1000, and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of any individual persons who are creditors available.

53. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.ey.com/ca/acerus

54. **THIS COURT ORDERS** that the Applicants, the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

55. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal

delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

COMEBACK MOTION

56. **THIS COURT ORDERS** that the comeback motion shall be heard at a date and time to be fixed by a Commercial List Judge, but in no event later than February 3, 2023.

FOREIGN PROCEEDINGS

57. **THIS COURT ORDERS** that the Applicant, Acerus Pharmaceuticals Corporation is hereby authorized and empowered, but not required, to act as the foreign representative (in such capacity, the "**Foreign Representative**") in respect of the within proceedings for the purpose of having these proceedings recognized and approved in a jurisdiction outside of Canada.

58. **THIS COURT ORDERS** that the Foreign Representative is hereby authorized to apply for foreign recognition and approval of these proceedings, as necessary, in any jurisdiction outside of Canada, including in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

GENERAL

59. **THIS COURT ORDERS** that the Applicants, the DIP Lender, or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties hereunder.

60. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

61. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby

respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

62. **THIS COURT ORDERS** that each of the Applicants and the Monitor shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

63. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

64. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

____

Court File No.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION, ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC.

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

INITIAL ORDER

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Lawyers for the Applicants

TAB 4

Court File No. ~~———~~●

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST~~—~~)

THE HONOURABLE ~~JUSTICE~~	)~~))~~	~~WEEKDAY~~THURSDAY, THE ~~#~~ 26TH DAY ~~OF MONTH, 20YR~~
JUSTICE OSBORNE	))	OF JANUARY, 2023

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF ~~A~~ PLAN OF COMPROMISE OR ARRANGEMENT OF ~~[APPLICANT'S NAME] (the "Applicant")~~ACERUS PHARMACEUTICALS CORPORATION, ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC.

Applicants

INITIAL ORDER

THIS APPLICATION, made by ~~the Applicant,~~ Acerus Pharmaceuticals Corporation, Acerus Biopharma Inc., Acerus Labs Inc. and Acerus Pharmaceuticals USA, LLC (collectively, the "**Applicants**"), for an initial order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day ~~at 330 University Avenue, Toronto, Ontario~~by judicial videoconference via Zoom.

ON READING the affidavit of ~~[NAME] sworn [DATE]~~ Naveed Manzoor sworn January 25, 2023 (the "**Manzoor Affidavit**") and the Exhibits thereto, ~~and~~ the pre-filing report of Ernst & Young Inc. ("**EY**"), in its capacity as proposed monitor of the Applicants dated 25, 2023 (the "**Pre-Filing Report**"), the consent of EY to act as the Monitor (the "**Monitor**"), on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for ~~[NAMES], no one appearing for [NAME]1~~

~~1 Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).~~

~~although duly served as appears from the affidavit of service of [NAME] sworn [DATE] and on reading the consent of [MONITOR'S NAME] to act as the Monitor~~the Applicants, counsel for EY, counsel for First Generation Capital Inc. ("**FGC**"), and counsel for the DIP Lender (as defined below),

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated~~2~~ so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the ~~Applicant is a company~~ Applicants are companies to which the CCAA applies.

~~**PLAN OF ARRANGEMENT**~~

~~3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").~~

POSSESSION OF PROPERTY AND OPERATIONS

3. ~~4.~~**THIS COURT ORDERS** that the ~~Applicant~~ Applicants shall remain in possession and control of ~~its~~ their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the ~~Applicant~~ Applicants shall continue to carry on business in a manner consistent with the preservation of ~~its~~ their business (the "**Business**") and Property. The ~~Applicant is~~ Applicants are authorized and empowered to continue to retain and employ ~~the~~ their employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by ~~it~~them, with liberty to retain such

~~2 If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.~~

further Assistants as ~~it deems~~ they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

4. ~~5.[~~**THIS COURT ORDERS** that the ~~Applicant~~ Applicants shall be entitled to continue to utilize ~~the~~ their existing central cash management system~~3~~ currently in place ~~as described in the Affidavit of [NAME] sworn [DATE]~~ or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the ~~Applicant~~ Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person or Persons (as hereinafter defined) other than the ~~Applicant~~Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under ~~the Plan~~ any plan of arrangement or compromise under the CCAA with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.~~]~~

5. ~~6.~~**THIS COURT ORDERS** that the ~~Applicant~~ Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order subject to compliance with the DIP Budget (as defined in the DIP Facility Agreement), as may be amended from time to time:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

~~3 This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.~~

(b) the fees and disbursements of any Assistants retained or employed by the ~~Applicant~~ Applicants in respect of these proceedings, at their standard rates and charges.

6. ~~7.~~**THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the ~~Applicant~~ Applicants shall be entitled~~,~~, subject to compliance with the DIP Budget, as may be amended from time to time, but not required to pay all reasonable expenses incurred by the ~~Applicant~~ Applicants in carrying on ~~the~~ their Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors~~'~~' and officers~~'~~' insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the ~~Applicant~~ Applicants following the date of this Order.

7. ~~8.~~**THIS COURT ORDERS** that the ~~Applicant~~ Applicants shall~~ remit~~, in accordance with legal requirements, remit or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the ~~Applicant~~ Applicants in connection with the sale of goods and services by the ~~Applicant~~Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order~~,~~; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the ~~Applicant~~Applicants.

~~9. THIS COURT ORDERS that until a real property lease is disclaimed **[or resiliated]**4 in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.~~

8. **THIS COURT ORDERS** that, from and after the date of this Order, the Applicants shall not make any payments pursuant to this Order other than those contemplated by the DIP Budget, as may be amended from time to time, and subject to permitted variances under the DIP Facility Agreement (as defined below), or upon further Order of this Court.

9. ~~10.~~**THIS COURT ORDERS** that, except as specifically permitted herein, the ~~Applicant is~~ Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the ~~Applicant~~ Applicants to any of ~~its~~ their creditors as of this date; (b) to grant no security interests, trust, liens, mortgages, charges or encumbrances upon or in respect of any of ~~its~~ the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. ~~11.~~**THIS COURT ORDERS** that the ~~Applicant~~ Applicants shall, subject to such requirements as are imposed by the CCAA~~ and such covenants as may be contained in the Definitive Documents (as hereinafter defined)~~, have the right to ~~:~~continue negotiations with stakeholders in an effort to pursue restructuring options for the Applicants including without

~~4 The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.~~

limitation all avenues of refinancing of their Business or Property, in whole or in part, subject to prior approval of this Court being obtained before any material refinancing.

~~(a) permanently or temporarily cease, downsize or shut down any of its business or operations, **[and to dispose of redundant or non-material assets not exceeding $● in any one transaction or $● in the aggregate]5**~~

~~(b) **[terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate]**; and~~

~~(c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,~~

~~all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "Restructuring").~~

~~12. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims **[or resiliates]** the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer **[or resiliation]** of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.~~

~~13. THIS COURT ORDERS that if a notice of disclaimer **[or resiliation]** is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer **[or resiliation]**, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer **[or resiliation]**, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.~~

~~5 Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.~~

NO PROCEEDINGS AGAINST THE ~~APPLICANT~~ APPLICANTS OR THE PROPERTY

11. ~~14.~~**THIS COURT ORDERS** that until and including ~~[DATE – MAX. 30 DAYS]~~February 4, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the ~~Applicant~~ Applicants or the Monitor, or affecting ~~the~~ their Business or ~~the~~ their Property, except with the written consent of the ~~Applicant~~ Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the ~~Applicant~~ Applicants or affecting ~~the~~ their Business or ~~the~~ their Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

12. ~~15.~~**THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the ~~Applicant~~ Applicants or the Monitor, or affecting ~~the~~ their Business or ~~the~~ their Property, are hereby stayed and suspended except with the written consent of the ~~Applicant~~ Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (~~i~~a) empower the ~~Applicant~~ Applicants to carry on any business which the ~~Applicant is~~ Applicants are not lawfully entitled to carry on, (~~ii~~b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (~~iii~~c) prevent the filing of any registration to preserve or perfect a security interest, or (~~iv~~d) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

