Court File No. CV-23-00693595-00CL

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

SECOND REPORT OF THE MONITOR

DATED MARCH 7, 2023

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(each an "**Applicant**" and collectively, the "**Applicants**")

SECOND REPORT OF THE MONITOR

DATED MARCH 7, 2023

INTRODUCTION

1. On January 26, 2023, the Applicants brought an application before the Ontario Superior Court of Justice (Commercial List) (the "**Court**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") to, among other things, obtain a stay of proceedings to allow them an opportunity to restructure their business and affairs.

2. On that same day, the Court granted an Initial Order (the "**Initial Order**") in these CCAA proceedings (the "**CCAA Proceedings**"). The Initial Order, among other things:

   a) appointed Ernst & Young Inc. ("**EYI**") as monitor of the Applicants (in such capacity, the "**Monitor**");

   b) approved the engagement of FAAN Advisors Group Inc. ("**FAAN**") as Chief Restructuring Officer ("**CRO**");

   c) ordered a stay of proceedings in favour of the Applicants through to February 3, 2023 (the "**Stay Period**");

d) granted certain Court-ordered charges; and

e) approved an interim financing facility (the "**DIP Facility**") provided by First Generation Capital Inc. ("**FGC**", and in its capacity as the DIP Facility lender, the "**DIP Lender**").

3. On January 29, 2023, the Applicants commenced ancillary insolvency proceedings under Chapter 15 of the United States Bankruptcy Code (the "**Chapter 15 Cases**") in the United States Bankruptcy Court for the District of Delaware (the "**U.S. Bankruptcy Court**"). On February 27, 2023, the U.S. Bankruptcy Court granted an Order recognizing the CCAA Proceedings as the foreign main proceedings and giving full force and effect to the orders entered in the CCAA Proceedings.

4. On February 3, 2023, the Court granted an Amended and Restated Initial Order (the "**ARIO**") amending and restating the Initial Order. The ARIO, among other things:

a) extended the Stay Period through to April 5, 2023;

b) approved a key employee retention plan (the "**KERP**");

c) increased the amounts which may be borrowed by the Applicants under the DIP Facility; and

d) increased certain Court-ordered charges and granted an additional Court-ordered charge in respect of the KERP.

5. This report (the "**Second Report**") should be read in conjunction with:

a) the Report of the Proposed Monitor dated January 25, 2023 (the "**Pre-Filing Report**") filed in connection with the Applicants' initial application for the Initial Order; and

b) the Report of the Monitor dated February 2, 2023 (the "**First Report**") filed in connection with the Applicant's motion for the ARIO.

PURPOSE

6. The purpose of this Second Report is to provide information to the Court on:

a) key activities of the Applicants and the Monitor since the granting of the Initial Order;

b) recent events regarding the review (the "**Delisting Review**") by the Toronto Stock Exchange ("**TSX**") of the eligibility for continued listing on the TSX of the securities of Acerus Pharmaceuticals Corporation ("**APC**");

c) recent events in the Chapter 15 Cases in the U.S. Bankruptcy Court;

d) the Applicants' receipts and disbursements for the period from January 23, 2023 to March 5**,** 2023, as compared to the cash flow forecast (the "**Initial Cash Flow Forecast**"), appended as Appendix "E" to the First Report;

e) the Applicants' updated cash flow forecast for the period from March 6, 2023 to May 28, 2023;

f) the Applicants' previous efforts to explore strategic alternatives, including a Pre-Filing Strategic Process (as defined and discussed further below); and

g) the Applicants' motion for an Order (the "**SISP Order**") that, among other things,

   i. approves a sale and investment solicitation process (the "**SISP**") to be conducted by the Monitor, in consultation with the Applicants; and

   ii. a further extension of the Stay Period through to May 19, 2023.

TERMS OF REFERENCE

7. In preparing this Second Report and making the comments herein, the Monitor has been provided with, and has relied upon, audited and unaudited financial information, books and records prepared by the Applicants, discussions with management of the Applicants ("**Management**"), and information from other third-party sources (collectively, the "**Information**"). Except as described in this Second Report in respect of the Cash Flow Forecast:

a) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of such information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CAS**") pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and

b) some of the information referred to in this Second Report consists of forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the Chartered Professional Accountants Canada Handbook, has not been performed.

8. Future oriented financial information referred to in this Second Report was prepared based on Management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

9. Unless otherwise indicated, the Monitor's understanding of factual matters expressed in this Second Report concerning the Applicants and their business is based on the Information, and not independent factual determinations made by the Monitor.

10. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

11. Additional information regarding the CCAA Proceedings and the Chapter 15 Cases, including copies of the Monitor's reports and key documents related to the Chapter 15 Cases, can be found on the Monitor's website at www.ey.com/ca/acerus.

BACKGROUND INFORMATION

12. This Second Report should be read in conjunction with the Affidavit of Naveed Z. Manzoor sworn March 2, 2023 (the "Second **Manzoor Affidavit**") in support of the Applicants' motion for the proposed SISP Order.

13. Headquartered in Mississauga, Ontario, the Applicants carry on a specialty pharmaceutical business focused on the research, development, commercialization and distribution of innovative prescription products primarily in the fields of urology and men's health.

14. The Applicants' portfolio of products include:

a) two prescription drugs approved by the U.S. Food and Drug Administration:

- Natesto™ is a nasal gel for male testosterone replacement therapy in hypogonadism (i.e., reduction or absence of hormone secretion);

- Noctiva ™ is a desmopressin nasal spray for Nocturia due to nocturnal polyuria (i.e., overproduction of urine at night);

b) the exclusive licensing and commercial agreements with respect to distributing Avanafil™ in the Canadian market; and

c) other pipeline products in various stages of research and development.

15. APC was incorporated under the *Ontario Business Corporations Act* (the "**OBCA**"). APC is listed on the TSX under the ticker "ASP.TO" and the OTCQB Exchange in the United States under the ticker "ASPCF". FGC holds approximately 89.3% of APC's outstanding shares. FGC is affiliated with the Chairman of the Board of Directors of APC (the "**Board**").

16. As described in the First Report, the other three Applicants are APC's wholly-owned subsidiaries and are financially dependant on APC.

UPDATE ON THE TSX DELISTING REVIEW

17. The Monitor understands that APC has submitted a request for delisting from TSX. The Monitor also understands that, by letter dated January 26, 2023 to the Applicants' legal counsel, TSX confirmed that:

a) it had commenced a Delisting Review in respect of APC;

b) certain delisting criteria outlined in Part VII of the *TSX Company Manual* were applicable to APC;

c) trading in APC's securities had been suspended;

d) a meeting of the Continued Listing Committee of TSX was scheduled to be held on February 3, 2023 at 3:30 p.m. EST at the office of TSX to consider whether or not to delist the securities of APC; and

e) APC could make written submissions addressing the noted deficiencies by 9:00 a.m. EST on February 2, 2023.

18. On February 2, 2023, the Applicants, through their legal counsel, advised TSX that APC would not be submitting written submissions in advance of the February 3, 2023 meeting.

19. On February 6, 2023, TSX released a Trader Note confirming that the securities of APC would be de-listed from TSX effective March 3, 2023 (at the close), and that the securities would remain suspended from trading until that time. As of the date hereof, the TSX website (URL: https://tsx.com/listings/listing-with-us/listed-company-directory) indicates that the securities of APC have been de-listed as of March 3, 2023.

UPDATE ON THE APPLICANTS' ACTIVITIES

20. Since the issuance of the Initial Order, the Applicants have continued to sell Natesto™ in the U.S. and Canadian markets. However, certain service providers in the U.S. expressed concerns and/or temporarily delayed providing services to the Applicants as a result of the restructuring proceedings.

21. As described in detail in the Second Manzoor Affidavit, the Applicants, with the assistance of the CRO and the Monitor, have engaged in discussions with relevant service providers in an attempt to address their concerns and ensure their continued cooperation with the Applicants. The Applicants have made progress in negotiating and entering into consensual arrangements with relevant service providers to ensure continued services. The Monitor has been closely involved and consulted in these negotiations to ensure fair and reasonable arrangements in compliance with the Initial Order.

22. In the meantime, the Applicants continue to work on the commercialization of Noctiva™ toward a relaunch of the product in the U.S. market.

UPDATE ON THE CHAPTER 15 CASES

23. The Monitor understands that no objections were made before the applicable deadline of February 23, 2023 in respect of the Applicants' petition to the U.S. Bankruptcy Court seeking (a) recognition of foreign main proceedings, (b) recognition of foreign representative, (c)

recognition of the Initial Order and ARIO, and (d) other related relief under Chapter 15 of the United States Bankruptcy Code.

