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 (TMH) (Jointly Administered) **Hearing Date: TBD** **Objection Deadline: TBD**

FOREIGN REPRESENTATIVE'S
MOTION FOR ENTRY OF AN ORDER
(I) RECOGNIZING AND ENFORCING THE CCAA VESTING
ORDER, (II) APPROVING THE SALE OF SUBSTANTIALLY
ALL OF THE DEBTORS' INTERESTS FREE AND CLEAR OF LIENS,
CLAIMS, AND ENCUMBRANCES, AND (III) GRANTING RELATED RELIEF

Acerus Pharmaceuticals Corporation, in its capacity as the authorized foreign representative (the "**Foreign Representative**") for the above-captioned debtors (the "**Debtors**" or "**Companies**"), which are the subject of proceedings (the "**Canadian Proceedings**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the "**CCAA**") in the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Court**"), respectfully requests entry of an order, substantially in the form attached hereto as **Exhibit A** (the "**Proposed Order**"), pursuant to sections 105(a), 363, 1507, 1520, 1521, 1525, and 1527 of title 11 of the United States Code (the "**Bankruptcy Code**"):[2]

(a) recognizing and enforcing the Canadian Court's order, attached to the Proposed Order as **Exhibit 1** (the "**CCAA Vesting Order**"), approving, among other things, the sale of the Purchased Shares to the Purchaser (as such term is defined in the CCAA Vesting

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[1] The Debtors in the 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.

[2] Capitalized terms used but not defined here shall have the meanings ascribed to them in the CCAA Vesting Order, the *Amended and Restated Initial Order* [D.I. 37-1] (the "**ARIO**"), or the *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* [D.I. 42] (the "**Recognition Order**").

Order) pursuant to the subscription agreement dated as of May 15, 2023 (the "**Transaction Agreement**"), which is attached hereto as **Exhibit B**;

(b) approving under section 363 of the Bankruptcy Code, the sale of the Purchased Shares to the Purchaser pursuant to the Transaction Agreement, free and clear of all liens, claims, encumbrances, and other interests (other than the Permitted Encumbrances); and

(c) granting such other relief as the Court deems just and proper

(collectively, the "**Requested Relief**").

In support of this motion (this "**Motion**"), the Foreign Representative relies upon and incorporates the *Declaration of Naveed M. Manzoor in Support of the Foreign Representative's Motion for Entry of an Order (I) Recognizing and Enforcing the CCAA Vesting Order, (II) Approving the Sale of Substantially All of the Debtors' Interests Free and Clear of Liens, and Claims, and Encumbrances, and (III) Granting Related Relief* (the "**Manzoor Declaration**") and the *Declaration of Elizabeth Pillon in Support of the Foreign Representative's Motion for Entry of an Order (I) Recognizing and Enforcing the CCAA Vesting Order, (II) Approving the Sale Substantially All of the Debtors' Interests Free and Clear of Liens, and Claims, and Encumbrances, and (III) Granting Related Relief* (the "**Pillon Declaration**") filed contemporaneously herewith. In further support of this Motion, the Foreign Representative respectfully states the following:

JURISDICTION AND VENUE

1. On January 29, 2023, the Foreign Representative commenced these chapter 15 cases as ancillary proceedings to the Canadian Proceedings pursuant to sections 1504, 1509 and 1515 of the Bankruptcy Code.

2. The United States Bankruptcy Court for the District of Delaware (the "**Court**") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, 11 U.S.C. §§ 109 and 1501,

and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012.

3. Recognition of a foreign proceeding and other matters under chapter 15 of the Bankruptcy Code are core matters under 28 U.S.C. § 157(b)(2)(P).

4. The statutory bases for the relief requested herein are sections 105(a), 363, 1507, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, rule 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**").

5. The Foreign Representative confirms its consent, pursuant to Bankruptcy Rule 7008 and Local Rule 9013-1(f) to the entry of final orders or judgments by the Court to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

6. Venue in this district is proper under 28 U.S.C. § 1410.

BACKGROUND

7. Acerus Pharmaceuticals Corporation ("**APC**") is a pharmaceutical company whose head office is located in Mississauga, Ontario. Directly and through its subsidiaries Acerus Biopharma Inc. ("**ABI**"), Acerus Labs Inc. ("**ALI**", together with APC and ABI, the "**Canadian Entities**"), and Acerus Pharmaceuticals USA, LLC ("**APL**", together with ABI and ALI the "**Subsidiaries**", and collectively with APC, ABI, and ALI, the "**Acerus Group**"), APC holds intellectual property rights over pharmaceutical products and various methods of treatment and manufacturing, and carries on a business researching, trialing, and bringing said products to market for distribution. The Acerus Group does business in the United States and Canada, has partners

located internationally and continues to explore business opportunities globally through licensing and partnerships.[3]

8. On January 26, 2023, the Debtors commenced proceedings under the CCAA to initiate a restructuring process under the supervision of the Canadian Court. The same day, the Canadian Court entered an initial order (the "**Initial Order**") appointing Ernst & Young, Inc. as monitor (the "**Monitor**") of the Debtors and authorizing APC to act as Foreign Representative of the Debtors. On February 3, 2023, the Canadian Court entered the ARIO.

9. On January 29, 2023 (the "**Petition Date**"), the Foreign Representative commenced these chapter 15 cases under sections 1504, 1509, and 1515 of the Bankruptcy Code by the filing of a petition for recognition of the Canadian Proceedings under section 1515 of the Bankruptcy Code. On January 31, 2023, the Court entered an order [D.I. 24] authorizing the joint administration and procedural consolidation of these chapter 15 cases pursuant to Bankruptcy Rule 1015(b).

10. Also on January 31, 2023, the Court entered an order [D.I. 25] (the "**Provisional Relief Order**") granting certain relief on a provisional basis pursuant to section 1519 of the Bankruptcy Code. On February 27, 2023, the Court entered the Recognition Order, thereby

[3] A detailed description of the Debtors and their businesses and the facts and circumstances surrounding these chapter 15 cases are set forth in: (a) *Verified Petition (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 official form petitions filed concurrently therewith, the "**Petition**"); (b) *Declaration of Naveed Z. Manzoor in Support of Debtors' Verified Petition for (I) Recognition of Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Debtors' Motion for Certain Provisional Relief* [D.I. 6] (the "**Manzoor Recognition Declaration**"); and (c) *Declaration of Lee Nicholson as Canadian Counsel to the Debtors in Support of the Debtors' Chapter 15 Petitions and Requests for Certain Related Relief Pursuant to Chapter 15 of the Bankruptcy Code* [D.I. 7] (the "**Nicholson Declaration**"), each incorporated by reference herein.

granting recognition of the Canadian Proceedings as "foreign main proceedings" pursuant to chapter 15 of the Bankruptcy Code.[4]

11. On March 2, 2023, the Canadian Court granted an order (the "**CCAA SISP Approval Order**") that, among other things, approved the sale and investment solicitation procedures ("**SISP**") attached thereto. On March 23, 2023, the Court granted an order recognizing and enforcing the CCAA SISP Approval Order and related relief [D.I. 61] (the "**CCAA SISP Recognition Order**", together with the CCAA SISP Approval Order, the "**SISP Orders**").