13. ~~16.~~**THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the ~~Applicant~~Applicants, except with the written consent of the ~~Applicant~~ Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

14. ~~17.~~**THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the ~~Applicant~~ Applicants or statutory or regulatory mandates for the supply of

goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the ~~Applicant~~Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the ~~Applicant~~Applicants, and that the ~~Applicant~~ Applicants shall be entitled to the continued use of ~~its~~ their current premises, telephone numbers, facsimile numbers, internet addresses, email addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the ~~Applicant~~ Applicants in accordance with normal payment practices of the ~~Applicant~~ Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the ~~Applicant~~ Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

15. ~~18.~~**THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the ~~Applicant~~Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.~~6~~

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

16. ~~19.~~**THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the ~~Applicant~~ Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the ~~Applicant~~ Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such

~~6 This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

obligations, until a compromise or arrangement in respect of the ~~Applicant~~Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the ~~Applicant~~ Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

17. ~~20.~~**THIS COURT ORDERS** that the ~~Applicant~~ Applicants shall indemnify ~~its~~ their directors and officers against obligations and liabilities that they may incur as directors or officers of the ~~Applicant~~ Applicants after the commencement of the within proceedings,~~7~~ except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

18. ~~21.~~**THIS COURT ORDERS** that the directors and officers of the ~~Applicant~~ Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**")~~8~~ on the Property, which charge shall not exceed an aggregate amount of $~~●~~200,000, as security for the indemnity provided in paragraph ~~[20]~~ 17 of this Order. The Directors' Charge shall have the priority as set out in paragraphs ~~[38]~~ 46 and ~~[40]~~ 48 herein.

19. ~~22.~~**THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the ~~Applicant's~~ Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph ~~[20]~~ 17 of this Order.

APPROVAL AND SEALING OF THE CRO ENGAGEMENT LETTER

~~7 The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.~~

~~8 Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.~~

20. **THIS COURT ORDERS** that the agreement dated as of January 23, 2023 pursuant to which the Applicants have engaged FAAN Advisors, ("**FAAN**"), to act as Chief Restructuring Officer (the "**CRO**") through the services of Naveed Manzoor ("**Manzoor**") and other employees or agents of FAAN (as applicable), an unredacted copy of which is attached as Confidential Exhibit "B" to the Pre-Filing Report as may be amended by the parties thereto with the consent of the Monitor (the "**CRO Engagement Letter**"), and the appointment of the CRO pursuant to the terms thereof, are hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby.

21. **THIS COURT ORDERS** that, during the Stay Period, the CRO is authorized to exercise and perform the powers, responsibilities and duties as described in the CRO Engagement Letter and subject to the terms thereof, together with such other powers, responsibilities and duties as may be agreed upon by the CRO and the Applicants, in consultation with the DIP Lender (collectively, the "**CRO Powers**"). In exercising the CRO Powers, the CRO shall be deemed to be acting for and on behalf of the Applicants and not its personal or corporate capacity.

22. **THIS COURT ORDERS** that the CRO, Manzoor, or such other employees or agents of FAAN, shall not be, or deemed to be a director, officer or employee of the Applicants.

23. **THIS COURT ORDERS** that the CRO shall not, as a result of the performance of its obligations and duties in accordance with the terms of the CRO Engagement Letter and this Order, be deemed to be in Possession (as defined below) of any of the Property within the meaning of any Environmental Legislation (as defined below); provided, however, if the CRO is nevertheless later found to be in Possession of any Property, then the CRO, as the case may be, shall be deemed to be a Person who has been lawfully appointed to take, or has lawfully taken, possession or control of such Property for the purposes of section 14.06(1.1)(c) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and shall be entitled to the benefits and protections in relation to Applicants and such Property as provided by section 14.06(2) of the BIA to a "trustee" in relation to an insolvent Person and its property.

24. **THIS COURT ORDERS** that the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the CRO, provided further that in no event shall the liability of the CRO exceed the quantum of the fees paid to the CRO.

25. **THIS COURT ORDERS** that no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the CRO, and all rights and remedies of any Person against or in respect of the CRO are hereby stayed and suspended, except with the written consent of the CRO and the Monitor, or with leave of this Court on notice to the Applicants, the Monitor, the DIP Lender and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicants, the Monitor, the DIP Lender and the CRO at least ten (10) days prior to the return date of any such motion for leave.

26. **THIS COURT ORDERS** that the obligations of the Applicants to the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the BIA in respect of the Applicants.

27. **THIS COURT ORDERS** that payment obligations of the Applicants to the CRO in respect of any fees and disbursements of the CRO shall be entitled to the benefit of and shall form part of the Administration Charge (as defined below) set out herein.

28. **THIS COURT ORDERS** that the unredacted copy of the CRO Engagement Letter included as Confidential Exhibit "B" to the Pre-Filing Report shall be sealed and kept confidential pending further order of this Court.

APPOINTMENT OF MONITOR

29. ~~23.~~**THIS COURT ORDERS** that ~~[MONITOR'S NAME]~~ Ernst & Young Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the ~~Applicant~~ Applicants with the powers and obligations set out in the CCAA or set forth herein and that the ~~Applicant~~ Applicants and ~~its~~ their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the ~~Applicant~~ Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

30. ~~24.~~**THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the ~~Applicant's~~ Applicants' receipts and disbursements and the Applicants' compliance with the DIP Budget;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) assist the ~~Applicant~~Applicants, to the extent required by the ~~Applicant, in its~~ Applicants or the CRO, in their dissemination~~,~~ of financial and other information to the DIP Lender and its counsel on a ~~[TIME INTERVAL]~~ weekly basis of financial and other information as agreed to between the ~~Applicant~~ Applicants and the DIP Lender ~~which may be used in these proceedings including reporting on a basis to be agreed with~~ , or as may reasonably be requested by the DIP Lender;

(d) advise the ~~Applicant in its~~ Applicants in their preparation of the ~~Applicant's~~ Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than ~~[TIME INTERVAL], or as otherwise agreed to~~ weekly, or as may reasonably be requested by the DIP Lender;

~~(e) advise the Applicant in its development of the Plan and any amendments to the Plan;~~

~~(f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;~~

(e) ~~(g)~~have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the ~~Applicant~~Applicants, to the extent that is necessary to adequately assess the ~~Applicant's~~ Applicants' business and financial affairs or to perform its duties arising under this Order;

(f) ~~(h)~~be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(g) ~~(i)~~perform such other duties as are required by this Order or by this Court from time to time.

31. ~~25.~~**THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

32. ~~26.~~**THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act, 1999,* the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act, the Ontario Mining Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order~~-~~, or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

33. ~~27.~~**THIS COURT ORDERS** that that the Monitor shall provide any creditor of the ~~Applicant~~ Applicants and the DIP Lender with information provided by the ~~Applicant~~ Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the ~~Applicant~~ Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the ~~Applicant~~ Applicants may agree.

34. ~~28.~~**THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save

and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

35. ~~29.~~**THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the ~~Applicant~~ Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the ~~Applicant~~ Applicants as part of the costs of these proceedings. The ~~Applicant is~~ Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the ~~Applicant on a [TIME INTERVAL] basis and, in~~ Applicants on a weekly basis. In addition, the ~~Applicant is~~ Applicants are hereby authorized to pay to the Monitor~~, counsel to the Monitor,~~ and counsel to the ~~Applicant~~Monitor, retainers in the ~~amount[s] of $● [~~amounts of $150,000 and $50,000, respectively,~~]~~ to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

36. ~~30.~~**THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

37. ~~31.~~**THIS COURT ORDERS** that the ~~Monitor,~~ Applicants' counsel ~~to~~, the Monitor~~, if any,~~ and ~~the Applicant's~~ its counsel and the CRO shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $~~●~~150,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority as set out in paragraphs ~~**[38]**~~ 46 and ~~**[40]**~~ 48 hereof.