24. On February 24, 2023, the Applicants filed a certificate of no objection with the U.S. Bankruptcy Court. On February 27, 2023, the U.S. Bankruptcy Court granted the Applicants' petition for the aforementioned relief. The Order of the U.S. Bankruptcy Court filed February 27, 2023 is attached as **Appendix "A"**.

25. The Monitor understands that the oral hearing of the petition, originally scheduled for March 2, 2023, was instead convened as a status conference at which the Applicants provided an update to the U.S. Bankruptcy Court on the current and anticipated steps in the CCAA Proceedings.

APPLICANTS' RECEIPTS AND DISBURSEMENTS

26. A summary of the Applicants' actual receipts and disbursements during the period from January 23, 2023 to March 5, 2023 (the "**Reporting Period**") as compared to the Initial Cash Flow Forecast appended to the First Report (the "**Variance Analysis**") is attached hereto as **Appendix "B"**.

27. During the Reporting Period, the Applicants' operations resulted in a net cash outflow of approximately $1.367 million. As detailed in the Variance Analysis, the operating cash burn is better than projected primarily due to deferring significant payments as a result of the supplier negotiations, as discussed earlier. To meet the significant projected payment requirements, around February 28, 2023, the Applicants drew US$2.0 million (equivalent to $2.713 million) under the $7 million DIP Facility. As of March 05, 2023, the Applicants had approximately $4.192 million in cash on hand.

THE APPLICANTS' CASHFLOW FORECAST

28. The Applicants, with the assistance of the Monitor, have further updated the cash flow forecast (the "**Updated Cash Flow Forecast**") for the period from March 6, 2023 to May 28, 2023 (the "**Forecast Period**"). A copy of the Updated Cash Flow Forecast is attached hereto as **Appendix "C"**.

29. The Updated Cash Flow Forecast projects that, with available borrowing room of the DIP Facility, the Applicants' funds are sufficient to fund operations during the proposed extension of the Stay Period.

PRE-FILING STRATEGIC PROCESS

30. Prior to initiating these CCAA Proceedings, the Applicants invested significant time and efforts, with the assistance of advisors, to explore strategic transaction opportunities.

31. The Applicants undertook extensive efforts to explore capital market options throughout 2022. Following the acquisition of Serenity Pharmaceuticals LLC in March 2022, the Applicants encountered additional funding needs in connection with the launch of Noctiva™. Consequently, the Applicants expanded their solicitation efforts by contacting known parties in the speciality pharmaceutical industry, as well as financial parties known to be interested in making investments in speciality pharmaceutical companies.

32. Despite several parties expressing interest, these informal marketing efforts did not lead to any offers. As the Applicants' financial requirements grew more urgent, they engaged EYI and Ernst & Young Orenda Corporate Finance Inc. (collectively, "**EY**") as their financial advisor and FAAN as Chief Strategic Officer in September 2022. The Applicants, with the assistance of EY and FAAN launched a thorough strategic review process (the "**Pre-Filing Strategic Process**"). This process aimed to evaluate all available capital and business alternatives in an accelerated timeframe, including a possible debt or equity financing, asset sale, M&A, or licensing transaction. To oversee these solicitation efforts, the Board appointed a committee of independent directors.

33. As part of the Pre-Filing Strategic Process, the Applicants, with the assistance of EY, updated a teaser ("**Teaser**") for outreach purposes and a confidential information memorandum ("**CIM**") that provide details about their assets. Additionally, the Applicants had set up a virtual data room (the "**Data Room**") to disseminate non-public information to interested parties that had executed an NDA (as defined below).

34. On September 21, 2022, the Applicants issued a press release announcing the Pre-Filing Strategic Process and requested that interested parties contact EY for additional information.

Parties interested in transacting with the Applicants were requested to deliver a non-binding letter of interest no later than October 26, 2022.

35. On or around September 21, 2022, EY began outreach efforts by sending copies of the Teaser and a confidentiality agreement (the "**NDA**") to prospective parties. In the meantime, the Applicants, in collaboration with EY, continued or reengaged in discussions with certain parties that had previously expressed interest in transacting with the Applicants. Overall, approximately 113 financial and strategic parties were contacted in the Pre-Filing Strategic Process. Additionally, the EY Global Network made informal inquiries with certain strategic parties in EU, Latin America, India, Japan and China that may be interested in investing in the men's health space.

36. Interested parties that executed an NDA were granted access to the CIM and the Data Room for further due diligence. Multiple parties conducted substantial diligence to explore and discuss a potential transaction with the Applicants. The Applicants' senior management and EY attended meetings with these parties and provided timely responses to questions and information requests.

37. Despite receiving several formal expressions of interest, the Applicants were unable to reach agreement with any of the prospective purchasers on the terms of an actionable transaction prior to the commencement of the CCAA Proceedings.

38. Following the granting of the Initial Order, the Monitor has had further discussions with the parties who had previously shown interest. The primary objective of these discussions is to update them on the status of these CCAA proceedings and assess their continued interest in the Applicants' assets and operations.

39. Based upon input received from the Pre-Filing Strategic Process as well as post-filing communications with certain interested parties, the Applicants intend to seek approval of the SISP with the goal of maximizing the value of their business and assets by canvasing the market again in the CCAA Proceedings. It should be noted that the DIP Facility agreement also requires that the Applicants conduct the SISP.

SISP

40. The Applicants have developed the SISP in consultation with the Monitor. A summary of the proposed SISP is provided below, but reference should be made to the copy of the SISP attached hereto as **Appendix** "**D**" for its actual terms. Capitalized terms used in this section but not otherwise defined have the meaning ascribed thereto in the SISP. Reference to the Applicants in this section shall include the CRO.

41. The proposed SISP will proceed in one phase, building upon the work performed in the Pre-Filing Strategic Process. The SISP will leverage existing resources, including the CIM and the Data Room, to streamline the process. The timeline for the SISP is summarized in the table below.

Milestone	**Deadline**
Publish notice of SISP and deliver Teaser Letter and NDA to Known potential bidders	March 14, 2023 (i.e., 5 days from the SISP Order)
Bid Deadline	April 28, 2023 (i.e., 50 days from the SISP Order)
Monitor to notify each bidder in writing as to whether its bid constitutes a Qualified Bid	No later than May 5, 2023 (i.e., within five (5) business days following the Bid Deadline)
Monitor to notify each Qualified Bidder on whether an Auction will take place	No later than May 5, 2023 (i.e., two (2) business days prior to the Auction)
Auction date, if required	May 9, 2023
Hearing of the Sale Approval Motion	No later than May 19, 2023

42. The proposed SISP is intended to solicit proposals for acquiring or refinancing the business or selling the assets and/or the business through a merger, reorganization, recapitalization, primary equity issuance or other similar transaction within a specified timeframe, as described above.

43. The Monitor will be responsible for administering the SISP in consultation with the Applicants, assisting with information requests from interested parties, conducting an auction if necessary, and assisting with the closing of a Successful Bid. The Monitor may also seek Court approval for amendments or directions related to the SISP, in consultation with the Applicants.

44. Within five days of the proposed SISP Order (i.e., no later than March 14, 2023), the Monitor will:

a) in consultation with the Applicants, prepare a list of known interested parties, including both those parties that previously expressed interest in the Pre-Filing Strategic Process and additional local and international parties identified by the Monitor and the Applicants;

b) publish a notice of the SISP in The Globe and Mail (*National Edition*) and cause a press release to be issued;

c) update the Teaser in consultation with the Applicants; and

d) cause the updated Teaser and NDA (if one was not executed in the Pre-Filing Strategic Process) to be sent to each known interested party, as well as any other party who requests them or is identified as a Potential Bidder.

45. The SISP outlines the requirements for any party interested in participating in the process as a Potential Bidder. They must provide an executed NDA, disclose their identity and provide any other information the Monitor may reasonably request.

46. The Monitor, in consultation with the Applicants, will coordinate all reasonable requests for information and due diligence access for each eligible Potential Bidder who meets the SISP requirements. Due diligence may include access to the Data Room, management presentations, and other reasonable requests at the Monitor's discretion, taking into account factors such as competitive and other business considerations.

47. The deadline for Potential Bidders to submit a binding Sale Proposal or Investment Proposal is April 28, 2023 (5:00 p.m. Toronto Time), or such later date as may be communicated by the Monitor to Potential Bidders. A binding proposal must contain all of the prescribed and required details as outlined in the SISP to be accepted as a Qualified Bid.

48. Before the bid deadline, the Monitor, in consultation with the Applicants:

a) can discuss and negotiate a bid for the purpose of clarifying or amending its terms;

b) may waive strict compliance with any one or more of the requirements set out in the SISP; and

c) may combine multiple bids from different bidders to create one Qualified Bid.