12. The SISP Orders and relevant pleadings, declarations and exhibits in support of the relief ultimately granted describe, among other things, (a) the equity interests of the Debtors and certain other assumed liabilities, subject to certain terms and conditions, available for sale (collectively, the "**Interests**") and the opportunity for an investment in connection with the purchase of such Interests, (b) the manner in which potential bidders may gain access to, or continue to have access to, due diligence materials concerning the Debtors, the Property and the Business and the sale or investment thereof, (c) the manner in which bidders and bids become Qualified Bidders and Qualified Bids, as applicable, (d) the evaluation of bids received, (e) the guidelines and process for the ultimate selection of the Successful Bidder(s) and Successful Bid(s), and (f) the process for obtaining approvals (including the approval of the Canadian Court) as may be necessary or appropriate in respect of a Successful Bid.

[4] The Recognition Order found, among other things, that the Debtors had satisfied the applicable requirements of, among others, sections 101(23) and (24), 1502(4), 1504, 1509, 1515, 1517, 1520, and 1521 of the Bankruptcy Code with respect to the relief granted therein. The Foreign Representative incorporates such findings herein.

A. The Sale and Investment Solicitation Procedures

1. *Pre-Filing SISP*

13. As detailed in the SISP Recognition Motion,[5] as part of its strategic review of capital and business alternatives, the Debtors and their advisors pursued (pre-filing) a sales and investment solicitation process for the Debtors, their assets and business, including for the rights to Natesto and Noctiva and other pharmaceutical products owned by the Debtors (the "**Pre-Filing SISP**"). *See* SISP Recognition Motion ¶ 12. The Pre-Filing SISP was designed to identify potential bidders and investors, and the Debtors and their advisors assembled a list of approximately one-hundred-and-thirteen (113) potential buyers and investors (the "**Prospective Bidders**"). *See id.*

14. The Debtors, with assistance from their advisors, then prepared a teaser document and a confidential information memorandum and sent both to the Prospective Bidders. *See id.* ¶ 13. Prospective Bidders who signed non-disclosure agreements were provided a copy of the confidential information memorandum and granted access to a data room (the "**Data Room**"), which included information with respect to the Debtors and their products. *See id.*

15. Although various parties signed non-disclosure agreements and reviewed the confidential information memorandum and information provided in the Data Room and the Debtors' advisors received submissions from various parties indicating formal interest, no actionable transactions were identified through the Pre-Filing SISP. *See id.* ¶¶ 14-15.

16. Thereafter, the Debtors and the Monitor determined that it would be appropriate to undertake a further SISP process under the supervision of the Canadian Court.

[5] "**SISP Recognition Motion**" means the *Foreign Representative's Motion for Entry of an Order (I) Recognizing and Enforcing the CCAA SISP Approval Order and (II) Granting Related Relief* [D.I. 50].

2. *The SISP*

17. The SISP, as approved by the Canadian Court and recognized by this Court, provided that the Monitor, with the assistance of the Debtors and the CRO, would solicit interest in, and opportunities for, an acquisition or refinancing of the Debtors' business or a sale of the assets and/or business of the Debtors, in whole or in part, and contemplated one or more of a restructuring, recapitalization, reverse vesting, or other form of reorganization of the business and affairs of the Debtors. *See id.* ¶ 17. The SISP was designed to be a broad solicitation of potential transaction structures in order to obtain the best possible outcome for the Debtors and their stakeholders.

18. The SISP provided for six (6) key milestones and deadlines. *Id.* at ¶ 18.

Milestone	Deadline
Publish notice of SISP and deliver teaser letter and NDA to Known Potential Bidders	Five (5) days following issuance of the SISP Order (March 14, 2023)
Bid Deadline	Fifty (50) days following issuance of SISP Order (April 28, 2023)
Monitor to notify each Bidder in writing as to whether its Bid constitutes a Qualified Bid	Within five (5) business days following the Bid Deadline (No later than May 5, 2023)[6]
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 SISP Order (May 9, 2023)
Hearing of the Sale Approval Motion	No later than seventy-one (71) days following issuance of SISP Order (No later than May 19, 2023)[7]

[6] This deadline, as permitted by the SISP, was extended to May 9, 2023.

[7] On May 15, 2023, this deadline was adjourned by order of the Canadian Court to May 30, 2023.

19. The SISP, which is, in essence, a continuation of the Pre-Filing SISP which began in September 2022 and continued through December 2022, provided for a notification process, bidding procedures, protocol for selection of a successful bid, and the requirement for approval of any proposed transaction. *Id.* at ¶ 19.

3. *The Execution and Results of the SISP*

20. On or about March 14, 2023, the Debtors' published notice of the SISP and delivered a teaser letter and NDA to 59 Known Potential Bidders who, in the Monitor's reasonable professional judgment, may have been interested in a transaction involving the Debtors' businesses or assets. Manzoor Declaration ¶ 14.

21. Of the 59 bidders contacted, 6 entered into non-disclosure agreements and were granted access to a data room and additional information to address due diligence inquiries. *Id.* at ¶ 15. Due to the varying level of interest in certain of the Debtors' assets by the parties, the scope of the due diligence requests varied significantly, but all were addressed in a timely and reasonable manner. *Id.* Of the 6 bidders who executed non-disclosure agreements, the Debtors received 3 Bids by the Bid Deadline (the "**Received Bids**"). *Id.*

22. Following the Bid Deadline, the Monitor and the Debtors began reviewing and discussing the Received Bids. On May 1, 2023, following the Bid Deadline, the Monitor was contacted by two additional parties. However, given that the Bid Deadline had expired—and after considering information provided by those parties with respect to their preliminary valuation of the Debtors and the extra time they would need to complete due diligence—the Debtors and the Monitor determined not to pursue discussion with these two parties. *Id.* at ¶ 16.

23. The Received Bids consisted of a:

a. Bid for a single product at nominal value;

b. Bid for a separate Product wherein the primary form of consideration consisted of royalty payments; and

c. Bid by First Generation Capital Inc. ("**FGC**") (the Transaction Agreement) for all of the assets of the Debtors wherein the consideration is a credit bid of all the secured liabilities of the Debtors (including the outstanding amounts under the DIP Facility), to be implemented as a reverse vesting transaction (the "**FGC Bid**").[8]

Id. ¶ 17.