DIP FINANCING

38. ~~32.~~**THIS COURT ORDERS** that the ~~Applicant is~~ Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from ~~[DIP LENDER'S NAME]~~ FGC, in its capacity as the debtor-in-possession lender (the "**DIP Lender**") in order to finance the ~~Applicant's~~ Applicants working capital requirements~~-~~, and other general corporate purposes and capital expenditures~~, provided that borrowings under such credit facility shall not exceed $● unless permitted by further Order of this Court~~.

39. ~~33.~~**THIS COURT ORDERS** ~~THAT~~ that such credit facility shall be on the terms and subject to the conditions set forth in the ~~commitment letter~~ DIP Facility Loan Agreement between the ~~Applicant~~ Applicants and the DIP Lender dated as of ~~[DATE] (the "Commitment Letter"), filed~~January 25, 2023, appended as Exhibit "S" to the Manzoor Affidavit (the "**DIP Facility Agreement**").

40. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to borrow, in accordance with the terms and conditions of the DIP Facility Agreement, interim financing of up to US$500,000 during the Stay Period.

41. ~~34.THIS COURT ORDERS that the Applicant is~~ **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such ~~credit~~ agreements, instruments, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively with the DIP Facility Agreement, the "**Definitive Documents**"), as ~~are~~ may be contemplated by the ~~Commitment Letter~~ DIP Facility Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the ~~Applicant is~~ Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the ~~Commitment Letter and the~~ Definitive Documents (collectively, the "**DIP Obligations**") as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

42. ~~35.~~**THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property as security for the DIP Obligations, which DIP Lender's Charge shall be in the aggregate amount of the DIP Obligations outstanding at any given time under the Definitive Documents. The DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority as set out in paragraphs ~~[38]~~ 46 and ~~[40]~~ 48 hereof.

43. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the DIP Lender under this Order or at law, the DIP Lender shall not incur any liability or obligation as a result of the carrying out of the provisions of this Order, save and except for any gross negligence or willful misconduct on its part.

44. ~~36.~~**THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon ~~●~~ three business days~~'~~' notice to the ~~Applicant~~ Applicants, the CRO and the Monitor, may exercise any and all of its rights and remedies against the ~~Applicant~~ Applicants or the Property under or pursuant to the ~~Commitment Letter,~~ Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the ~~Applicant~~ Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the ~~Applicant~~ Applicants against the obligations of the ~~Applicant~~ Applicants to the DIP Lender under ~~the Commitment Letter,~~ the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the ~~Applicant~~ Applicants and for the appointment of a trustee in bankruptcy of the ~~Applicant~~Applicants; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the ~~Applicant~~ Applicants or the Property.

45. ~~37.~~**THIS COURT ORDERS AND DECLARES** that FGC and the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise ~~filed by the Applicant~~ under the CCAA, or any proposal filed ~~by the Applicant~~ under the ~~*Bankruptcy and Insolvency Act* of Canada (the "BIA")~~BIA, with respect to any advances made by FGC, as secured lender to the Applicants, and under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

46. ~~38.~~**THIS COURT ORDERS** that the priorities of the ~~Directors' Charge, the~~ Administration Charge ~~and~~ , the DIP Lender's Charge, and the Directors' Charge (collectively, the "**Charges**"), as among them, shall be as follows~~9~~:

First ~~—~~ - Administration Charge (to the maximum amount of $● 150,000);

Second – DIP Lender's Charge; and

Third ~~—~~ - Directors' Charge (to the maximum amount of $● 200,000).

47. ~~39.~~**THIS COURT ORDERS** that the filing, registration or perfection of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "~~Charges~~")~~ shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

48. ~~40.~~**THIS COURT ORDERS** that ~~each of the Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein)~~ the Charges shall constitute a charge on the Property and ~~such Charges~~ shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

49. ~~41.~~**THIS COURT ORDERS** that except as otherwise expressly provided for herein, or ~~as may be approved by this Court, the Applicant~~ the proposed amended and restated initial order included in the Applicants' Application Record if granted by the Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge~~Charges, unless the ~~Applicant~~ Applicants also ~~obtains~~ obtain the prior written consent of the CRO, the Monitor, the

~~9 The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

50. ~~42.~~**THIS COURT ORDERS** that the Directors' Charge, the Administration Charge~~, the Commitment Letter~~, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal~~ or ~~, provincial or other statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the ~~Applicant~~Applicants, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the ~~Commitment Letter or the ~~Definitive Documents shall create or be deemed to constitute a breach by the ~~Applicant ~~Applicants of any Agreement to which ~~it is ~~they are a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the ~~Applicant~~ Applicants entering into the ~~Commitment Letter~~DIP Facility Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the ~~Applicant ~~Applicants pursuant to this Order, ~~the Commitment Letter or ~~the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

51. ~~43.~~**THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the ~~Applicant's~~ Applicants' interest in such real property leases.

SERVICE AND NOTICE

52. ~~44.~~**THIS COURT ORDERS** that the Monitor shall (~~i~~a) without delay, publish in ~~[newspapers specified by the Court]~~ The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (~~ii~~b) within five days after the date of this Order, (~~A~~i) make this Order publicly available in the manner prescribed under the CCAA, (~~B~~ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the ~~Applicant~~ Applicants of more than $1000, and (~~C~~iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of any individual persons who are creditors available.

53. ~~45.~~**THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) shall be valid and effective service. Subject to Rule 17.05~~.~~, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ~~'<@>'.~~: www.ey.com/ca/acerus

54. **THIS COURT ORDERS** that the Applicants, the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

55. ~~46.~~**THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the ~~Applicant~~ Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the ~~Applicant's~~ Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the ~~Applicant~~ Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

COMEBACK MOTION

56. **THIS COURT ORDERS** that the comeback motion shall be heard at a date and time to be fixed by a Commercial List Judge, but in no event later than February 3, 2023.

FOREIGN PROCEEDINGS

57. **THIS COURT ORDERS** that the Applicant, Acerus Pharmaceuticals Corporation is hereby authorized and empowered, but not required, to act as the foreign representative (in such capacity, the "**Foreign Representative**") in respect of the within proceedings for the purpose of having these proceedings recognized and approved in a jurisdiction outside of Canada.

58. **THIS COURT ORDERS** that the Foreign Representative is hereby authorized to apply for foreign recognition and approval of these proceedings, as necessary, in any jurisdiction outside of Canada, including in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

GENERAL

59. ~~47.~~**THIS COURT ORDERS** that the ~~Applicant~~ Applicants, the DIP Lender, or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of ~~its~~ their powers and duties hereunder.

60. ~~48.~~**THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the ~~Applicant~~Applicants, the Business or the Property.

61. ~~49.~~**THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the ~~Applicant~~Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the ~~Applicant~~ Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the ~~Applicant~~ Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

62. ~~50.~~**THIS COURT ORDERS** that each of the ~~Applicant~~ Applicants and the Monitor shall be at liberty and ~~is~~ are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

63. ~~51.~~**THIS COURT ORDERS** that any interested party (including the ~~Applicant~~ Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

64. ~~52.~~**THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

Court File No. ●

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION, ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC.

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

INITIAL ORDER

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Lawyers for the Applicants

TAB 5

Court File No. ●

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	●, THE ● DAY
	)	
JUSTICE ●	)	OF ●, 2023

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION,
ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC.

Applicants

AMENDED AND RESTATED INITIAL ORDER

THIS MOTION, made by Acerus Pharmaceuticals Corporation, Acerus Biopharma Inc., Acerus Labs Inc. and Acerus Pharmaceuticals USA, LLC (collectively, the "**Applicants**"), for an order amending and restating the initial order issued on January 26, 2023 (the "**Initial Filing Date**") and extending the stay of proceedings provided for therein was heard this day by judicial videoconference via Zoom.