49. The Applicants and the Monitor are under no obligation to designate the highest or otherwise best bid, or any bid, as a Qualified Bid. The Monitor will inform each bidder in writing whether their bid was qualified within five business days of the bid deadline or at a later time determined by the Monitor.

50. Bids will be evaluated based on the criteria outlined in paragraph 22 of the SISP. At any stage of the SISP, the Monitor, in consultation with the Applicants, may ascribe monetary values to non-monetary terms, such as assumed liabilities and contracts, in any bid, Qualified Bid, Initial Bid or Overbids for the purposes of assessing such bids.

51. If multiple Qualified Bids are received, the Applicants may i) either select one or more Successful Bids, with or without negotiation of Qualified Bids; or ii) or conduct an auction among the Qualified Bidders.

52. If the Monitor, in consultation with the Applicants, elects to conduct an Auction, Qualified Bidders will receive instructions for participating in the Auction via video conferencing at least two business days before. Only Qualified Bidders can participate in the Auction. The Monitor will disclose the identities of the Qualified Bidders participating in the Auction to ensure transparency.

53. If the Monitor, in consultation with the Applicants, elects to proceed with an Auction, the Auction will begin with the highest or best Qualified Bid. Subsequent Overbids must proceed in minimum increments of $100,000. All Overbids will be made and received in one group video-conference on an open basis, with the true identity of each participant fully disclosed. The Auction will conclude after each participant has had the opportunity to submit an Overbid, and no Overbids will be considered after the Monitor declares the Auction to be concluded. The Monitor may set additional procedural rules for the Auction.

54. If there is an Auction, during the Auction the Applicants will review all Qualified Bids and Overbids, and select the highest or best bid(s) at the end of the Auction as the Successful Bid(s).

55. The Successful Bidder(s), whether selected prior to or following the conduct of an Auction, must complete and execute all necessary documents within two business days of being selected.

56. The Applicants will seek court approval to close the transaction(s) contemplated in the Successful Bid(s) at a hearing to be held no later than May 19, 2023.

57. The Monitor may consult with secured creditors of the Applicants during the SISP, subject to the condition that confidentiality requirements set by the Monitor are adhered to. However, if a secured creditor is or is related to a Potential Bidder, the Monitor and Applicants will not share information that could provide an unfair advantage or jeopardize the SISP's integrity.

58. The SISP contemplates that the Applicants, with the approval of the Monitor, can negotiate a Stalking Horse Bid before the Bid Deadline to provide certainty to the proposed SISP. If a Stalking Horse Bid is accepted, it will be subject to Court approval and necessary amendments to the SISP. All Potential Bidders will be promptly informed of any Court approval of the Stalking Horse Bid and related SISP amendments.

Monitor's Assessment of the SISP

59. The Monitor has worked with the Applicants to develop the proposed SISP aimed at identifying the best alternatives for the benefit of the Applicants and their stakeholders while ensuring a fair and transparent process for bidders. The DIP Lender is supportive of the SISP.

60. Further, to ensure the effectiveness and fairness of the process, the proposed SISP provides that the Monitor shall oversee and conduct the SISP, in consultation with the Applicants, and with the ultimate oversight and supervision of the Court.

61. The SISP provides that the Monitor shall coordinate all discussions with Potential Bidders, and in case a secured creditor is or is related to a Potential Bidder, the Monitor and Applicants shall ensure that sensitive information is not shared to protect the SISP's integrity and fairness.

62. In appropriate circumstances, the Monitor, in consultation with the Applicants, may modify the SISP, provided that any substantive modification will be communicated to the CCAA service list. The Monitor is of the view that this flexibility is appropriate to ensure the best possible outcome from the SISP.

63. The Applicants previously conducted the Pre-Filing Strategic Process with the assistance of EY, and the proposed SISP builds on this process by reaching out to known interested parties and generating potential market interest through a notice published in a major daily newspaper and a press release.

64. The Monitor believes that the proposed SISP is well-designed and will effectively explore sale, restructuring, and recapitalization options for the benefit of the Applicants and their stakeholders. The proposed timeline is reasonable taking into account the information obtained from the Pre-Filing Strategic Process, timelines observed in other comparable insolvency sale processes, and the Applicants' liquidity constraints.

EXTENSION TO THE STAY PERIOD

65. The Stay Period is currently set to expire on April 5, 2023. The Applicants are requesting an extension of the Stay Period until May 19, 2023.

66. The Monitor is of the view that the requested stay extension is necessary and appropriate for the following reasons:

a) the Applicants require the extension in order to conduct the SISP which would leverage off the work already performed in the Pre-Filing Strategic Process;

b) the Monitor will work closely with the Applicants throughout the SISP to ensure that it is conducted in a fair and transparent manner; and

c) the Applicants have continued to operate in good faith and with due diligence since the date of the Initial Order.

67. Based on the Cash Flow Forecast and the availability under the DIP Facility, it appears that the Applicants will have sufficient liquidity for the duration of the extended Stay Period.

CONCLUSIONS AND RECOMMENDATIONS

68. The Monitor supports the relief sought by the Applicants in the proposed SISP Order with regard to:

a) approving the SISP; and

b) extending the Stay Period to May 19, 2023.

All of which is respectfully submitted this 7th day of March, 2023.

ERNST & YOUNG INC., in its capacity as Court-appointed Monitor of the Applicants, and not in its corporate or personal capacity

per:

Alex Morrison
Senior Vice-President

Michael Hayes
Senior Vice-President

Allen Yao
Vice-President

APPENDIX A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Acerus Pharmaceuticals Corporation, *et al.,* Debtors in a foreign proceeding.[1]	Chapter 15 Case No. 23-10111 (MFW) (Jointly Administered) Re: D.I. 4

ORDER GRANTING VERIFIED PETITION FOR (I) RECOGNITION OF FOREIGN MAIN PROCEEDINGS, (II) RECOGNITION OF FOREIGN REPRESENTATIVE, (III) RECOGNITION OF INITIAL ORDER AND AMENDED AND RESTATED INITIAL ORDER, AND (IV) RELATED RELIEF UNDER CHAPTER 15 OF THE BANKRUPTCY CODE

Upon consideration of the *Verified Petition for (I) Recognition of Foreign Main Proceedings (II) Recognition of Foreign Representative, (III) Recognition of Initial Order and Amended and Restated Initial Order, and (IV) Related Relief Under Chapter 15 of the Bankruptcy Code* [D.I. 4] (together with the chapter 15 petitions filed for each of the Debtors, the "**Petitions for Recognition**"), the Manzoor Declaration, the Nicholson Declaration, and the Provisional Relief Motion (together with the Petitions for Recognition, the Manzoor Declaration, and the Nicholson Declaration, the "**Chapter 15 Pleadings**"), each filed January 29, 2023, by or on behalf of the Foreign Representative, Acerus Pharmaceuticals Corporation, in its capacity as the duly appointed foreign representative of the above captioned debtors (the "**Debtors**"), in a voluntary restructuring proceeding (the "**Canadian Proceedings**") under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (as amended, the "**CCAA**"), pending before the Ontario Superior Court of Justice Commercial List (the "**Canadian Court**"), initiated pursuant to the

[1] The Debtors in these chapter 15 proceedings, together with the last four digits of their business identification numbers are: Acerus Pharmaceuticals Corporation (6891); Acerus Biopharma Inc. (0687); Acerus Labs Inc. (0126); and Acerus Pharmaceuticals USA, LLC (9089). The location of the Debtors' headquarters and the Debtors' foreign representative is: 205-7025 Langer Drive, Mississauga, Ontario, Canada.

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (as amended, the "**CCAA**"), and it appearing that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012; and it appearing that venue is proper before this Court pursuant to 28 U.S.C. § 1410; and the Court having considered and reviewed the Chapter 15 Pleadings and having held a hearing to consider the relief requested in the Petitions for Recognition (the "**Hearing**"); and it appearing that timely notice of the filing of the Chapter 15 Pleadings and the Hearing has been given pursuant to the *Order (A) Scheduling Recognition Hearing and (B) Specifying Form and Manner of Service of Notice* and that no other or further notice need be provided; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

THIS COURT HEREBY FINDS AND DETERMINES THAT:

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. These cases were properly commenced pursuant to sections 1504, 1509 and 1515 of the title 11 of the United States Code (the "**Bankruptcy Code**").

C. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012.

D. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

E. Venue is proper in this district pursuant to 28 U.S.C. § 1410.

F. The Canadian Proceedings are "foreign proceedings" within the meaning of section 101(23) of the Bankruptcy Code.

G. The Canadian Proceedings are pending in Canada, which is the country in which the Debtors have their center of main interests and, as such, the Canadian Proceedings are "foreign main proceedings" within the meaning of sections 1502(4) and 1517(b)(1) of the Bankruptcy Code and are entitled to recognition as foreign main proceedings in respect of each of the Debtors.