24. On May 8, 2023, a committee of independent directors (the "**Special Committee**") held a meeting with the CRO, the Debtors' counsel, the Monitor and its counsel to discuss the Received Bids. *Id.* ¶ 19. Mr. Ihnatowycz does not sit on the Special Committee and has recused himself from all Board discussion and decisions with respect to the FGC Bid. *Id.* Following careful consideration of the available options, the Special Committee, in consultation with and based on the recommendation of the Monitor, the CRO and counsel for the Debtors, determined that it was in the Debtors' and its stakeholders' best interest to pursue the FGC Bid. *See id.* After reviewing each of the Received Bids and in an exercise of his discretion, the Monitor (as permitted by the SISP) determined no Auction was necessary. *Id.*

25. Following the review and recommendation of the Special Committee, the Monitor and the Debtors and their respective counsel finalized the form of the Transaction Agreement and the proposed CCAA Vesting Order to be submitted to the Canadian Court. *Id.* at ¶ 20.

26. After extensive discussion and careful consideration of the alternative options, the Board, without Mr. Ihnatowycz, also approved the FGC Bid as the Successful Bid. In reaching this conclusion, the Board considered, among other things, financial information and analysis

[8] FGC is the secured lender and majority shareholder of APC, as well as the DIP Lender in the Canadian Proceedings. The President and Chief Executive Officer of FGC is Ian Ihnatowycz, who also serves as Chairperson of APC's board of directors (the "**Board**"). Mr. Ihnatowycz, however, does not sit on the Special Committee and has recused himself from all discussions and decisions with regard to the FGC Bid.

provided by the Monitor and the recommendations of the Monitor, CRO and counsel for the Debtors. *See id.* ¶¶ 21-22.

27. The Transaction Agreement was entered into between APC and FGC on May 15, 2023. *Id.* at ¶ 23.

28. Thereafter, the Canadian Court entered the CCAA Vesting Order approving the FGC Bid (the "**Transaction**"), as reflected in the Transaction Agreement submitted in connection with the FGC Bid, on May 30, 2023. *See id.* ¶ 24. Consummation of the Transaction is conditioned upon the approval of this Motion. FGC may terminate the Transaction Agreement if this Motion is not approved by June 27, 2023 (the "**FGC Termination Date**") and either party may terminate the Transaction Agreement if this Motion is not approved by June 30, 2023 (the "**Outside Date**") so long as the party seeking to terminate is not in breach of any provision of the Transaction Agreement that would result in the inability to satisfy the conditions to closing specified in Article 7 of the Transaction Agreement.

29. Approval and recognition of the Transaction Agreement and the Transaction contemplated therein is the only viable path forward for the Debtors and the only option for a going-concern exit from the Canadian Proceedings. *Id.* at ¶ 25.

B. The Transaction Agreement and Local Rule 6004-1 Disclosures

30. The Transaction Agreement is the culmination of the Debtors' nearly year-long efforts to restructure. *Id.* at ¶ 26. Through the Canadian Proceedings, the Debtors worked swiftly to identify a viable going-concern strategy to exit the Canadian insolvency proceedings in a manner which preserves the value of the Debtors' businesses for the benefit of stakeholders. *Id.* The Transaction provides a number of benefits, including the following:

a. based on the price payable under the Transaction Agreement, all of the Debtors' secured liabilities will be satisfied by way of the credit bid;

b. the Transaction Agreement provides for various unsecured and contingent liabilities to be assumed, in comparison to the other potential alternatives which provided for vesting of all liabilities; and

c. the completion of the Transaction will allow for the Debtors to continue operations as a going concern, resulting in (i) the potential for employees to preserve their employment; (ii) suppliers of goods and services being able to maintain their business relationships with the Debtors; (iii) opportunity for each of the Company's pharmaceutical products to be pursued and potentially brought to market at a future date; and (iv) many of the contractual distribution and pharmaceutical product testing arrangements will also remain intact without need for the Companies to take further steps.

Id.

31. The Transaction contemplated under the Transaction Agreement has been structured to form a so-called "reverse vesting" transaction. In sum, instead of providing for a traditional asset sale transaction where all purchased assets are purchased and transferred to the purchaser on a "free and clear" basis and all excluded assets, excluded contracts and excluded liabilities remain with the debtor company,[9] the Transaction provides for a transaction whereby, essentially:

a. FGC will subscribe for and purchase new shares of APC, which will, in turn, cancel and terminate all of its existing shares so that FGC may become the sole shareholder of APC and ultimately, each of the subsidiaries of APC (including APL); and

b. all excluded contracts, excluded assets, and excluded liabilities with respect to the Companies (including APL) will be transferred and "vested out" to Canadian corporations (Residual Cos.) to be incorporated by APC in advance of the closing date, so as to allow FGC to indirectly acquire APC's business and assets, including, for the avoidance of doubt, all of the Canadian Entities' and APL's assets, licenses, undertaking, and properties of every kind whatsoever and wherever situated,

[9] While neither the Transaction Agreement, nor the CCAA Vesting Order, as approved by the Canadian Court, contemplate or require FGC to cure pre-filing arrears associated with the assumption of any contract, all contract counterparties were served with the motion seeking entry of the CCAA Vesting Order to provide them with notice that their contract was either being retained or excluded as part of the Transaction.

> including property held in trust for the Canadian Entities and APL (the "**Acerus Group Property**") on a "free and clear" basis.

See id. ¶ 27.

32. The Transaction Agreement was structured as a reverse vesting transaction primarily because the Companies maintain various licenses that are required to maintain its operations, as well as in-progress trials and testing programs that are proceeding under and in the name of the Companies. *Id.* at ¶ 28. Under a traditional asset sale transaction structure, some of these licenses would be difficult to transfer to a purchaser and, to the extent that such transfer is possible, the steps required to proceed with such a transfer would likely result in additional delays, costs and uncertainty. *Id.*

33. Additionally, the Companies hold various contracts with government entities, some of which may be difficult to transfer to a purchaser and, to the extent such transfer is possible, the steps required to proceed with such transfer would likely result in additional delays, costs and uncertainty. *Id.* at ¶ 29. The reverse vesting structure will also allow the Debtors to maintain all of its licenses and intellectual property without requiring any additional steps or regulatory approvals to transfer them to FGC. As the Debtors are facing significant liquidity constraints, the delays, costs and uncertainty associated with getting licenses transferred is not a viable option. *Id.*

34. Furthermore, the Debtors operate in the pharmaceutical industry, which is heavily regulated in both Canada and the United States. *Id.* at ¶ 30. As such, in connection with the operation of the business, the Debtors are required to maintain various licenses and complex contracts. *Id.* The licenses and contracts currently held by the Companies which would require

transfer or reestablishment and/or new arrangements to be entered into if an asset transfer were implemented, but are not required in a reverse vesting structure, include, but are not limited to:

a. drug establishment licenses and import licenses in Canada;

b. state business licenses in the United States;

c. contracts with the United States government and payors;

d. contracts with distributors in Canada, the United States and globally;

e. intellectual property which would require re-recording and registration of the names and assignment on all patents worldwide; and

f. marketing materials in the name of the Companies, originally approved by the U.S. Food and Drug Administration and Pharmaceutical Advertising Advisory Board in Canada and other organizations, which may require resubmission and approval, and thereafter the cost of rebranding of materials.