ON READING the affidavit of Naveed Manzoor sworn January 25, 2023 (the "**Manzoor Affidavit**"), and the Exhibits thereto, the pre-filing report of Ernst & Young Inc. ("**EY**"), in its capacity as proposed monitor of the Applicants dated January 25, 2023 (the "**Pre-Filing Repor**t"), the first report of EY in its capacity as monitor (in such capacity, the "**Monitor**") dated ●, 2023 (the "**First Report**"), the consent of EY to act as the Monitor, on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, counsel for EY, counsel for First Generation Capital Inc. ("**FGC**"), counsel for the DIP Lender (as defined below) and such other parties as listed on the Counsel Slip, with no one else appearing although duly served as appears from the affidavit of service of ● sworn ●, 2023,

APPLICATION

1. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

2. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

3. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are authorized and empowered to continue to retain and employ their employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

4. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize their existing central cash management system currently in place or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person or Persons (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any plan of arrangement or compromise under the CCAA with regard to any claims

or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after the Initial Filing Date subject to compliance with the DIP Budget (as defined in the DIP Facility Agreement), as may be amended from time to time:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the Initial Filing Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

6. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled, subject to compliance with the DIP Budget, as may be amended from time to time, but not required to pay all reasonable expenses incurred by the Applicants in carrying on their Business in the ordinary course after the Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicants following the Initial Filing Date.

7. **THIS COURT ORDERS** that the Applicants shall, in accordance with legal requirements, remit or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the Initial Filing Date, or where such Sales Taxes were accrued or collected prior to the Initial Filing Date but not required to be remitted until on or after the Initial Filing Date; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

8. **THIS COURT ORDERS** that, from and after the Initial Filing Date, the Applicants shall not make any payments pursuant to the Initial Filing Date other than those contemplated by the DIP Budget, as may be amended from time to time, and subject to permitted variances under the DIP Facility Agreement (as defined below), or upon further Order of this Court.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to their landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("**Rent**"), for the period commencing from and including the Initial Filing Date, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the Initial Filing Date shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of the Initial Filing Date; (b) to grant no security interests, trust, liens, mortgages, charges or

encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as defined below), have the right to:

(a) permanently or temporarily cease, downsize or shut down any of their businesses or operations, and to dispose of redundant or non-material assets not exceeding $250,000 in any one transaction or $1,000,000 in the aggregate;

(b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate; and

(c) pursue all avenues of financing or refinancing, restructuring, selling, assigning or in any other manner disposing of and/or reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material financing or refinancing, restructuring, sale, assignment, disposition or reorganization,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Applicants or the Business (the “**Restructuring**”).

12. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the Applicants’ intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants’ entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days’ notice to such landlord and any such secured creditors. If the Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for

in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

14. **THIS COURT ORDERS** that until and including April 5, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting their Business or their Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting their Business or their Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants or the Monitor, or affecting their Business or their Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (c) prevent the filing of any registration to preserve or perfect a security interest, or (d) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, email addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Initial Filing Date are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the Initial Filing Date, nor shall any Person be under any obligation on or after the Initial Filing Date to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

KEY EMPLOYEE RETENTION PLAN

19. **THIS COURT ORDERS** that the Key Employee Retention Plan (the "**KERP**"), as described in the Manzoor Affidavit, an unredacted copy of which is attached as Confidential

Exhibit **"[●]"** to the First Report, is hereby approved and the Applicants are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

20. **THIS COURT ORDERS** that payments made by the Applicants pursuant to this Order do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

21. **THIS COURT ORDERS** that the key employees referred to in the KERP (the "**Key Employees**") shall be entitled to the benefit of and are hereby granted a charge on the Property (the "**KERP Charge**"), which charge shall not exceed an aggregate amount of $455,250 to secure any payments to the Key Employees under the KERP. The KERP Charge shall have the priority as set out in paragraphs 51 and 53 herein.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

22. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the Initial Filing Date and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

23. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

24. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $200,000, as security for the indemnity provided in paragraph 23 of this Order. The Directors' Charge shall have the priority as set out in paragraphs 51 and 53 herein.

25. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 23 of this Order.

APPROVAL OF THE CRO ENGAGEMENT LETTER

26. **THIS COURT ORDERS** that the agreement dated as of January 23, 2023 pursuant to which the Applicants have engaged FAAN Advisors, ("**FAAN**"), to act as Chief Restructuring Officer (the "**CRO**") through the services of Naveed Manzoor ("**Manzoor**") and other employees or agents of FAAN (as applicable), an unredacted copy of which is attached as Confidential Exhibit "B" to the Pre-Filing Report as may be amended by the parties thereto with the consent of the Monitor (the "**CRO Engagement Letter**"), and the appointment of the CRO pursuant to the terms thereof, are hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby.

27. **THIS COURT ORDERS** that, during the Stay Period, the CRO is authorized to exercise and perform the powers, responsibilities and duties as described in the CRO Engagement Letter and subject to the terms thereof, together with such other powers, responsibilities and duties as may be agreed upon by the CRO and the Applicants, in consultation with the DIP Lender (collectively, the "**CRO Powers**"). In exercising the CRO Powers, the CRO shall be deemed to be acting for and on behalf of the Applicants and not its personal or corporate capacity.

28. **THIS COURT ORDERS** that the CRO, Manzoor, or such other employees or agents of FAAN, shall not be, or deemed to be a director, officer or employee of the Applicants.

29. **THIS COURT ORDERS** that the CRO shall not, as a result of the performance of its obligations and duties in accordance with the terms of the CRO Engagement Letter and this Order, be deemed to be in Possession (as defined below) of any of the Property within the meaning of any Environmental Legislation (as defined below); provided, however, if the CRO is nevertheless later found to be in Possession of any Property, then the CRO, as the case may be, shall be deemed to be a Person who has been lawfully appointed to take, or has lawfully taken, possession or control of such Property for the purposes of section 14.06(1.1)(c) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and shall be entitled to the benefits and protections in

relation to Applicants and such Property as provided by section 14.06(2) of the BIA to a "trustee" in relation to an insolvent Person and its property.

30. **THIS COURT ORDERS** that the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the Initial Filing Date except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the CRO, provided further that in no event shall the liability of the CRO exceed the quantum of the fees paid to the CRO.

31. **THIS COURT ORDERS** that no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the CRO, and all rights and remedies of any Person against or in respect of the CRO are hereby stayed and suspended, except with the written consent of the CRO and the Monitor, or with leave of this Court on notice to the Applicants, the Monitor, the DIP Lender and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicants, the Monitor, the DIP Lender and the CRO at least ten (10) days prior to the return date of any such motion for leave.

32. **THIS COURT ORDERS** that the obligations of the Applicants to the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the BIA in respect of the Applicants.

33. **THIS COURT ORDERS** that payment obligations of the Applicants to the CRO in respect of any fees and disbursements of the CRO shall be entitled to the benefit of and shall form part of the Administration Charge (as defined below) set out herein.

APPOINTMENT OF MONITOR

34. **THIS COURT ORDERS** that Ernst & Young Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

35. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants' receipts and disbursements and the Applicants' compliance with the DIP Budget;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) assist the Applicants, to the extent required by the Applicants or the CRO, in their dissemination of financial and other information to the DIP Lender and its counsel on a weekly basis of financial and other information as agreed to between the Applicants and the DIP Lender, or as may reasonably be requested by the DIP Lender;

(d) advise the Applicants in its development of the Plan and any amendments to the Plan, and in the Restructuring;

(e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(f) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as may reasonably be requested by the DIP Lender;

(g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

(h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(i) perform such other duties as are required by this Order or by this Court from time to time.

36. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

37. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act, 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Mining Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order, or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

38. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

39. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for

any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

40. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a weekly basis. In addition, the Applicants are hereby authorized to pay to the Monitor and counsel to the Monitor, retainers in the amounts of $150,000 and $50,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

41. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

42. **THIS COURT ORDERS** that the Applicants' counsel, the Monitor and its counsel and the CRO shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $300,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority as set out in paragraphs 51 and 53 hereof.