H. The Foreign Representative, Acerus Pharmaceuticals Corporation, is a "person," as such term is defined in section 101(41) of the Bankruptcy Code, has been duly appointed by the Debtors and has been declared by the Canadian Court as authorized to act as the "foreign representative" with respect to the Canadian Proceedings within the meaning of section 101(24) of the Bankruptcy Code.

I. The Petitions for Recognition meet all of the requirements set forth in section 1515 of the Bankruptcy Code and Bankruptcy Rules 1007(a)(4) and 2002(q).

J. The Canadian Proceedings are entitled to recognition by the Court pursuant to section 1517(a) of the Bankruptcy Code and the Debtors have satisfied the eligibility requirements of section 109(a) of the Bankruptcy Code, as applicable.

K. The Debtors and the Foreign Representative are entitled to all of the relief set forth in section 1520 of the Bankruptcy Code.

L. Appropriate notice of the filing of, and the Hearing on, the Petitions for Recognition was given, which notice is deemed adequate for all purposes, and no other or further notice need be given.

M. The relief granted hereby is necessary and appropriate, in the interests of the public and of international comity, not inconsistent with the public policy of the United States, warranted pursuant to sections 105(a), 362, 363, 364, 365, 1507(a), 1509(b)(2)-(3), 1520, 1521, 1522 and 1525 of the Bankruptcy Code, and will not cause hardship to creditors of the Debtors or other parties in interests that is not outweighed by the benefits of granting that relief.

N. The relief granted hereby is necessary to effectuate the purposes and objectives of chapter 15 and to protect the Debtors and the interests of their creditors and other parties in interest.

O. Absent the relief granted hereby, the Debtors and their directors and officers may be subject to the prosecution of judicial, quasi-judicial, arbitration, administrative or regulatory actions or proceedings in connection with the Canadian Proceedings or otherwise against the Debtors and their directors and officers or their property, thereby interfering with and causing harm to, the Debtors, their creditors, and other parties in interest in the Canadian Proceedings and, as a result, the Debtors, their creditors and such other parties in interest would suffer irreparable injury for which there is no adequate remedy at law.

P. Absent the requested relief, the efforts of the Debtors, the Canadian Court and the Foreign Representative in conducting the Canadian Proceedings and effecting their restructuring or sale process therein may be thwarted by the actions of certain creditors, a result that will obstruct the purposes of chapter 15 as reflected in section 1501(a) of the Bankruptcy Code.

Q. Absent the requested relief, the Debtors would be unable to incur the undrawn balance of the DIP Facility (as defined in the DIP Facility Agreement) up to the Maximum Loan Amount (as defined in the DIP Facility Agreement).

R. Each of the injunctions contained in this Order (i) is within the Court's jurisdiction, (ii) is essential to the success of the Debtors' restructuring in the Canadian Proceedings, (iv) confers material benefits on, and is in the best interests of, the Debtors and their creditors, and (v) is important to the overall objectives of the Debtor' restructuring.

S. The findings and determinations set forth in that certain *Order Granting Provisional Relief* [D.I. 25] (the "**Provisional Relief Order**"), including without limitation the findings and determinations pursuant to section 364(e) of the Bankruptcy Code, are confirmed on a final basis and incorporated by reference.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Petitions for Recognition and the Relief Requested are granted as set forth herein, and any objections thereto are overruled with prejudice.

2. The Canadian Proceedings are granted recognition with respect to each of the Debtors as foreign main proceedings (as defined in section 1502(4) of the Bankruptcy Code) pursuant to sections 1517(a) and (b)(1) of the Bankruptcy Code.

3. Acerus Pharmaceuticals Corporation is recognized as the "foreign representative" as defined in section 101(24) of the Bankruptcy Code in respect of the Canadian Proceedings.

4. The Debtors and the Foreign Representative are granted all of the relief set forth in section 1520 of the Bankruptcy Code including, without limitation, the application of the protection afforded by the automatic stay under section 362(a) of the Bankruptcy Code to the Debtors and to the Debtors' property that is now within or in the future is located within the territorial jurisdiction of the United States.

5. Any and all Provisional Relief (as defined in the Provisional Relief Motion) not granted in the Provisional Relief Order, if any, is hereby granted pursuant to section 1521(a)(7)

of the Bankruptcy Code.

6. The Foreign Representative is authorized to operate the business of the Debtors that is the subject of the Canadian Proceedings and exercise the powers of a trustee to the extent provided by 11 U.S.C. § 1520(a)(3).

7. The Initial Order or the Amended and Restated Initial Order (to the extent it supersedes the Initial Order), including any and all existing and future extensions, amendments, restatements, and/or supplements authorized by the Canadian Court, are hereby given full force and effect, on a final basis, with respect to the Debtors and the Debtors' property that now or in the future is located within the territorial jurisdiction of the United States.

8. Pursuant to 11 U.S.C. § 1521(a)(1)-(3), all persons and entities, other than the Foreign Representative and his representatives and agents, are hereby enjoined (to the extent they have not been stayed under section 1520(a)) from:

a. execution against any of the Debtors' and their directors and officers (the "Protected Parties") assets;

b. the commencement or continuation, including the issuance or employment of process, of a judicial, quasi-judicial, administrative, regulatory, arbitral, or other action or proceeding, or to recover a claim, including, without limitation, any and all unpaid judgments, settlements or otherwise against the Debtors and other Protected Parties, which in either case is in any way related to, or would interfere with, the administration of the Debtors' estates in the Canadian Proceedings;

c. taking or continuing any act to create, perfect or enforce a lien or other security interest, setoff or other claim against the Debtors or other Protected Parties or any of their property or proceeds thereof;

d. transferring, relinquishing or disposing of any property of the Debtors to any person or entity (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Foreign Representative;

e. commencing or continuing an individual action or proceeding concerning the Debtors' or other Protected Parties' assets, rights, obligations or liabilities; and

f. declaring or considering the filing of the Canadian Proceedings or these chapter 15 cases a default or event of default under any agreement, contract or arrangement;

provided, in each case, that such injunctions shall be effective solely within the territorial jurisdiction of the United States; and provided further that nothing herein shall: (x) prevent any entity from filing any claims against the Debtors in the Canadian Proceedings or (y) prevent any entity from seeking relief from the Canadian Court in the Canadian Proceedings or this Court in these Chapter 15 Cases, as applicable, for relief from the injunctions contained in the Order.

9. Pursuant to 11 U.S.C. §§ 1521(a)(5) and 1521(b), the administration, realization, and distribution of the Debtors' assets within the territorial jurisdiction of the United States is entrusted to the Foreign Representative and the Foreign Representative is hereby established as the exclusive representative of the Debtors in the United States.

10. Pursuant to 11 U.S.C. §§ 1521(a)(6) of the Bankruptcy Code , all prior relief granted to the Debtors, the Foreign Representative, and the DIP Lender by this Court pursuant to the Provisional Relief Order shall be extended and shall remain in full force and effect, on a final basis.

11. The Debtors are authorized to incur, as needed, the undrawn balance of the DIP Facility (as defined in the DIP Facility Agreement) up to the Maximum Loan Amount (as defined in the DIP Facility Agreement), and any such additional advances made in accordance with the DIP Facility Agreement shall be secured by the DIP Lender's Charge. Any such additional advances shall be deemed to have been made in "good faith" as contemplated by section 364(e) of the Bankruptcy Code.

12. The Foreign Representative, the Debtors and their respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules or local rules of

this Court.

13. No action taken by the Foreign Representative, the Debtors, or their respective successors, agents, representatives, advisors, or counsel in preparing, disseminating, applying for, implementing, or otherwise acting in furtherance of or in connection with the Canadian Proceedings, this order, these chapter 15 cases, or any adversary proceeding herein, or any further proceeding commenced hereunder, shall be deemed to constitute a waiver of the rights or benefits afforded such persons under sections 306 and 1510 of the Bankruptcy Code.

14. Notwithstanding any provision in the Bankruptcy Rules to the contrary, including, but not limited to, Bankruptcy Rules 7062 and 1018, (i) this Order shall be effective immediately and enforceable upon its entry; (ii) the Foreign Representative and the DIP Lender are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order; and (c) the Foreign Representative and the Debtors are authorized and empowered, and may in their discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

15. A copy of this Order shall be served (i) within five business days of entry of this order, by electronic mail to the extent email addresses are available and otherwise by U.S. mail, overnight or first-class postage prepaid, upon the Notice Parties (as defined in the *Motion for Order (A) Scheduling Hearing on Recognition of Chapter 15 Petitions and (B) Specifying Form and Manner of Service of Notice*) and such other entities as the Court may direct. Such service shall be good and sufficient service and adequate notice for all purposes.