Id.

35. Additionally, the reverse vesting structure permits the maintenance of the Companies' tax attributes, which include net operating losses in the approximate amount of $215 million. FGC has advised the Monitor that the Companies' tax attributes are an important consideration in their decision to credit bid the entire amount of the Companies' secured debt. *Id.* at ¶ 31.

36. Further, the Monitor inquired with FGC and its counsel with respect to whether it would be willing to consider a plan of arrangement. However, FGC was not willing to consider this structure to implement a transaction. *See id.* ¶ 32. Indeed, the market has been thoroughly canvassed and there was simply no other viable alternative transaction available to the Companies. *See id.* The only going-concern option which would result in an ongoing customer or supplier for

contract counterparties, among other benefits, are the transactions with FGC under the Transaction Agreement, which is to be implemented through a reverse vesting structure. *Id.*

37. A reverse vesting transaction generally involves a series of steps, whereby: (1) the purchaser becomes the sole shareholder of the debtor company, (2) the debtor company retains its assets, including key contracts and permits; and (3) the assets and liabilities not retained by the debtor company are "vested out" and transferred, together with any excluded assets, into a newly incorporated entity.[10] *See* Pillon Declaration ¶ 8.

38. The Canadian court may approve a reverse vesting transaction pursuant to sections 11 and 36 of the CCAA and may consider several factors in determining if such a transaction should be approved. *See id.* ¶ 9. Those factors include, but are not limited to: (i) whether the process leading to the proposed sale or disposition was reasonable in the circumstances; (ii) whether the monitor approved the process leading to the proposed sale or disposition; (iii) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy; (iv) the extent to which the creditors were consulted; (v) the effects of the proposed sale or disposition on the creditors and other interested parties; and (vi) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value. *See id.*

39. The CCAA Vesting Order includes releases and protections in favor of:

a. the present and former directors, officers, employees, legal counsel and advisors of the Debtors;

b. the CRO;

[10] While those liabilities and assets are "vested out" into a newly incorporated entity, the outcome would be the same as if the Transaction had been carried out using an asset purchase structure. There will be no inter-company transfer of assets and liabilities among the existing Debtors prior to closing. Accordingly, there will be no material prejudice or impairment of any creditors' rights which would have been avoided in an asset purchase transaction.

c. the Monitor and its legal counsel;

d. FGC, in its capacities as secured lender to the Debtors and majority shareholder of APC, and its current and former directors, officers, employees, legal counsel and advisors; and

e. FGC and its current and former directors, officers, employees, legal counsel, and advisors,

(collectively the "**Release Parties**"). Manzoor Declaration. ¶ 35.

40. The releases cover any and all present and future claims against the Released Parties based upon any fact or matter of occurrence in respect of the Transaction or the Debtors, their assets, business or affairs or administration of the Debtors, subject to certain limited exceptions.[11] *Id.* at ¶ 36.

41. Further, the releases provided in the Transaction Agreement and CCAA Vesting Order explicitly do not release or discharge: (a) any claim that is not permitted to be released pursuant to the CCAA; (b) claims arising out of fraud, bad faith or illegal acts; (c) any obligations of any of the Released Parties under or in connection with the Transaction Agreement, the closing documents, and/or the consummation of the Transaction; or (d) claims against APL in the Jones Day Litigation, as well as the individuals named as defendants in the Jones Day Litigation. *See id.* ¶¶ 37-38. Canadian courts have approved similar releases in reverse vesting transactions. *See id.* ¶ 39.

42. As a result of the entry of the CCAA Vesting Order, and consistent with reverse vesting transactions previously approved by Canadian courts, all options, securities and other

[11] Those exceptions include any claim against APL in the Jones Day Litigation (as such term is defined in the Transaction Agreement) and against any of the individuals named as defendants in the Jones Day Litigation. As set forth in greater detail in the Manzoor Recognition Declaration, the Jones Day Litigation is an action pending in New York State Supreme Court by Jones Day against APL and certain members of its senior management for alleged unpaid legal bills. *See* Manzoor Recognition Declaration ¶¶ 39-42. The Transaction Agreement provides for, *inter alia* the retention by APL of the Jones Day Litigation and any resulting obligations to Jones Day that may result from a successful prosecution of its claims in the Jones Day Litigation. *See* Manzoor Declaration ¶ 36.

rights held by any person that are convertible or exchangeable for any securities of APC shall terminate or be cancelled. *See id.* ¶ 40. As recognized by Canadian courts, in situations (as here) where shareholders have no economic interest, present or future, it is within the Canadian Court's jurisdiction to approve the cancellation of all outstanding shares and the issuance of new shares to the purchaser. *See id.*

43. The closing of the Transaction Agreement is subject to a number of customary conditions precedent, including the requirements that the CCAA Vesting Order and the Proposed Order shall have been granted and become final orders. The parties anticipate closing the Transaction on or before the Outside Date. *See id.* ¶ 41. Expeditiously consummating the Transaction, which is supported by the Debtors' key stakeholders, is critical to preserving the going-concern value of the Debtors' enterprise.

44. The Foreign Representative and the Monitor believe that the Transaction Agreement is fair and reasonable under the circumstances, is the result of good-faith, arm's-length negotiations, and is in the best interests of the Debtors, their creditors, and other stakeholders. *See id.* ¶¶ 43-45. Moreover, the reverse vesting structure of the Transaction is necessary and appropriate to preserve the going-concern value of the Debtors' business and produces an economic result more favorable than any other alternative. *See id.* ¶¶ 43, 46. In sum, the Transaction Agreement represents the best and only viable outcome for the Debtors, their creditors, and other stakeholders in the circumstances. *See id.* ¶ 47.