DIP FINANCING

43. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from FGC, in its capacity as the debtor-in-possession lender (the "**DIP Lender**") in order to finance the Applicants working capital requirements, and other general corporate purposes and capital expenditures.

44. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the DIP Facility Loan Agreement between the Applicants and the DIP Lender dated as of January 25, 2023, appended as Exhibit "S" to the Manzoor Affidavit (the "**DIP Facility Agreement**").

45. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to borrow, in accordance with the terms and conditions of the DIP Facility Agreement, interim financing of up to US$7,000,000 during the Stay Period.

46. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such agreements, instruments, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively with the DIP Facility Agreement, the "**Definitive Documents**"), as may be contemplated by the DIP Facility Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Definitive Documents (collectively, the "**DIP Obligations**") as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

47. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property as security for the DIP Obligations, which DIP Lender's Charge shall be in the aggregate amount of the DIP Obligations outstanding at any given time under the Definitive Documents. The DIP Lender's Charge shall not secure an obligation that exists before the Initial Filing Date. The DIP Lender's Charge shall have the priority as set out in paragraphs 51 and 53 hereof.

48. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the DIP Lender under this Order or at law, the DIP Lender shall not incur any liability or obligation as a result of the carrying out of the provisions of this Order, save and except for any gross negligence or willful misconduct on its part.

49. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon three business days' notice to the Applicants, the CRO and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Definitive

Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

50. **THIS COURT ORDERS AND DECLARES** that FGC and the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise under the CCAA, or any proposal filed under the BIA, with respect to any advances made by FGC, as secured lender to the Applicants, and under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

51. **THIS COURT ORDERS** that the priorities of the Administration Charge, DIP Lender's Charge, Directors' Charge, and KERP Charge (collectively, the "**Charges**") as among them, shall be as follows:

First - Administration Charge (to the maximum amount of $300,000);

Second - DIP Lender's Charge;

Third - Directors' Charge (to the maximum amount of $200,000); and

Fourth – KERP Charge (to the maximum amount of $455,250).

52. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

53. **THIS COURT ORDERS** that the Charges shall constitute a charge on the Property and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

54. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the CRO, the Monitor, the DIP Lender and the beneficiaries of the Administration Charge, Directors' Charge, KERP Charge, or further Order of this Court.

55. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the KERP Charge, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal, provincial or other statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Facility Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the Applicants pursuant to this Order, the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

56. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

57. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (b) within five days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than $1000, and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of any individual persons who are creditors available.

58. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.ey.com/ca/acerus

59. **THIS COURT ORDERS** that the Applicants, the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

60. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

RELIEF FROM REPORTING OBLIGATIONS

61. **THIS COURT ORDERS** that none of the directors, officers, employees, or other representatives of the Applicants, including without limitation the CRO, nor the Monitor (and their respective directors, officers, employees or representatives) shall have any personal liability for the Applicants failure to file annual information forms, annual and quarterly management discussion and analysis, annual and quarterly financial statements (including related audits, reports, and certifications) for the Stay Period, which period may be extended pursuant to further Order of the Court. Notwithstanding the foregoing, the Applicants shall continue to advise the appropriate regulators of material updates in this proceeding.

62. **THIS COURT ORDERS** that the decision by the Applicants to incur no further expenses in relation to any filings (including financial statements), disclosures, core or non-core documents, restatements, amendments to existing filings, press releases or any other actions (collectively, the "**Securities Filings**") that may be required by any federal, provincial or other law respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including, without limitation, the Securities Act (Ontario), RSO 1990, c S.5 and comparable statutes enacted by other provinces of Canada, the CSE Policies 1-10 and other rules, regulations and policies of the Canadian Securities Exchange (collectively, the "**Securities Provisions**"), is hereby authorized, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of the Applicants failing to make any Securities Filings required by the Securities Provisions.

63. **THIS COURT ORDERS** that none of the directors, officers, employees, and other representatives of the Applicants, including without limitation the CRO, nor the Monitor shall have any personal liability for any failure by the Applicants to make any Securities Filings required by the Securities Provisions.

FOREIGN PROCEEDINGS

64. **THIS COURT ORDERS** that the Applicant, Acerus Pharmaceuticals Corporation is hereby authorized and empowered, but not required, to act as the foreign representative (in such capacity, the "**Foreign Representative**") in respect of the within proceedings for the purpose of having these proceedings recognized and approved in a jurisdiction outside of Canada.

65. **THIS COURT ORDERS** that the Foreign Representative is hereby authorized to apply for foreign recognition and approval of these proceedings, as necessary, in any jurisdiction outside of Canada, including in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

SEALING PROVISION

66. **THIS COURT ORDERS** that Confidential Exhibit "B" to the Pre-Filing Report and Confidential Exhibit **"[●]"** to First Report is hereby sealed pending further order of the Court, and shall not form part of the public record.

GENERAL

67. **THIS COURT ORDERS** that the Applicants, the DIP Lender, or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties hereunder.

68. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

69. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby

respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

70. **THIS COURT ORDERS** that each of the Applicants and the Monitor shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

71. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

72. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the Initial Filing Date.

Court File No.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION, ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC.

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

AMENDED AND RESTATED INITIAL ORDER

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Lawyers for the Applicants

TAB 6

~~Revised: January 21, 2014~~

Court File No. ~~———~~ ●

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST ~~–~~)

THE HONOURABLE ~~JUSTICE~~	)))	~~WEEKDAY~~ ●, THE ~~#~~ ● DAY ~~OF MONTH, 20YR~~
JUSTICE ●	))	OF ●, 2023

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF ~~A~~ PLAN OF COMPROMISE OR ARRANGEMENT OF ~~[APPLICANT'S NAME] (the "Applicant")~~ ACERUS PHARMACEUTICALS CORPORATION, ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC.

Applicants

AMENDED AND RESTATED INITIAL ORDER

~~THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.~~

THIS MOTION, made by Acerus Pharmaceuticals Corporation, Acerus Biopharma Inc., Acerus Labs Inc. and Acerus Pharmaceuticals USA, LLC (collectively, the "**Applicants**"), for an order amending and restating the initial order issued on January 26, 2023 (the "**Initial Filing Date**") and extending the stay of proceedings provided for therein was heard this day by judicial videoconference via Zoom.

ON READING the affidavit of ~~[NAME] sworn [DATE]~~ Naveed Manzoor sworn January 25, 2023 (the "**Manzoor Affidavit**"), and the Exhibits thereto, ~~and~~ the pre-filing report of Ernst & Young Inc. ("**EY**"), in its capacity as proposed monitor of the Applicants dated January 25, 2023 (the "**Pre-Filing Report**"), the first report of EY in its capacity as monitor (in such capacity, the "**Monitor**") dated ●, 2023 (the "**First Report**"), the consent of EY to act as the Monitor, on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for ~~[NAMES], no one~~ the Applicants, counsel for EY, counsel for First Generation Capital Inc. ("**FGC**"), counsel for the DIP

Lender (as defined below) and such other parties as listed on the Counsel Slip, with no one else appearing ~~for [NAME][1]~~ although duly served as appears from the affidavit of service of ~~[NAME] sworn [DATE] and on reading the consent of [MONITOR'S NAME] to act as the Monitor~~● sworn ●, 2023,

~~**SERVICE**~~

~~1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated[2] so that this Application is properly returnable today and hereby dispenses with further service thereof.~~

APPLICATION

1. ~~2.~~**THIS COURT ORDERS AND DECLARES** that the ~~Applicant is a company~~ Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

2. ~~3.~~**THIS COURT ORDERS** that the ~~Applicant~~ Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

3. ~~4.~~**THIS COURT ORDERS** that the ~~Applicant~~ Applicants shall remain in possession and control of ~~its~~ their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the ~~Applicant~~ Applicants shall continue to carry on business in a manner consistent with the preservation of ~~its~~ their business (the "**Business**") and Property. The ~~Applicant is~~ Applicants are authorized and empowered to continue to retain and employ ~~the~~ their employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by ~~it~~them, with liberty to retain such