16. The Court shall retain jurisdiction with respect to the enforcement, amendment, or modification of this Order, any request for additional relief and any request by an entity for relief from the provisions of this Order, for cause shown, that is properly commenced and within

the jurisdiction of the Court.

17. This Order shall be effective and enforceable immediately upon entry and shall constitute a final order within the meaning of 28 U.S.C. § 158(a).

Dated: February 27th, 2023
Wilmington, Delaware

MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

APPENDIX B

Acerus Pharmaceuticals Corporation and Subsidiaries (collectively, the "Applicants")
Cash Flow Variance Analysis for the Period from January 23, 2023 to March 5, 2023
$CDN in Thousands

	Actual	Forecast	Variance	*Notes*
Receipts				
Product Sales	$ 93	$ 1,611	$ (1,518)	*1*
Total Receipts	**$ 93**	**$ 1,611**	**$ (1,518)**	
Less: Disbursements				
Direct Selling Costs	194	1,116	922	*1*
Payroll & Contractors	281	354	73	*2*
Contract manufacturing costs	123	333	210	*3*
Other Product Related Expenses	481	2,234	1,753	*4*
Other SG&A	36	58	22	
Professional Fees	346	1,064	718	*5*
Total Disbursements	1,460	5,159	3,699	
Net cash receipts/(disbursements)	**$ (1,367)**	**$ (3,548)**	**$ 2,181**	
Cash Balance				
Opening Balance	$ 2,847	$ 1,662	$ 1,185	*6*
Net Cash Receipts/(disbursements)	(1,367)	(3,548)	2,181	
DIP draws/(repayment)	2,713	3,390	(677)	*7*
Ending Cash Balance	**$ 4,192**	**$ 1,504**	**$ 2,688**	
DIP Facility				
Opening Balance	$ -	$ -	$ -	
DIP Draws/(Repayment)	2,713	3,390	(677)	*7*
Closing Balance	**$ 2,713**	**$ 3,390**	**$ (677)**	

In the Matter of the CCAA of Acerus Pharmaceuticals Corporation, Acerus Biopharma Inc., Acerus Labs Inc., and Acerus Pharmaceuticals USA, LLC (collectively, the "Applicants")

Cash flow variance analysis for the period from January 23, 2023 to March 5, 2023

Disclaimer:

This variance analysis compares the Applicants' actual receipts and disbursements compared to the cash flow forecast appended to the First Report of the Monitor, dated February 2, 2023. This variance analysis is prepared weekly, and covers a pre-filing stub period from January 23 to January 25, 2023. Both the cash flow forecast and actual results are inclusive of this pre-filing stub period for variance analysis purposes.

1. **Product Sales and Direct Selling Costs**
   There have been delays in collecting sales from making payments to third-party logistics companies and distributors for Natesto due to negotiations among the parties. The parties have agreed on the arrangements going forward in the post-filing period, and these variances are expected to reverse in the near future.

2. **Payroll and contractors**
   This variance is the result of a combination of a timing difference and certain pre-filing payable amounts that have been stayed as a result of the CCAA proceedings.

3. **Contract Manufacturing Costs**
   This represents a timing difference that will reverse in the future.

4. **Other Product Related Expenses**
   This variance is due to primarily a timing difference as well as certain payments being stayed as a result of the CCAA proceedings.

5. **Restructuring Costs**
   This favourable variance was primarily due to the timing of professional fee payments.

6. **Opening Balance**
   The opening balance was adjusted higher due to certain payments being stayed as a result of the CCAA proceedings.

7. **DIP Draws/(Repayment)**
   Around March 1, 2023, the Applicants drew US$2 million under the US$7 million DIP facility. This variance is due to a timing difference as the Applicants aligned the draws with the projected disbursement requirements.

APPENDIX C

Acerus Pharmaceuticals Corporation and Subsidiaries (collectively, the "Applicants")
Cash Flow Forecast for the Period March 6, 2023 to May 28, 2023
$CDN in Thousands

Week #		7	8	9	10	11	12	13	14	15	16	17	18	
Ending		Mar 12	Mar 19	Mar 26	Apr 02	Apr 09	Apr 16	Apr 23	Apr 30	May 07	May 14	May 21	May 28	Total
	Notes	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	
Receipts														
Product Sales	1	$ 844	$ 149	$ 170	$ 532	$ 109	$ 109	$ 109	$ 142	$ 95	$ 95	$ 95	$ 129	$ 2,576
Total Receipts		**$ 844**	**$ 149**	**$ 170**	**$ 532**	**$ 109**	**$ 109**	**$ 109**	**$ 142**	**$ 95**	**$ 95**	**$ 95**	**$ 129**	**$ 2,576**
Disbursements														
Direct Selling Costs	2	887	7	3	-	104	95	372	76	76	76	76	66	1,839
Payroll & Contractor costs	3	76	-	197	3	-	64	-	121	3	64	-	121	650
Contract manufacturing costs	4	-	-	838	-	-	-	-	248	-	-	-	245	1,331
Other Product Related Expenses	5	515	20	444	20	271	20	20	376	271	20	20	376	2,376
Other SG&A	6	105	-	14	10	5	-	-	9	10	5	-	9	168
Professional Fees	7	321	433	127	275	25	75	252	227	25	185	25	309	2,278
Total Disbursements		1,905	460	1,623	308	406	254	645	1,057	385	351	121	1,127	8,643
Net cash receipts/(disbursements)		**$ (1,062)**	**$ (311)**	**$ (1,454)**	**$ 224**	**$ (298)**	**$ (146)**	**$ (536)**	**$ (915)**	**$ (290)**	**$ (256)**	**$ (26)**	**$ (998)**	**$ (6,067)**
Cash Balance														
Opening Balance	8	$ 4,192	$ 3,131	$ 2,820	$ 1,366	$ 1,590	$ 1,292	$ 1,146	$ 3,323	$ 2,409	$ 2,118	$ 1,863	$ 1,836	$ 4,192
Net Cash Receipts/(disbursements)		(1,062)	(311)	(1,454)	224	(298)	(146)	(536)	(915)	(290)	(256)	(26)	(998)	$ (6,067)
DIP draws/(repayment)		-	-	-	-	-	-	2,713	-	-	-	-	1,356	$ 4,069
Ending Cash Balance		**$ 3,131**	**$ 2,820**	**$ 1,366**	**$ 1,590**	**$ 1,292**	**$ 1,146**	**$ 3,323**	**$ 2,409**	**$ 2,118**	**$ 1,863**	**$ 1,836**	**$ 2,195**	**$ 2,195**
DIP Facility														
Opening Balance	9	$ 2,713	$ 2,713	$ 2,713	$ 2,713	$ 2,713	$ 2,713	$ 2,713	$ 5,426	$ 5,426	$ 5,426	$ 5,426	$ 5,426	$ 2,713
DIP Draws/(Repayment)	9	-	-	-	-	-	-	2,713	-	-	-	-	1,356	$ 4,069
Closing Balance		**$ 2,713**	**$ 2,713**	**$ 2,713**	**$ 2,713**	**$ 2,713**	**$ 2,713**	**$ 5,426**	**$ 5,426**	**$ 5,426**	**$ 5,426**	**$ 5,426**	**$ 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. in its capacity as the Chief Restructuring Officer, and in consultation with Ernst & Young Inc. (the "**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 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 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 Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast. The 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 Monitor's review, nothing has come to the Monitor's attention that causes the 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 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**
   These payments include amounts related to health plans, a co-pay program and incentives to pharmacy partners, as well as fees charged by third-party logistics service providers and distributors. A portion of these payments represents a projected deposit that will be held by the Monitor in trust. This deposit will be used to cover post-filing costs in accordance with arrangements with a service provider.

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.

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 Monitor and its counsel and the Chief Restructuring Officer in connection with the Applicants' restructuring proceedings.

8. **Beginning Balance**
   Represents the opening cash balance as at March 6, 2023.

9. **Debt in Possession Facility ("DIP") Draws and Repayments**
   The Applicants are projected to make additional draws of US$3 million in total under the DIP facility during the forecast period, which will result in an anticipated ending balance of US$5 million. As a result, the remaining borrowing capacity of the DIP facility is anticipated to be approximately US$2 million at the end of the forecast period.