45. The following is a summary of certain material provisions of the Transaction Agreement as required by Local Rule 6004-1(iv):[12]

[12] Any summary of, or reference to, the terms and conditions of the Transaction Agreement and/or the Proposed Order herein are qualified in their entirety by the actual terms and conditions of the Transaction Agreement and the Proposed Order. To the extent there is any inconsistency between any such summary or reference herein and the actual terms

Provision	Description	Location in Order or Transaction Agreement
Sale to Insider (L.R. 6004-1(iv)(A)).	FGC is the secured lender and majority shareholder of APC, as well as the DIP Lender in the Canadian Proceedings. The President and Chief Executive Officer of FGC is Ian Ihnatowycz, who also serves as Chairperson of APC's Board. Mr. Ihnatowycz, however, does not sit on the Special Committee and has recused himself from all discussions and decisions with regard to the FGC Bid. *See* Manzoor Declaration ¶ 21.	N/A
Agreements with Management (L.R. 6004-1(iv)(B)).	N/A	N/A
Releases (L.R. 6004-1(iv)(C)).	The CCAA Vesting Order includes releases and protections in favor of: (a) the present and former directors, officers, employees, legal counsel and advisors of the Debtors; (b) the CRO; (c) the Monitor and its legal counsel; (d) FGC, in its capacities as secured lender to the Debtors and majority shareholder of APC, and its current and former directors, officers, employees, legal counsel and advisors; and (e) FGC and its current and former directors, officers, employees, legal counsel, and advisors (collectively the "**Release Parties**"). *See* Manzoor Declaration. ¶ 35. The releases cover any and all present and future claims against the Released Parties based upon any fact or matter of occurrence related to the Transaction or the Debtors, their assets, business or affairs or administration of the Debtors, subject to certain limited exceptions. *See id.* ¶ 36. Further, the releases provided in the Transaction Agreement and CCAA Vesting Order explicitly do not release or discharge: (a) any claim that is not permitted to be released pursuant to the CCAA; (b) claims arising out of fraud, bad faith or illegal acts; (c) any obligations of any of the Released Parties under or in connection with the Transaction Agreement, the	*See* Transaction Agreement §§ 8.7 and 8.8.

and conditions of the Transaction Agreement and the Proposed Order, the actual terms and conditions of the Transaction Agreement and/or the Proposed Order shall control.

	closing documents, and/or the consummation of the Transaction; or (d) claims against APL in the Jones Day Litigation and the individuals named as defendants in the Jones Day Litigation. *See id.* ¶¶ 37-38.	
Private Sale/No Competitive Bidding (L.R. 6004-1(iv)(D)).	N/A	N/A
Closing and Other Deadlines (L.R. 6004-1(iv)(E)).	Section 7.1 of the Transaction Agreement includes the entry of an order by this Court recognizing the CCAA Vesting Order as a condition precedent to close the transactions. Similarly, section 9.1 of the Transaction Agreement mandates that an order recognizing and enforcing the CCAA Vesting Order must be issued and entered by this Court not later than twenty-eight (28) days after the CCAA Vesting Order was entered by the Canadian Court. The CCAA Vesting Order was approved by the Canadian Court on May 30, 2023 and the deadline for the Debtor to obtain an order recognizing and enforcing the CCAA Vesting Order is June 27, 2023.	*See* Transaction Agreement §§ 7.1, 9.1.
Good Faith Deposit (L.R. 6004-1(iv)(F)).	N/A	N/A
Interim Arrangements with Proposed Buyer (L.R. 6004-1(iv)(G)).	N/A	N/A
Use of Proceeds (L.R. 6004-1(iv)(H)).	N/A	N/A
Tax Exemption (L.R. 6004-1(iv)(I)).	The Proposed Order does not seek to have the Transaction declared exempt from taxes under section 1146(a) of the Bankruptcy Code.	N/A
Record Retention (L.R. 6004-1(iv)(J)).	The Transaction Agreement contemplates that the members of the Debtors shall make all books and records reasonably available to the Monitor and any trustee in bankruptcy for a period of seven (7) years after the Closing.	*See* Transaction Agreement § 8.1.
Sale of Avoidance Actions (L.R. 6004-1(iv)(K)).	N/A	N/A

Requested Findings as to Successor Liability (L.R. 6004-1(iv)(L)).	As stated herein, the Transaction Agreement and Proposed Order provides for certain releases as to the Purchaser. *See, e.g.*, Manzoor Declaration. ¶ 35-38; *see also* Proposed Order ¶¶ 7-9.	*See* Transaction Agreement §§ 8.7, 8.8.
Sale Free and Clear of Unexpired Leases (L.R. 6004-1(iv)(M)).	N/A	N/A
Credit Bid (L.R. 6004-1(iv)(N)).	The Transaction Agreement contemplates a credit bid of all the secured liabilities of the Debtors (including the outstanding amounts under the DIP Facility), to be implemented as a reverse vesting transaction.	*See* Transaction Agreement § 5.8.
Relief from Bankruptcy Rule 6004(h) (L.R. 6004-1(iv)(O)).	Given the need to obtain final approval of the Transaction in the United States by no later than June 27, 2023, the Foreign Representative seeks to waive the 14-day stay under Bankruptcy Rule 6004(h).	N/A

C. The CCAA Vesting Order

46. Following completion of the SISP and selection of the Purchaser, the Debtors sought approval of the Transaction through the entry of the CCAA Vesting Order in the Canadian Proceedings. A hearing to consider the CCAA Vesting Order in the Canadian Proceedings was held on May 30, 2023. Parties in interest were properly noticed in the Canadian Proceedings with respect thereto and were provided an opportunity to be heard at such hearing. Indeed, parties did appear at the hearing on May 30th and were heard by the Canadian Court. *See* Pillon Declaration ¶ 5-8. After the hearing, on May 31, 2023, the Canadian Court entered the CCAA Vesting Order. *Id.* at ¶ 9.

BASIS FOR RELIEF REQUESTED

A. The Court Should Recognize and Enforce the CCAA Vesting Order and Authorize the Sale of the Purchased Shares Pursuant to Section 363 of the Bankruptcy Code

47. Upon a bankruptcy court's granting recognition of a foreign representative and of a foreign proceeding as a foreign main proceeding, relief is available to the petitioner under section

1520 of the Bankruptcy Code. *See* 11 U.S.C. § 1520. Section 1520(a)(2) of the Bankruptcy Code provides, in relevant part, that, "[u]pon recognition of a foreign proceeding that is a foreign main proceeding . . . section[] 363 [of the Bankruptcy Code] appl[ies] to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the section[] would apply to property of an estate." 11 U.S.C. § 1520(a)(2). Moreover, section 1520(a)(3) of the Bankruptcy Code provides that, upon recognition of a foreign main proceeding, "unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the rights and powers of a trustee under and to the extent provided by section[] 363 [of the Bankruptcy Code]." 11 U.S.C § 1520(a)(3); *see also In re Elpida Memory, Inc.*, No. 12-10947 (CSS), 2012 WL 6090194, at *5 (Bankr. D. Del. Nov. 16, 2012) (holding that section 363 of the Bankruptcy Code applies to transfers of assets located within the United States outside of the ordinary course of business in connection with cases commenced under chapter 15 of the Bankruptcy Code); *In re Atrimm, S.r.L.*, 335 B.R. 149, 159 (Bankr. C.D. Cal. 2005) ("[U]nder chapter 15, § 363 (governing sale, use or lease of property of the estate) . . . appl[ies] to any transfer of an interest of the debtor in property within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of a domestic bankruptcy estate.") (citing 11 U.S.C. § 1520(a)(2)).