~~[1] Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).~~

~~[2] If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.~~

further Assistants as ~~it deems~~ they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

4. ~~5.[~~**THIS COURT ORDERS** that the ~~Applicant~~ Applicants shall be entitled to continue to utilize ~~the~~ their existing central cash management system[3] currently in place ~~as described in the Affidavit of [NAME] sworn [DATE]~~ or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the ~~Applicant~~ Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person or Persons (as hereinafter defined) other than the ~~Applicant~~Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under ~~the Plan~~ any plan of arrangement or compromise under the CCAA with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System. ~~]~~

5. ~~6.~~**THIS COURT ORDERS** that the ~~Applicant~~ Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after ~~this Order~~the Initial Filing Date subject to compliance with the DIP Budget (as defined in the DIP Facility Agreement), as may be amended from time to time:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the ~~date of this Order~~Initial Filing Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the fees and disbursements of any Assistants retained or employed by the ~~Applicant~~ Applicants in respect of these proceedings, at their standard rates and charges.

~~[3] This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.~~

6. ~~7.~~**THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the ~~Applicant~~ Applicants shall be entitled~~,~~, subject to compliance with the DIP Budget, as may be amended from time to time, but not required to pay all reasonable expenses incurred by the ~~Applicant~~ Applicants in carrying on ~~the~~ their Business in the ordinary course after ~~this Order~~the Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors~~-~~' and officers~~-~~' insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the ~~Applicant~~ Applicants following the ~~date of this Order~~Initial Filing Date.

7. ~~8.~~**THIS COURT ORDERS** that the ~~Applicant~~ Applicants shall ~~remit~~, in accordance with legal requirements, remit or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the ~~Applicant~~ Applicants in connection with the sale of goods and services by the ~~Applicant~~Applicants, but only where such Sales Taxes are accrued or collected after the ~~date of this Order~~Initial Filing Date, or where such Sales Taxes were accrued or collected prior to the ~~date of this Order~~ Initial Filing Date but not required to be remitted until on or after the ~~date of this Order,~~ Initial Filing Date; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the ~~Applicant~~Applicants.

8. **THIS COURT ORDERS** that, from and after the Initial Filing Date, the Applicants shall not make any payments pursuant to the Initial Filing Date other than those contemplated by the DIP Budget, as may be amended from time to time, and subject to permitted variances under the DIP Facility Agreement (as defined below), or upon further Order of this Court.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed ~~**[or resiliated]**[4]~~ in accordance with the CCAA, the ~~Applicant~~ Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to ~~the~~ their landlord under the lease) or as otherwise may be negotiated between the ~~Applicant~~ Applicants and the landlord from time to time ("**Rent**"), for the period commencing from and including the ~~date of this Order~~Initial Filing Date, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the ~~date of this Order~~ Initial Filing Date shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the ~~Applicant is~~ Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the ~~Applicant~~ Applicants to any of ~~its~~ their creditors as of ~~this date~~the Initial Filing Date; (b) to grant no security interests, trust, liens, mortgages, charges or encumbrances upon or in respect of any of ~~its~~ the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. **THIS COURT ORDERS** that the ~~Applicant~~ Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as ~~hereinafter~~ defined below), have the right to:

~~[4] The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.~~

(a) permanently or temporarily cease, downsize or shut down any of ~~its business~~ their businesses or operations, ~~[~~and to dispose of redundant or non-material assets not exceeding $~~●~~ 250,000 in any one transaction or $~~●~~ 1,000,000 in the aggregate~~]~~[5];

(b) ~~[~~terminate the employment of such of ~~its~~ their employees or temporarily lay off such of ~~its~~ their employees as ~~it deems appropriate]~~they deem appropriate; and

(c) pursue all avenues of financing or refinancing ~~of its~~ , restructuring, selling, assigning or in any other manner disposing of and/or reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material financing or refinancing, restructuring, sale, assignment, disposition or reorganization,

all of the foregoing to permit the ~~Applicant~~ Applicants to proceed with an orderly restructuring of the Applicants or the Business (the "**Restructuring**").

12. **THIS COURT ORDERS** that the ~~Applicant~~ Applicants shall provide each of the relevant landlords with notice of the ~~Applicant's~~ Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the ~~Applicant's~~ Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the ~~Applicant~~Applicants, or by further Order of this Court upon application by the ~~Applicant~~ Applicants on at least two (2) days~~-~~' notice to such landlord and any such secured creditors. If the ~~Applicant disclaims [or resiliates]~~ Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer ~~[or resiliation]~~ of the lease shall be without prejudice to the ~~Applicant's~~ Applicants' claim to the fixtures in dispute.

~~[5] Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.~~

13. **THIS COURT ORDERS** that if a notice of disclaimer ~~**[or resiliation]**~~ is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer ~~**[or resiliation]**~~, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the ~~Applicant~~ Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer ~~**[or resiliation]**~~, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the ~~Applicant~~ Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE ~~APPLICANT~~ APPLICANTS OR THE PROPERTY

14. **THIS COURT ORDERS** that until and including ~~[DATE – MAX. 30 DAYS]~~April 5, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the ~~Applicant~~ Applicants or the Monitor, or affecting ~~the~~ their Business or ~~the~~ their Property, except with the written consent of the ~~Applicant~~ Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the ~~Applicant~~ Applicants or affecting ~~the~~ their Business or ~~the~~ their Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the ~~Applicant~~ Applicants or the Monitor, or affecting ~~the~~ their Business or ~~the~~ their Property, are hereby stayed and suspended except with the written consent of the ~~Applicant~~ Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (~~i~~a) empower the ~~Applicant~~ Applicants to carry on any business which the ~~Applicant is~~ Applicants are not lawfully entitled to carry on, (~~ii~~b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (~~iii~~c) prevent the filing of any registration to preserve or perfect a security interest, or (~~iv~~d) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the ~~Applicant~~Applicants, except with the written consent of the ~~Applicant~~ Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the ~~Applicant~~ Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the ~~Applicant~~Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the ~~Applicant~~Applicants, and that the ~~Applicant~~ Applicants shall be entitled to the continued use of ~~its~~ their current premises, telephone numbers, facsimile numbers, internet addresses, email addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the ~~date of this Order~~ Initial Filing Date are paid by the ~~Applicant~~ Applicants in accordance with normal payment practices of the ~~Applicant~~ Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the ~~Applicant~~ Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the ~~date of this Order~~Initial Filing Date, nor shall any Person be under any obligation on or after the ~~date of this Order~~ Initial Filing Date to advance or re-advance any monies or otherwise extend any credit to the

~~Applicant~~Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.[6]

KEY EMPLOYEE RETENTION PLAN

19. **THIS COURT ORDERS** that the Key Employee Retention Plan (the "**KERP**"), as described in the Manzoor Affidavit, an unredacted copy of which is attached as Confidential Exhibit **"[●]"** to the First Report, is hereby approved and the Applicants are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

20. **THIS COURT ORDERS** that payments made by the Applicants pursuant to this Order do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

21. **THIS COURT ORDERS** that the key employees referred to in the KERP (the "**Key Employees**") shall be entitled to the benefit of and are hereby granted a charge on the Property (the "**KERP Charge**"), which charge shall not exceed an aggregate amount of $455,250 to secure any payments to the Key Employees under the KERP. The KERP Charge shall have the priority as set out in paragraphs 51 and 53 herein.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

22. ~~19.~~**THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the ~~Applicant~~ Applicants with respect to any claim against the directors or officers that arose before the ~~date hereof~~ Initial Filing Date and that relates to any obligations of the ~~Applicant~~ Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the ~~Applicant~~Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the ~~Applicant~~ Applicants or this Court.