APPENDIX D

SALE AND INVESTMENT SOLICITATION PROCESS

Introduction

1. On January 26, 2023, Acerus Pharmaceuticals Corporation ("**Acerus**") and certain of its subsidiaries (collectively, the "**Applicants**") were granted an initial order (as amended or amended and restated from time to time, the "**Initial Order**") under the *Companies' Creditors Arrangement Act* (the "**CCAA**" and the "**CCAA Proceedings**") by the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). The Initial Order (which was amended and restated on February 3, 2023), among other things:

   (a) stayed all proceedings against the Applicants, their assets and their respective directors and officers;

   (b) appointed Ernst & Young Inc. as the monitor of the Applicants (in such capacity, the "**Monitor**");

   (c) authorized the Applicants to enter into a debtor-in-possession financing facility (the "**DIP Facility**") with First Generation Capital Inc. (the "**DIP Lender**") pursuant to the DIP facility loan agreement dated January 26, 2023 (the "**DIP Facility Loan Agreement**"), as well as the related charge in favour of the DIP Lender (the "**DIP Charge**") over all of the Applicants' present and future assets, property and undertakings of every nature and kind whatsoever, and wherever situate including all proceeds thereof to secure the amounts outstanding under or in connection with the DIP Facility; and

   (d) authorized the Applicants to pursue all avenues of sale or investment of their assets or business, in whole or in part, subject to prior approval of the Court before any material sale or refinancing.

2. Further to the Applicants' restructuring efforts, the Monitor will, with the assistance of its advisors and the Applicants and its chief restructuring officer, FAAN Advisors Group Inc. (the "**CRO**"), conduct the sale and investment solicitation process (the "**SISP**") described herein pursuant to a Court order dated March 9, 2023 (the "**SISP Order**"). The SISP is intended to solicit interest in an acquisition or refinancing of the business or a sale of the assets and/or the business of the Applicants by way of merger, reorganization, recapitalization, primary equity issuance or other similar transaction. The Monitor, in consultation with the Applicants, intend to provide all qualified interested parties with an opportunity to participate in the SISP.

Opportunity

3. The SISP is intended to solicit interest in the opportunity (the "**Opportunity**") for a sale of or investment in all or part of the Applicants' assets (the "**Property**", which includes Noctiva, Natesto, Strendra (avanafil), Lidbree, Tefina, TriVair and all other products of the Applicants (the "**Products**")) and business operations (the "**Business**").

4. Except to the extent otherwise set forth in a definitive sale or investment agreement with the Successful Bidder (as defined below), any sale of the Property or investment in the Business will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Monitor, the Applicants, or any of their

respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Applicants in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, financial and monetary claims charges, options and interests therein and thereon pursuant to Court order(s), to the extent that the Court deems it appropriate to grant such relief and except as otherwise provided in such Court order(s).

Role of the Monitor

5. The Monitor's responsibilities pursuant to the SISP include:

   (a) administering the SISP, in consultation with the Applicants;

   (b) consulting with the Applicants in connection with the bidding procedures included in this SISP and the closing of the transaction contemplated in the Successful Bid(s) (as defined below);

   (c) assisting the Applicants to facilitate information requests, including assisting the Applicants in preparing or modifying financial information to assist with the bidding procedures described in this SISP;

   (d) reporting to the Court in connection with the SISP, including the bidding process described in this SISP, and the closing of the transaction contemplated in the Successful Bid(s);

   (e) conducting an Auction (as defined below), if necessary, in accordance with the Auction procedures contemplated herein; and

   (f) assisting the Applicants with the closing of the transaction contemplated in the Successful Bid(s).

6. In consultation with the Applicants, the Monitor may seek Court approval of an amendment to the SISP or may seek the Court's directions in respect of the SISP.

Timeline

7. The following table sets out the key milestones under the SISP:

Milestone	**Deadline**
Deadline to publish notice of SISP, deliver Teaser Letter and NDA to Known Potential Bidders, and set up electronic data room	Five (5) days following issuance of the SISP Order March 14, 2023
Bid Deadline	Fifty (50) days following issuance of the SISP Order April 28, 2023

Monitor to notify each Bidder in writing as to whether its Bid constitutes a Qualified Bid	Within 5 business days following Bid Deadline No later than May 5, 2023
Monitor to notify each Qualified Bidder on whether an Auction will take place	Two (2) business days prior to the commencement of the Auction No later than May 5, 2023
Auction Date (if required)	Sixty-one (61) days following issuance of the SISP Order May 9, 2023
Hearing of the Sale Approval Motion	No later than seventy-one (71) days following issuance of the SISP Order, subject to the availability of the Court No later than May 19, 2023

8. Subject to any order of the Court, the dates set out in the SISP, including the Bid Deadline and Auction Date, may be amended or extended by the Monitor, in consultation with the Applicants.[1]

Solicitation of Interest: Notice of the SISP

9. As soon as reasonably practicable, but, in any event, by no later than five (5) days from the SISP Order:

    (a) the Monitor, in consultation with the Applicants, will prepare a list of potential bidders, including (i) parties that have approached the Applicants or the Monitor indicating an interest in the Opportunity, (ii) local and international strategic and financial parties who the Monitor, in consultation with the Applicants, believe may be interested in purchasing all or part of the Business or Property or investing in the Applicants pursuant to the SISP, and (iii) parties that showed an interest in the Applicants and/or their assets by way of the previous, out-of-court strategic review process, in each case whether or not such party has submitted a letter of intent or similar document (collectively, the "**Known Potential Bidders**");

    (b) the Monitor will cause a notice of the SISP (and such other relevant information that the Monitor, in consultation with the Applicants, considers appropriate) (the "**Notice**") to be published in The Globe and Mail (National Edition), and any other

[1] The term Applicants as referred to in paragraphs 8 to 40 shall be read to include the Chief Restructuring Officer, Naveed Z. Manzoor, on behalf of FAAN Advisors.

newspaper or journal as the Monitor, in consultation with the Applicants, considers appropriate, if any;

(c) the Monitor will cause a press release to be issued with Canada Newswire or comparable newswire entity setting out the information contained in the Notice and such other relevant information that the Monitor, in consultation with the Applicants, considers appropriate; and

(d) the Monitor, in consultation with the Applicants, will prepare: (i) a process summary (the "**Teaser Letter**") describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Monitor and Applicants and their respective counsel which shall inure to the benefit of any purchaser of the Business or Property or any part thereof (an "**NDA**").

10. The Monitor will cause the Teaser Letter and NDA to be sent to each Known Potential Bidder by no later than five (5) days from the SISP Order and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

Potential Bidders and Due Diligence Materials

11. Any party who wishes to participate in the SISP (a "**Potential Bidder**") must provide to the Monitor (i) an NDA executed by it, (ii) a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder, and (iii) any other information that the Monitor may reasonably request. The Monitor, in its discretion, may accept an NDA executed by a Potential Bidder during the previous, out-of-court strategic review process in satisfaction of the requirement set out in (i).

12. The Monitor, in consultation with the Applicants, subject to competitive and other business considerations, afford each Potential Bidder who has satisfied the conditions set out in paragraph 11 above such access to due diligence material and information relating to the Applicants, the Property and the Business as the Monitor in consultation with the Applicants deems appropriate. Due diligence may include access to an electronic data room containing information about the Applicants, the Property and the Business, and may also include management presentations, and other matters which a Potential Bidder may reasonably request and as to which the Monitor, in its judgment and in consultation with the Applicants, may agree. The Monitor will designate a representative or representatives to coordinate all reasonable requests for additional information and due diligence access from Potential Bidders and the manner in which such requests must be communicated. Neither the Monitor nor the Applicants will be obligated to furnish any information relating to the Applicants, the Property or Business to any person other than as is expressly provided for in the SISP. Furthermore and for the avoidance of doubt, selected due diligence materials may be withheld from certain Potential Bidders if the Monitor and the Applicants, determine such information to represent proprietary or sensitive competitive information / disclosure could impair the Applicants or their Business or the integrity of the SISP. None of the Monitor, the Applicants, or any of their respective agents, advisors or estates shall be held responsible for, and none of them will bear any liability with respect

to, any information obtained by any person in connection with a sale of the Property or Business or investment in the Applicants.

13. Without limiting the generality of any term or condition of any NDA between the Applicants, on the one hand, and any Potential Bidder or Bidder (as defined below), on the other, unless otherwise agreed by the Monitor and Applicants or ordered by the Court, no Potential Bidder or Bidder shall be permitted to have any discussions with (a) any counterparty to any contract with the Applicants (or any of them), any secured creditor of the Applicants, any current or former director, manager, shareholder, officer (other than the CRO), member or employee of the Applicants (or any of them), other than in the normal course of business and wholly unrelated to the Applicants, the potential transaction, the confidential information, the SISP or the CCAA Proceedings, and (b) any other Potential Bidder or Bidder regarding the SISP or any bids submitted or contemplated to be submitted pursuant thereto. Notwithstanding the foregoing, where any such communications are agreed to with the Monitor's consent, such discussions shall be made in the presence of the Monitor. For greater certainty at no time shall such secured creditors (including in the capacity as a director of the Applicants) be entitled to communicate or discuss with one another or with any other Potential Bidder or Bidder regarding the SISP or any bids submitted or contemplated to be submitted pursuant thereto.