48. In addition, sections 1525 and 1527 of the Bankruptcy Code contemplate cooperation "to the maximum extent possible with the foreign court or a foreign representative," which includes, "coordination of the administration and supervision of the debtor's assets and affairs" and "approval or implementation of agreements concerning the coordination of proceedings." 11 U.S.C. §§ 1525(a), 1527(4).

49. Further, section 1507 of the Bankruptcy Code permits the Court to grant the requested relief as "additional assistance". 11 U.S.C. § 1507; *In re Vitro SAB de CV*, 701 F.3d 1031, 1057 (5th Cir. 2012) (explaining that section 1507's "broad grant of assistance is intended to be a catch-all"); *see also* H.R. Rep. No. 109-31, pt. 1, at 109 (2005) (noting that section 1507 authorizes "additional relief" beyond that available under section 1521 of the Bankruptcy Code). In determining whether to exercise its discretion to grant additional relief under section 1507(a), a court should consider "whether such additional assistance, consistent with the principles of comity, will reasonably assure" the: (1) just treatment of all holders of claims against or interests in the debtor's property; (2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding; and (3) prevention of preferential or fraudulent dispositions of property of the debtor. Recognition and enforcement of the CCAA Vesting Order is appropriate under section 1507 of the Bankruptcy Code, as all applicable factors are satisfied.

50. Here, recognition of the orders of the Canadian Court is appropriate under Section 1507.[13] Courts in the United States have routinely concluded that the CCAA is a sound statutory insolvency scheme that fosters reorganization in a manner that is consistent with fundamental principles and policies of the United States. *See Cornfeld v. Invs. Overseas Servs., Ltd.*, 471 F.Supp. 1255, 1259 (S.D.N.Y. 1979) ("The fact that the foreign country involved is Canada is significant. It is well-settled in New York that the judgments of the Canadian courts are to be

[13] *First*, the CCAA provides for such a procedure, as previously recognized by numerous United States courts, and a scheme for the "equitable, orderly, and systematic" distribution. *See e.g. Allstate Life Ins. Co. v. Linter Grp. Ltd.*, 994 F.2d 996, 1000 (2d Cir. 1993). *Second*, the Debtors' creditors and parties in interest have been treated fairly in connection with the Debtors obtaining the CCAA Vesting Order. Such parties have been provided proper and sufficient notice of, and had the opportunity to raise any objections to, the substantive relief requested in the CCAA Vesting Order. *Third*, preferential or fraudulent transfers are not permitted under the CCAA, which provides for the recovery of such transfers.

given effect under principles of comity. . . . More importantly, Canada is a sister common law jurisdiction with procedures akin to our own, and thus there need be no concern over the adequacy of the procedural safeguards of Canadian proceedings.") (internal quotation marks and citations omitted); *see also In re Grant Forest Prod., Inc*., 440 B.R. 616, 622 (Bankr. D. Del. 2010); *In re Crystallex Int'l Corp*., No. 11-14074 (LSS), 2022 WL 17254660, at *6 (Bankr. D. Del. Nov. 28, 2022). As is the case with Canada, when a foreign proceeding is "in a sister common law jurisdiction with procedures akin to our own, comity should be extended with less hesitation, there being fewer concerns over the procedural safeguards employed in those foreign proceedings." *In re Bd. of Dirs. of Hopewell Int'l Ins. Ltd*., 238 B.R. 25, 66 (Bankr. S.D.N.Y. 1999) (internal citation omitted).

51. Accordingly, recognition and enforcement of the CCAA Vesting Order is appropriate under section 1507 of the Bankruptcy Code as such relief will provide the Debtors and all parties in interest with certainty that the CCAA Vesting Order will be enforceable not only in Canada, but in the United States, and will therefore protect and prevent prejudice to such parties by ensuring uniform application of the CCAA Vesting Order. Moreover, entry of an order of this Court recognizing and giving effect in the U.S. to the CCAA Vesting Order is an express condition to the Transaction Agreement.

1. *The Transaction Agreement is a Prudent Exercise of the Debtor's Business Judgement*

52. Section 363(b)(1) of the Bankruptcy Code provides that a debtor "may use, sell, or lease, other than in the ordinary course of business, property of the estate," provided the debtor has a good business reason for doing so. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (explaining that "under normal circumstances the court would defer to the trustee's judgment so long as there is a legitimate business justification"). Great judicial deference

is given to a debtor's exercise of business judgment regarding the sale of estate property. *See In re Girard Med. Ctr.,* No. 90-10804S, 1990 WL 56486, at *2 (Bankr. E.D. Pa. Feb. 23, 1990). Once a debtor articulates a good business reason for the sale of estate property outside the ordinary course of business, it is presumed that the debtor's decision to move forward with the sale was made "on an informed basis, in good faith and in the honest belief that the [transaction] was in the best interests of the [debtor] company." *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1990).

53. In the context of an asset sale pursuant to section 363 of the Bankruptcy Code, it is well established that it is not required that debtors conduct an auction in order to meet the business judgment standard. *See, e.g.*, *In re Trans World Airlines, Inc.*, No. 01-00056(PJW), 2001 WL 1820326, at *4 (Bankr. D. Del. 2001) (A "section 363(b) sale transaction does not require an auction procedure.").

54. Here, entering into the Transaction Agreement is a prudent exercise of the Debtors' business judgment. The Transaction Agreement is the culmination of the Debtors' nearly year-long restructuring effort and simultaneous marketing process. The process included extensive stakeholder negotiations and engagement and a thorough, transparent, and fair marketing process pursuant to both the Pre-Filing SISP and the SISP. *See* Manzoor Declaration ¶¶ 7-25. As such, entry into the Transaction Agreement is a prudent exercise of the Debtors' business judgment.

55. The Foreign Representative believes that the sale of the Purchased Shares in accordance with the terms and conditions of the Transaction Agreement represents the best realization of value for the Debtors' stakeholders under the circumstances. In fact, the Transaction is the ***only*** viable going-concern transaction available to the Debtors to exit the Canadian insolvency proceedings. *See id.* ¶ 25. This Court's recognition of the CCAA Vesting Order is a

critical step in achieving that result.[14] Recognition and enforcement of the CCAA Vesting Order will permit the Debtors to sell the Purchased Shares without disruption and in a timely and efficient manner. Absent the relief requested herein, the Debtors, their creditors, and their employees will potentially suffer significant, if not irreparable, harm due to an inability to close the Transaction. Accordingly, the Foreign Representative hereby seeks recognition of the CCAA Vesting Order in these chapter 15 cases.