~~[6] This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

23. ~~20.~~**THIS COURT ORDERS** that the ~~Applicant~~ Applicants shall indemnify ~~its~~ their directors and officers against obligations and liabilities that they may incur as directors or officers of the ~~Applicant~~ Applicants after the commencement of the within proceedings,~~[7]~~ except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

24. ~~21.~~**THIS COURT ORDERS** that the directors and officers of the ~~Applicant~~ Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**")~~[8]~~ on the Property, which charge shall not exceed an aggregate amount of $~~●~~200,000, as security for the indemnity provided in paragraph ~~[20]~~ 23 of this Order. The Directors' Charge shall have the priority as set out in paragraphs ~~[38]~~ 51 and ~~[40]~~ 53 herein.

25. ~~22.~~**THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the ~~Applicant's~~ Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph ~~[20]~~ 23 of this Order.

APPROVAL OF THE CRO ENGAGEMENT LETTER

26. **THIS COURT ORDERS** that the agreement dated as of January 23, 2023 pursuant to which the Applicants have engaged FAAN Advisors, ("**FAAN**"), to act as Chief Restructuring Officer (the "**CRO**") through the services of Naveed Manzoor ("**Manzoor**") and other employees or agents of FAAN (as applicable), an unredacted copy of which is attached as Confidential Exhibit "B" to the Pre-Filing Report as may be amended by the parties thereto with the consent of the Monitor (the "**CRO Engagement Letter**"), and the appointment of the CRO pursuant to the terms

~~[7] The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.~~

~~[8] Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.~~

thereof, are hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby.

27. **THIS COURT ORDERS** that, during the Stay Period, the CRO is authorized to exercise and perform the powers, responsibilities and duties as described in the CRO Engagement Letter and subject to the terms thereof, together with such other powers, responsibilities and duties as may be agreed upon by the CRO and the Applicants, in consultation with the DIP Lender (collectively, the "**CRO Powers**"). In exercising the CRO Powers, the CRO shall be deemed to be acting for and on behalf of the Applicants and not its personal or corporate capacity.

28. **THIS COURT ORDERS** that the CRO, Manzoor, or such other employees or agents of FAAN, shall not be, or deemed to be a director, officer or employee of the Applicants.

29. **THIS COURT ORDERS** that the CRO shall not, as a result of the performance of its obligations and duties in accordance with the terms of the CRO Engagement Letter and this Order, be deemed to be in Possession (as defined below) of any of the Property within the meaning of any Environmental Legislation (as defined below); provided, however, if the CRO is nevertheless later found to be in Possession of any Property, then the CRO, as the case may be, shall be deemed to be a Person who has been lawfully appointed to take, or has lawfully taken, possession or control of such Property for the purposes of section 14.06(1.1)(c) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and shall be entitled to the benefits and protections in relation to Applicants and such Property as provided by section 14.06(2) of the BIA to a "trustee" in relation to an insolvent Person and its property.

30. **THIS COURT ORDERS** that the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the Initial Filing Date except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the CRO, provided further that in no event shall the liability of the CRO exceed the quantum of the fees paid to the CRO.

31. **THIS COURT ORDERS** that no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the CRO, and all rights and remedies of any Person against or in respect of the CRO are hereby stayed and suspended, except with the written consent of the CRO and the Monitor, or with leave of this Court on notice to the Applicants, the Monitor, the DIP Lender and the CRO. Notice of any such motion

seeking leave of this Court shall be served upon the Applicants, the Monitor, the DIP Lender and the CRO at least ten (10) days prior to the return date of any such motion for leave.

32. **THIS COURT ORDERS** that the obligations of the Applicants to the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the BIA in respect of the Applicants.

33. **THIS COURT ORDERS** that payment obligations of the Applicants to the CRO in respect of any fees and disbursements of the CRO shall be entitled to the benefit of and shall form part of the Administration Charge (as defined below) set out herein.

APPOINTMENT OF MONITOR

34. ~~23.~~**THIS COURT ORDERS** that ~~[MONITOR'S NAME]~~ Ernst & Young Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the ~~Applicant~~ Applicants with the powers and obligations set out in the CCAA or set forth herein and that the ~~Applicant~~ Applicants and ~~its~~ their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the ~~Applicant~~ Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

35. ~~24.~~**THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the ~~Applicant's~~ Applicants' receipts and disbursements and the Applicants' compliance with the DIP Budget;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) assist the ~~Applicant~~Applicants, to the extent required by the ~~Applicant, in its~~ Applicants or the CRO, in their dissemination~~,~~ of financial and other information to the DIP Lender and its counsel on a ~~[TIME INTERVAL]~~ weekly basis of financial and other information as agreed to between the ~~Applicant~~ Applicants and the DIP

Lender~~ which may be used in these proceedings including reporting on a basis to be agreed with ~~, or as may reasonably be requested by the DIP Lender;

~~(d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than [TIME INTERVAL], or as otherwise agreed to by the DIP Lender;~~

(d) ~~(e)advise the Applicant ~~advise the Applicants in its development of the Plan and any amendments to the Plan, and in the Restructuring;

(e) ~~(f)~~assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(f) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as may reasonably be requested by the DIP Lender;

(g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the ~~Applicant~~Applicants, to the extent that is necessary to adequately assess the ~~Applicant's ~~Applicants' business and financial affairs or to perform its duties arising under this Order;

(h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(i) perform such other duties as are required by this Order or by this Court from time to time.

36. ~~25.~~**THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

37. ~~26.~~**THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act, 1999,* the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act, the Ontario Mining Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order~~-~~, or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

38. ~~27.~~**THIS COURT ORDERS** that that the Monitor shall provide any creditor of the ~~Applicant~~ Applicants and the DIP Lender with information provided by the ~~Applicant~~ Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the ~~Applicant~~ Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the ~~Applicant~~ Applicants may agree.

39. ~~28.~~**THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

40. ~~29.~~**THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the ~~Applicant~~ Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the ~~Applicant~~ Applicants as part of the costs of these proceedings.

The ~~Applicant is~~ Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the ~~Applicant on a [TIME INTERVAL] basis and, in~~ Applicants on a weekly basis. In addition, the ~~Applicant is~~ Applicants are hereby authorized to pay to the Monitor~~,~~ and counsel to the Monitor, ~~and counsel to the Applicant,~~ retainers in the ~~amount[s] of $● [~~amounts of $150,000 and $50,000, respectively,~~]~~ to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

41. ~~30.~~**THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

42. ~~31.~~**THIS COURT ORDERS** that the ~~Monitor,~~ Applicants' counsel~~ to~~, the Monitor~~, if any,~~ and ~~the Applicant's~~ its counsel and the CRO shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $~~●~~300,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority as set out in paragraphs ~~[38]~~ 51 and ~~[40]~~ 53 hereof.

DIP FINANCING

43. ~~32.~~**THIS COURT ORDERS** that the ~~Applicant is~~ Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from ~~[DIP LENDER'S NAME]~~ FGC, in its capacity as the debtor-in-possession lender (the "**DIP Lender**") in order to finance the ~~Applicant's~~ Applicants working capital requirements~~,~~, and other general corporate purposes and capital expenditures~~, provided that borrowings under such credit facility shall not exceed $● unless permitted by further Order of this Court~~.

44. ~~33.~~**THIS COURT ORDERS** ~~THAT~~ that such credit facility shall be on the terms and subject to the conditions set forth in the ~~commitment letter~~ DIP Facility Loan Agreement between the ~~Applicant~~ Applicants and the DIP Lender dated as of ~~[DATE] (the "Commitment Letter"), filed~~January 25, 2023, appended as Exhibit "S" to the Manzoor Affidavit (the "**DIP Facility Agreement**").

45. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to borrow, in accordance with the terms and conditions of the DIP Facility Agreement, interim financing of up to US$7,000,000 during the Stay Period.