14. Potential Bidders and Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any transaction they enter into with the Applicants (or any of them).

Formal Binding Offers

15. Potential Bidders that wish to make a formal offer to purchase, or make an investment in, the Applicants or their Property or Business, or any part thereof (a "**Bidder**") shall submit a binding offer (a "**Bid**") that complies with all of the following requirements to the Monitor at the address specified in Schedule "1" hereto (including by e-mail), which Bid shall be delivered by such Bidder by no later than 5:00 p.m. (Toronto Time) on fifty (50) days following issuance of the SISP Order or such later date as may be communicated by the Monitor to Potential Bidders via a Bid Deadline Letter (as defined below) (the "**Bid Deadline**"):

    (a) the Bid must be a binding offer to:

        (i) acquire all, substantially all or a portion of the Property or the shares of the Applicants pursuant to a reverse vesting order (a "**Sale Proposal**"); and/or

        (ii) make an investment in, restructure, reorganize or refinance the Business or the Applicants (an "**Investment Proposal**");

    (b) the Bid must include a duly authorized and executed definitive transaction document;

    (c) the definitive transaction document in respect of a Sale Proposal or Investment Proposal shall include, among other things:

(i) that the Bid is not conditioned upon (A) the outcome of unperformed due diligence by the Bidder, or (B) obtaining financing, but may be conditioned upon the Applicants receiving the required approvals or amendments relating to the licences required to operate the business, and/or transfer of the Products, if necessary;

(ii) any and all conditions and approvals required to complete the closing of the transaction; and

(iii) all terms in respect of such Sale Proposal or Investment Proposal, as applicable;

(d) the Bid (either individually or in combination with other bids that make up one Bid) shall be an offer to purchase or make an investment in some or all of the Applicants or their Property or Business and shall be consistent with the necessary terms and conditions established by the Monitor and the Applicants and communicated to Bidders;

(e) the Bid must include a letter stating that the Bidder's offer is irrevocable until approval of the Successful Bid(s) by the Court, provided that if such Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction contemplated by such Bid;

(f) the Bid must include written evidence of a firm, irrevocable commitment for financing or other evidence of the Bidder's ability to consummate the proposed transaction that will allow the Monitor and Applicants to make a determination as to the Bidder's financial and other capabilities to consummate the proposed transaction;

(g) the Bid must include written evidence, in form and substance satisfactory to the Monitor and Applicants, of authorization and approval from the Bidder's board of directors (or comparable governing body) with respect to the submission, execution and delivery of such Bid, and identification of any anticipated shareholder, regulatory or other approvals outstanding, and the anticipated process and time frame and any anticipated impediments for obtaining such approvals;

(h) the Bid must not include any request for or entitlement to any break or termination fee, expense reimbursement or similar type of payment;

(i) the Bid must fully disclose the identity of each entity that will be entering into the transaction or the financing thereof, or that is otherwise participating in or benefiting from such Bid;

(j) without limiting the foregoing, a Sale Proposal Bid must include:

(i) the purchase price in Canadian dollars and a description of any non-cash consideration, including any future royalty payments or other deferred payment, details of any liabilities to be assumed by the Bidder and key assumptions supporting the valuation;

(A) if the purchase price involves a royalty, earn-out or other deferred payment, the Sale Proposal shall include a specific indication of the Bidder's proposal and/or commitments for and relating to obtaining necessary regulatory approvals and the Bidder's commercialization strategy, manufacturing capabilities, proposed sale milestones and minimum sale amounts, budget and/or commitment for capital expenditures, direct marketing and sales initiatives and support and proposed product positioning within the Potential Bidder's current product portfolio;

(ii) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;

(iii) a specific indication of the financial capability of the Bidder and the expected structure and financing of the transaction;

(iv) a description of those liabilities and obligations (including operating liabilities) which the Bidder intends to assume and which such liabilities and obligations it does not intend to assume; and

(v) a commitment by the Bidder to provide a non-refundable deposit in the amount of not less than 10% of the purchase price offered upon the Bidder being selected as the Successful Bidder;

(k) without limiting the foregoing, an Investment Proposal Bid must include:

(i) a description of how the Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization, and a description of any non-cash consideration;

(ii) the aggregate amount of the equity and/or debt investment to be made in the Business or the Applicants in Canadian dollars;

(iii) the underlying assumptions regarding the pro forma capital structure;

(iv) a specific indication of the sources of capital for the Bidder and the structure and financing of the transaction;

(v) a description of those liabilities and obligations (including operating liabilities) which the Bidder intends to assume and which liabilities and obligations it does not intend to assume; and

(vi) a commitment by the Bidder to provide a non-refundable deposit in the amount of not less than 10% of the total new investment contemplated in the Bid upon the Bidder being selected as the Successful Bidder;

(l) the Bid must include acknowledgements and representations of the Bidder that the Bidder:

(i) has, to its satisfaction, had an opportunity to conduct any and all due diligence regarding the Property, the Business and the Applicants prior to making its Bid;

(ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and

(iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business, the Property, or the Applicants, or the completeness of any information provided in connection therewith, except as may be expressly stated in the definitive transaction agreement(s) signed by the Applicants;

(m) the Bid must contain such other information as may be reasonably requested by the Monitor in consultation with the Applicants;

(n) the Bid must be received by the Bid Deadline;

(o) the Bid must contemplate closing the transaction set out therein on or before May 31, 2023.

16. Following the Bid Deadline, the Monitor, and the Applicants will assess the Bids received. The Applicants, in consultation with the Monitor, may designate the most competitive Bids that comply with the requirements set out herein to be "**Qualified Bids**". The Applicants and the Monitor shall be under no obligation to designate the highest or otherwise best Bid, or any Bid, as a Qualified Bid. Only Bidders whose Bids have been designated as Qualified Bids shall be eligible to participate in the Auction and/or become the Successful Bidder(s).

17. The Monitor, in consultation with the Applicants, may waive strict compliance with any one or more of the requirements set out herein and deem such non-compliant Bids to be a Qualified Bid.

18. The Monitor may, in consultation with the Applicants, may aggregate separate Bids from unaffiliated Bidders to create one Qualified Bid.

19. The Monitor and the Applicants shall be entitled to discuss and negotiate the Bid and form of any Sale Proposal or Investment Proposal prior to the Bid Deadline for purposes of amending or clarifying the terms and form thereof.

20. The Monitor shall cause each Bidder to be notified in writing as to whether its Bid constituted a Qualified Bid within five (5) business days of the Bid Deadline, or at such later time as the Monitor deems appropriate.

21. The Monitor, in consultation with the Applicants, may extend the Bid Deadline. Any such extension of the Bid Deadline shall be communicated to Potential Bidders by bid deadline extension letter (a "**Bid Deadline Letter**") from the Monitor delivered by email and posted on the Monitor's case website.

Evaluation of Competing Bids

22. Bids shall be evaluated based upon several factors including, without limitation: (i) the purchase price and the net value of the consideration provided by such Bid (with the value of any non-cash consideration being determined by the Applicants in their business judgment, in consultation with the Monitor), (ii) the identity, circumstances and ability of the Bidder to successfully complete such transactions, (iii) the proposed transaction documents, (iv) factors affecting the speed, certainty and value of the transaction, (v) the assets and liabilities included or excluded from the Bid, (vi) any related restructuring costs, (vii) the manufacturing capabilities of the Bidder and (viii) the likelihood and timing of consummating such transaction, each as determined by the Applicants in their business judgment, in consultation with the Monitor.

23. At any stage of the SISP, the Monitor, in consultation with the Applicants, may ascribe monetary values to non-monetary terms in any Bid, Qualified Bid, Initial Bid, or Overbids for the purposes of assessing and/or valuing such bids, including without limitation, the value to be ascribed to any liabilities or contracts to be assumed or not assumed.

24. If the Monitor receives one or more Bids that are designated as Qualified Bids (the "**Qualified Bidders**"), the Applicants, in consultation with the Monitor, may:

    (a) select one or more of such Qualified Bids as the successful bid (the "**Successful Bid(s)**", and the Qualified Bidder(s) making such bid, the "**Successful Bidder(s)**"), with or without negotiation of Qualified Bids with Qualified Bidders; and/or

    (b) direct such Qualified Bidders to participate in an Auction to be conducted and administered by the Monitor, with the assistance of its advisors and the Applicants, in accordance with the terms of this SISP (the "**Auction**").