2. *Creditors and Parties-in-Interest Received Adequate Notice*

56. In addition to the CCAA Vesting Order being posted on the Monitor's website maintained in connection with the Canadian Proceedings, every creditor and party-in-interest was served with the motion seeking entry of the CCAA Vesting Order and had an opportunity to appear and be heard before the Canadian Court; including all U.S. based creditors and parties-in-interest. *See* Pillon Declaration ¶¶ 3-5. Moreover, the Foreign Representative will serve, or cause to be served, this Motion and the Sale Recognition Hearing Notice[15] by electronic mail and/or domestic or foreign mail upon the following parties or their counsel, if known: (a) the Office of the United States Trustee for the District of Delaware; (b) all parties to litigation in which any Debtor is a party and that is pending in the United States as of the date that the Chapter 15 Petitions were filed; (c) all secured creditors of the Debtors in these cases; (d) all other known creditors of the Debtors in these cases; (e) all parties that were served with the CCAA Vesting Order in the Canadian

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[14] Pursuant to Article 7 of the Transaction Agreement, entry of the Proposed Order substantially in the form attached hereto is a condition precedent to the consummation of the Transaction.

[15] A form of the notice of sale recognition hearing before the Court (the "**Sale Recognition Hearing Notice**") is attached hereto as **Exhibit C**.

Proceedings; (f) the United States Food and Drug Administration; (g) the Debtors; and (h) all other parties that have requested notice in these cases pursuant to Bankruptcy Rule 2002.

57. The Sale Recognition Hearing Notice will (a) set forth the time for filing objections to the relief requested in this Motion, (b) the date, time, and place to attend a hearing on this Motion, (c) notify parties that copies of this Motion, including the Proposed Order, the CCAA Vesting Order, and the Transaction Agreement, are available and may be examined (i) free of charge at the webpage maintained by the Monitor at www.ey.com/ca/acerus, or (ii) downloaded for a fee from the Court's electronic docket at https://ecf.deb.uscourts.gov. As such, this Motion and the Sale Recognition Hearing Notice will provide notice that is "reasonably calculated, under all the circumstances, to inform interested parties of the pendency of a proceeding." *In re Energy Future Holdings Corp*., 522 B.R. 520, 529 (Bankr. D. Del. 2015) (citing *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 314–15 (1950)). This notice comes in addition to the notice provided in the Canadian Proceedings in connection with the filing of the motion seeking entry of the CCAA Vesting Order. Accordingly, the Debtors submit that notice of the Transaction and the hearing on approval thereof is sufficient and appropriate.

3. *The Purchase Price is Fair and Reasonable*

58. The Purchase Price provided in the Transaction Agreement is fair, reasonable, the result of an extensive marketing process and negotiations between the Debtors and their advisors and the Purchaser and its advisors, and provides the highest and best value to the Debtors and their stakeholders for the Purchased Shares. The fairness and reasonableness of the consideration to be received by the Debtors from the Purchaser is validated by a "market test" through the robust court-approved SISP—a reliable means for establishing whether a purchase price is fair and reasonable. *See* Manzoor Declaration ¶¶ 11-25; *see also In re Champion Enterprises, Inc.*, No. 09-14019 KG, 2012 WL 3778872, at *35 (Bankr. D. Del. Aug. 30, 2012) ("A market test is the

best evidence of a company's value at a given point in time."). The Transaction Agreement presents the best and only opportunity to maximize the value of the Purchased Shares and the Debtors on a going-concern basis and avoid any decline and devaluation of the Purchased Shares. For all of the foregoing reasons, the Debtors have determined that the sale of the Purchased Shares pursuant to the Transaction Agreement is in the best interests of their estates, creditors, and other parties in interest.

4. *The Releases Under the Transaction Agreement Are Appropriately Recognized Under Chapter 15 and the Bankruptcy Code*

59. As stated above, the definition of Released Parties under the CCAA Vesting Order includes releases and protections in favor of: (i) the present and former directors, officers, employees, legal counsel and advisors of the Debtors; (ii) the CRO and the Monitor (iii) FGC (in its capacities as secured lender to the Debtors and majority shareholder of APC); and (iv) FGC's current and former directors, officers, employees, legal counsel and advisors. *See, supra,* ¶¶ 39-40; *see also* Manzoor Declaration ¶ 35. The releases, as approved by the Canadian Court, cover any and all present and future claims against the Released Parties based upon any fact or matter of occurrence in respect of the Transaction or the Debtors, their assets, business or affairs or administration of the Debtors, subject to certain limited exceptions. *See* Manzoor Declaration ¶ 36. They do not, however, release claims arising out of fraud, bad faith, illegal acts or claims that are not permitted to be released under Canadian law. *See id.* ¶¶ 37-38.

60. Notably, Canadian courts have approved releases in similar reverse vesting transactions, and such releases have been in favor of the debtor's directors, officers, the monitors, counsel, employees of the debtor, shareholders and the debtor's advisors. *See id.* ¶ 39.

61. Recognition of such releases is appropriate and routinely granted to foreign debtors through chapter 15 of the Bankruptcy Code. *See, e.g.*, *In re Catalyst Paper Corp.*, No. 16-12419

(CSS), 2017 WL 5479405, at *2 (Bankr. D. Del. Jan. 20, 2017) (granting recognition to orders issued by the Canadian court, including the releases set forth therein). For example, *In re Metcalfe & Mansfield Alternative Investments*, 421 B.R. 685 (Bankr. S.D.N.Y. 2010), the bankruptcy court enforced a Canadian court's order confirming a restructuring plan that contained non-debtor releases and injunctions, even though the court was uncertain whether a U.S. court would have approved the releases and injunctions in a case under chapter 11 of the Bankruptcy Code. The bankruptcy court reiterated the purpose of chapter 15 is to grant comity to the judgments and orders of foreign courts, concluding that "principles of enforcement of foreign judgments and comity in chapter 15 cases strongly counsel approval of enforcement in the United States of the third-party non-debtor release and injunction provisions included in the Canadian [o]rders," even if those provisions may not be appropriate in a plenary chapter 11 case. *See id*. at 696.

62. Similarly, in *In re Sino-Forest Corp.*, 501 B.R. 655 (Bankr. S.D.N.Y. 2013), Judge Glenn reenforced the rationale of *Metcalfe,* recognizing and enforcing a Canadian court-approved settlement containing a global release provision. The bankruptcy court found that "where [] third-party releases are not categorically prohibited, it cannot be argued that the issuance of such releases is manifestly contrary to public policy" within the meaning of section 1506. *See id.* at 655 (citing *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 141 (2d Cir. 2005)); *see also In re Avanti Commc'ns Grp. PLC*, 582 B.R. 603 (Bankr. S.D.N.Y. 2018) (determining that non-consensual third party releases should be recognized and enforced consistent with the principles of "comity" and cooperation with foreign courts inherent under chapter 15).