46. ~~34.THIS COURT ORDERS that the Applicant is~~ **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such ~~credit~~ agreements, instruments, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively with the DIP Facility Agreement, the "**Definitive Documents**"), as ~~are~~ may be contemplated by the ~~Commitment Letter~~ DIP Facility Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the ~~Applicant is~~ Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the ~~Commitment Letter and the~~ Definitive Documents (collectively, the "**DIP Obligations**") as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

47. ~~35.~~**THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property~~, which~~ as security for the DIP Obligations, which DIP Lender's Charge shall be in the aggregate amount of the DIP Obligations outstanding at any given time under the Definitive Documents. The DIP Lender's Charge shall not secure an obligation that exists before ~~this Order is made~~the Initial Filing Date. The DIP Lender's Charge shall have the priority as set out in paragraphs ~~**[38]**~~ 51 and ~~**[40]**~~ 53 hereof.

48. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the DIP Lender under this Order or at law, the DIP Lender shall not incur any liability or obligation as a result of the carrying out of the provisions of this Order, save and except for any gross negligence or willful misconduct on its part.

49. ~~36.~~**THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon ~~●~~ three business days~~-~~' notice to the ~~Applicant~~ Applicants, the CRO and the Monitor, may exercise any and all of its rights and remedies against the ~~Applicant~~ Applicants or the Property under or pursuant to the ~~Commitment Letter,~~ Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the ~~Applicant~~ Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the ~~Applicant~~ Applicants against the obligations of the ~~Applicant~~ Applicants to the DIP Lender under ~~the Commitment Letter,~~ the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the ~~Applicant~~ Applicants and for the appointment of a trustee in bankruptcy of the ~~Applicant~~Applicants; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the ~~Applicant~~ Applicants or the Property.

50. ~~37.~~**THIS COURT ORDERS AND DECLARES** that FGC and the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise ~~filed by the Applicant~~ under the CCAA, or any proposal filed ~~by the Applicant~~ under the ~~*Bankruptcy and Insolvency Act* of Canada (the "BIA")~~BIA, with respect to any advances made by FGC, as secured lender to the Applicants, and under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

51. ~~38.~~**THIS COURT ORDERS** that the priorities of the ~~Directors' Charge, the~~ Administration Charge ~~and the~~ , DIP Lender's Charge, Directors' Charge, and KERP Charge (collectively, the "**Charges**") as among them, shall be as follows[9]:

~~[9] The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

First ~~—~~- Administration Charge (to the maximum amount of $~~●~~300,000);

Second ~~—~~- DIP Lender's Charge; ~~and~~

Third ~~—~~- Directors' Charge (to the maximum amount of $~~●).~~200,000); and

Fourth – KERP Charge (to the maximum amount of $455,250).

52. ~~39.~~**THIS COURT ORDERS** that the filing, registration or perfection of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "~~Charges~~")~~ shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

53. ~~40.~~**THIS COURT ORDERS** that ~~each of the Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein)~~ the Charges shall constitute a charge on the Property and ~~such Charges~~ shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

54. ~~41.~~**THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the ~~Applicant~~ Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge~~Charges, unless the ~~Applicant~~ Applicants also ~~obtains~~ obtain the prior written consent of the CRO, the Monitor, the DIP Lender and the beneficiaries of the Administration Charge, Directors' Charge ~~and the Administration~~ , KERP Charge, or further Order of this Court.

55. ~~42.~~**THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the ~~Commitment Letter~~KERP Charge, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued

pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal ~~or~~ , provincial or other statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the ~~Applicant~~Applicants, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the ~~Commitment Letter or the~~ Definitive Documents shall create or be deemed to constitute a breach by the ~~Applicant~~ Applicants of any Agreement to which ~~it is~~ they are a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the ~~Applicant~~ Applicants entering into the ~~Commitment Letter~~DIP Facility Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the ~~Applicant~~ Applicants pursuant to this Order, ~~the Commitment Letter or~~ the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

56. ~~43.~~**THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the ~~Applicant's~~ Applicants' interest in such real property leases.

SERVICE AND NOTICE

57. ~~44.~~**THIS COURT ORDERS** that the Monitor shall (~~i~~a) without delay, publish in ~~[newspapers specified by the Court]~~ The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (~~ii~~b) within five days after the date of this Order, (~~A~~i) make this Order publicly available in the manner prescribed under the CCAA, (~~B~~ii) send, in the prescribed manner,

a notice to every known creditor who has a claim against the ~~Applicant~~ Applicants of more than $1000, and (~~C~~iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of any individual persons who are creditors available.

58. ~~45.~~ **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) shall be valid and effective service. Subject to Rule 17.05~~-~~, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ~~'<@>'.~~: www.ey.com/ca/acerus

59. **THIS COURT ORDERS** that the Applicants, the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

60. ~~46.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the ~~Applicant~~ Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the ~~Applicant's~~ Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the ~~Applicant~~ Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission

shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

RELIEF FROM REPORTING OBLIGATIONS

61. **THIS COURT ORDERS** that none of the directors, officers, employees, or other representatives of the Applicants, including without limitation the CRO, nor the Monitor (and their respective directors, officers, employees or representatives) shall have any personal liability for the Applicants failure to file annual information forms, annual and quarterly management discussion and analysis, annual and quarterly financial statements (including related audits, reports, and certifications) for the Stay Period, which period may be extended pursuant to further Order of the Court. Notwithstanding the foregoing, the Applicants shall continue to advise the appropriate regulators of material updates in this proceeding.

62. **THIS COURT ORDERS** that the decision by the Applicants to incur no further expenses in relation to any filings (including financial statements), disclosures, core or non-core documents, restatements, amendments to existing filings, press releases or any other actions (collectively, the "**Securities Filings**") that may be required by any federal, provincial or other law respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including, without limitation, the Securities Act (Ontario), RSO 1990, c S.5 and comparable statutes enacted by other provinces of Canada, the CSE Policies 1-10 and other rules, regulations and policies of the Canadian Securities Exchange (collectively, the "**Securities Provisions**"), is hereby authorized, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of the Applicants failing to make any Securities Filings required by the Securities Provisions.

63. **THIS COURT ORDERS** that none of the directors, officers, employees, and other representatives of the Applicants, including without limitation the CRO, nor the Monitor shall have any personal liability for any failure by the Applicants to make any Securities Filings required by the Securities Provisions.

FOREIGN PROCEEDINGS

64. **THIS COURT ORDERS** that the Applicant, Acerus Pharmaceuticals Corporation is hereby authorized and empowered, but not required, to act as the foreign representative (in such

capacity, the "**Foreign Representative**") in respect of the within proceedings for the purpose of having these proceedings recognized and approved in a jurisdiction outside of Canada.

65. **THIS COURT ORDERS** that the Foreign Representative is hereby authorized to apply for foreign recognition and approval of these proceedings, as necessary, in any jurisdiction outside of Canada, including in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

SEALING PROVISION

66. **THIS COURT ORDERS** that Confidential Exhibit "B" to the Pre-Filing Report and Confidential Exhibit **"[●]"** to First Report is hereby sealed pending further order of the Court, and shall not form part of the public record.

GENERAL

67. ~~47.~~**THIS COURT ORDERS** that the ~~Applicant~~ Applicants, the DIP Lender, or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of ~~its~~ their powers and duties hereunder.

68. ~~48.~~**THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the ~~Applicant~~Applicants, the Business or the Property.

69. ~~49.~~**THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the ~~Applicant~~Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the ~~Applicant~~ Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the ~~Applicant~~ Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

70. ~~50.~~**THIS COURT ORDERS** that each of the ~~Applicant~~ Applicants and the Monitor shall be at liberty and ~~is~~ are hereby authorized and empowered to apply to any court, tribunal, regulatory

or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

71. ~~51.~~**THIS COURT ORDERS** that any interested party (including the ~~Applicant~~ Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

72. ~~52.~~**THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the ~~date of this Order.~~Initial Filing Date.

Court File No. ●

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION, ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC.

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

AMENDED AND RESTATED INITIAL ORDER

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ONTARIO
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PROCEEDING COMMENCED AT TORONTO

APPLICATION RECORD

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