Auction

25. Following the evaluation of the Qualified Bid(s), the Applicants, in consultation with the Monitor must determine whether the Auction will be held not less than two (2) business days prior to the commencement of the Auction. The Monitor shall notify and provide instructions to participate in the Auction to each Qualified Bidder not less than two (2) business days prior to the commencement of the Auction.

26. Only Qualified Bidders shall be eligible to participate in the Auction. No later than 5:00 p.m. (Toronto time) on the business day prior to the Auction, each Qualified Bidder must inform the Monitor whether it intends to participate in the Auction. The Monitor will promptly thereafter inform in writing, or cause to be informed in writing, each Qualified Bidder who has expressed its intent to participate in the Auction (the "**Auction Participants**") of the identity of all other Qualified Bidders that have indicated their intent to participate in the Auction.

Auction Procedure

27. The Auction shall be governed by the following procedures:

(a) **Participation at the Auction.** Only the Applicants, the Auction Participants, the Monitor and each of their respective advisors will be entitled to attend the Auction, and only the Auction Participants will be entitled to make any subsequent Overbids (as defined below) at the Auction. The Monitor shall provide all Auction Participants with the details of the Initial Bid (as defined below) by 5:00 p.m. (Toronto Time) two (2) business day before the Auction Date;

(b) **No Collusion.** Each Auction Participant shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the SISP; and (ii) its bid and each subsequent Overbid is a good-faith *bona fide* offer, which, if accepted by the Applicants on the record of the Auction forms a binding agreement between the parties, and that the Auction Participant intends to consummate the proposed transaction if selected as the Successful Bidder;

(c) **Minimum Overbid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the Applicants, in consultation with, and with the approval of, the Monitor (the "**Initial Bid**"), and any bid made at the Auction by a Auction Participant subsequent to the Monitor's announcement of the Initial Bid (each, an "**Overbid**"), must proceed in minimum additional increments of $100,000.00, or as otherwise declared by the Monitor during the Auction with the approval of the Applicants;

(d) **Bidding Disclosure.** The Auction shall be conducted such that all Overbids will be made and received in one group video-conference, on an open basis, and all Auction Participants will be entitled to be present for all bidding with the understanding that the true identity of each Auction Participant will be fully disclosed to all other Auction Participants and that all material terms of each subsequent bid will be fully disclosed to all other Auction Participants throughout the entire Auction; provided, however, that the Monitor, in its discretion, may establish separate video conference rooms to permit interim, technical, or clarifying discussions between the Monitor and individual Auction Participants with the understanding that all formal Overbids will be delivered in one group video conference, on an open basis;

(e) **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each Auction Participant has had and refused the opportunity to submit an Overbid with full knowledge of the then-existing highest Qualified Bid(s) or Overbid(s)s, at which time the Monitor will declare the Auction to be concluded;

(f) **No Post-Auction Bids.** No Overbids will be considered for any purpose after the Monitor has declared the Auction to be concluded; and

(g) **Auction Procedures.** The Monitor, in consultation with the Applicants, shall be at liberty to modify or to set additional procedural rules for the Auction as it sees fit.

28. During the Auction, the Applicants, in consultation with, and with the approval of, the Monitor, will:

(a) review Qualified Bids and Overbids, as the case may be, considering the factors set out in paragraph 22, among others; and

(b) identify the highest or otherwise best Qualified Bid or Overbid received at any given time during the Auction, with the highest or otherwise best such bid or bids at the conclusion of the Auction being the Successful Bid(s), and the Qualified Bidder(s) making such bid the Successful Bidder(s).

Deposits

29. Any deposit made by the Successful Bidder(s) pursuant to this SISP shall be held by the Monitor in a single interest bearing account designated solely for such purpose and such deposit shall be dealt with in accordance with the definitive documents for the transactions contemplated by the Successful Bid(s).

Sale Approval Motion Hearing

30. The Successful Bidder(s) shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid(s) was made within two (2) business days of the Successful Bid(s) being selected as such, unless extended by the Monitor, in consultation with the Applicants.

31. At the hearing of the motion to approve any transaction with the Successful Bidder(s) (the "**Sale Approval Motion**"), the Applicants shall seek, among other things, approval from the Court to consummate the Successful Bid(s). All the Qualified Bids other than the Successful Bid(s), if any, shall be deemed to be rejected by the Applicants on and as of the date of approval of the Successful Bid(s) by the Court.

Consultation with the Secured Lenders

32. The Monitor, in consultation with the Applicants, may, as it deems appropriate, consult with secured creditors of the Applicants throughout the SISP upon such assurances as to confidentiality as the Monitor may require. To the extent any secured creditor is or is related to a Potential Bidder, the Monitor and Applicants shall not provide such secured lender with information that might create an unfair advantage or jeopardize the integrity of the SISP unless such secured creditor irrevocably confirms in writing to the Monitor that it shall not submit or participate directly or indirectly in the submission of a Bid. Except as set forth in this paragraph, nothing in this SISP shall prohibit a secured creditor of the Applicants (i) from participating as a Bidder in the SISP, or (ii) committing to bid its secured debt, including a credit bid of all outstanding indebtedness under any DIP loan facility (inclusive of interest and all amounts payable under any DIP loan agreement to and including the date of closing of a definitive transaction) in the SISP.

Confidentiality and Access to Information

33. Unless expressly provided for herein, participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Bidders, Qualified Bidders, or Successful Bidder(s), or the details of any bids submitted or the details of any confidential discussions or correspondence between the Applicants, the Monitor and such

other Potential Bidders, Bidders, Qualified Bidders, or Successful Bidder(s) in connection with the SISP, except to the extent that the Applicants (in consultation with, and with the approval of, the Monitor and with the consent of the applicable bidders) are seeking to combine separate Bids to form a Qualified Bid.

34. All discussions regarding Bids should be directed through the Monitor. Under no circumstances should the management of the Applicants be contacted directly without the prior consent of the Monitor. Any such unauthorized contact or communication could result in exclusion of the Potential Bidder or Bidder or Qualified Bidder, as applicable, from the SISP.

Supervision of the SISP

35. The Monitor shall oversee and conduct the SISP, in all respects, and, without limitation to that supervisory role, the Monitor will participate in the SISP in the manner set out in this SISP, the SISP Order, the Initial Order and any other orders of the Court, and is entitled to receive all information in relation to the SISP. In the event that there is disagreement as to the interpretation or application of the SISP, the Court will have the jurisdiction to hear and resolve such dispute.

36. This SISP does not, and will not be interpreted to create any contractual or other legal relationship between the Applicants, or the Monitor and any Potential Bidder, Bidder, Qualified Bidder, Successful Bidder or any other party, other than as specifically set forth in a definitive agreement that may be entered into with the Applicants.

37. Without limiting the generality of preceding paragraph, the Monitor shall not have any liability whatsoever to any person or party, including, without limitation, any Potential Bidder, Bidder, Qualified Bidder, Successful Bidder, the Applicants, or any other creditor or other stakeholder of the Applicants, for any act or omission related to the process contemplated by this SISP. By submitting a Bid, each Bidder shall be deemed to have agreed that it has no claim against the Monitor for any reason whatsoever.

38. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, the Auction and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

39. The Applicants, with the approval of the Monitor, shall have the right to modify the SISP (including, without limitation, pursuant to any Bid Deadline Letter) if, in their reasonable business judgment, such modification will enhance the process or better achieve the objectives of the SISP; provided that the service list in these CCAA Proceedings shall be advised of any substantive modification to the procedures set forth herein.

40. Notwithstanding anything to the contrary in this SISP, the Applicants, in consultation with, and with the approval of, the Monitor, may attempt to negotiate a stalking horse bid (a “**Stalking Horse Bid**”) prior to the Bid Deadline to provide certainty for the Applicants during the SISP. If the Applicants, in consultation with, and with the approval of, the Monitor, accept a Stalking Horse Bid, such Stalking Horse Bid shall be subject to approval by the Court and the Applicants shall bring a motion before the Court on notice to the service list in these CCAA Proceedings seeking the approval of the Stalking Horse Bid,

together with approval of necessary amendments to the SISP. All Potential Bidders shall be promptly informed of any Court approval of a Stalking Horse Bid and any related amendments to the SISP.

Schedule “1”

Address of Monitor

<u>To the Monitor:</u>

Ernst and Young Inc.
EY Tower, 100 Adelaide Street West
PO Box 1
Toronto, ON M5H 0B3

Attention: Alex Morrison, Michael Hayes and Allen Yao

Email: alex.f.morrison@parthenon.ey.com

michael.hayes@parthenon.ey.com

allen.yao@parthenon.ey.com