63. Here, just as in *Metcalfe* and similar chapter 15 cases involving Canadian debtors and releases approved by the Canadian courts, recognition of the releases under the Transaction Agreement and the CCAA Vesting Order directly serves the principal purpose of chapter 15—

granting comity and full force and effect to the orders of foreign courts. Moreover, as similar releases are also granted in a chapter 11 case there can be no finding that the releases are manifestly contrary to public policy and are prohibited under section 1506.

64. Accordingly, the CCAA Vesting Order, Transaction Agreement and the releases thereunder should appropriately be recognized by this Court.

5. *The Cancellation of Interests Through the CCAA Vesting Order is Appropriate and Permissible Under Chapter 15*

65. As discussed above, the CCAA Vesting Order terminates and cancels all options, securities and other rights held by any person that are convertible or exchangeable for any securities of APC. *See supra* ¶ 42; *see also* Manzoor Declaration ¶ 40. Importantly, the Purchaser—FGC—holds approximately 89% of the issued and outstanding shares of APC. The remaining shareholders were, as recognized by the Canadian Court, adequately notified of the CCAA Proceedings and the proposed Transaction. *See, e.g.*, Pillon Declaration ¶¶ 4-5.

66. Additionally, the cancellation of all outstanding shares and the issuance of new shares to the Purchaser pursuant to the CCAA Vesting Order, was within the jurisdiction of the Canadian Court. *See, e.g.*, *Harte Gold (Re)*, 2022 ONSC 653 at para. 62 (finding that where shareholders have no economic interest, present or future, it would be unnecessary and, indeed, inappropriate to require a vote of the shareholders to effectuate an action achievable through the court); OBCA, s. 168 and 186(2) (permitting the Canadian court to amend the articles of a corporation that is subject to a reorganization).

67. Here, the Canadian Court has approved and permitted the cancellation of the Interests through the CCAA Vesting Order and recognition of that order from the Canadian Court directly serves the purpose of chapter 15—affording comity to a foreign Canadian court order. Additionally, the shareholders were adequately notified of the relief sought via CCAA Vesting

Order and were afforded the opportunity to appear and be heard in connection with such relief before the Canadian Court. As such, the Canadian Court and the Canadian Proceedings provided an adequate mechanism through which the shareholders' interests were protected.

B. The Court Should Authorize and Approve the Sale of the Purchased Shares "Free and Clear" Under Section 363(f) of the Bankruptcy Code.

68. Section 363(f) of the Bankruptcy Code permits a debtor to sell property free and clear of another party's interest in the property if: (a) applicable non-bankruptcy law permits such a free and clear sale; (b) the holder of the interest consents; (c) the interest is a lien and the sale price of the property exceeds the value of all liens on the property; (d) the interest is the subject of a bona fide dispute; or (e) the holder of the interest could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of its interest. *See* 11 U.S.C. § 363(f).

69. Section 363(f) is drafted in the disjunctive. Thus, satisfaction of any of the requirements enumerated therein will suffice to warrant the sale of the Purchased Shares free and clear of all interests (*i.e.*, all liens, claims, rights, interests, charges or encumbrances), except with respect to any interests that may be assumed under the Transaction Agreement. *See In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) ("Section 363(f) is written in the disjunctive, not the conjunctive, and if any of the five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens.") (citing *In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988)).

70. Pursuant to section 363(f) of the Bankruptcy Code, the Debtors have obtained the requisite consent to enter into the Transaction Agreement and sell the Purchased Shares free and clear of all liens, claims, interests, or encumbrances (other than Permitted Encumbrances). Those creditors that may submit such liens, claims, encumbrances, or other interests who did not object, or who withdrew their objections, to the Motion, the motion seeking entry of the CCAA Vesting Order, and the sale of the Purchased Shares should be deemed, subject to the terms of the Proposed

Order and the CCAA Vesting Order, to have consented to such sale free and clear pursuant to section 363(f)(2) of the Bankruptcy Code. The Debtors submit that the sale of the Purchased Shares free and clear of all interests, other than as provided in the Proposed Order and the CCAA Vesting Order, satisfies the statutory prerequisites of section 363(f) of the Bankruptcy Code.

71. A sale to the Purchaser of the Purchased Shares free and clear of all liens, claims, encumbrances, and other interests (other than Permitted Encumbrances) is consistent with the best interests of the Debtors' estates and creditors. Pursuing a sale other than one free and clear of all liens, claims, encumbrances, and other interests (other than Permitted Encumbrances) would yield substantially less value for the Debtors and their creditors. Therefore, a sale free and clear of all interests (other than Permitted Encumbrances) is in the best interests of the Debtors, their creditors, and other parties in interest, and is consistent with the sale approved by the CCAA Vesting Order. Indeed, as reported by the Monitor, there is no available or actionable alternative to the Transaction that represents a better outcome for the Debtors' stakeholders. *See* Manzoor Declaration ¶ 33.

C. The Court Should Afford the Purchaser All Protections Under Section 363(m) and (n) of the Bankruptcy Code as a Good Faith Purchaser.

72. The Debtors also request that the Court find that the Purchaser is entitled to the benefits and protections set forth in sections 363(m) and (n) of the Bankruptcy Code. Specifically, section 363(m) of the Bankruptcy Code provides, in pertinent part:

> [t]he reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

73. Section 363(m) of the Bankruptcy Code thus protects the purchaser of assets sold pursuant to section 363 of the Bankruptcy Code from the risk that it will lose its interest in the purchased assets if the order allowing the sale is reversed on appeal so long as such purchaser leased or purchased the assets in "good faith."

74. Such relief is appropriate in that the selection of the purchaser was the result of a robust marketing process, arm's-length, good-faith negotiations, and parties in interest will have had the opportunity to review and object to the Transaction both in the Canadian Court and in this Court. *See Esposito v. Title Ins. Co. of Pa. (In re Fernwood Mkts.)*, 73 B.R. 616, 620 (Bankr. E.D. Pa. 1987) (good faith purchasers are protected under section 363(m) where notice is provided to lienholders). Courts generally conclude that a purchaser has acted in good faith as long as the consideration is adequate and reasonable, and the terms of the transaction are fully disclosed. *See, e.g.*, *In re Abbotts Dairies of Pennsylvania, Inc.,* 788 F.2d 143, 149–50 (3d Cir. 1986). The Debtors submit that the Purchaser is a "good faith purchaser" within the meaning of section 363(m) of the Bankruptcy Code.

75. Here, the Debtors' assets were subjected to a solicitation and competitive bidding process which complied with the Canadian Court-approved SISP. *See* Manzoor Declaration ¶¶ 44-45. Moreover, the selection of the FGC Bid as the Successful Bid and the negotiation and entry into the Transaction Agreement was the product of a non-collusive, good faith, arm's-length negotiation between the Debtors and the Purchaser. *See id.* Further, the protections of sections 363(m) and 363(n) of the Bankruptcy Code are essential to the Purchaser's willingness to consummate the Transaction. *See id.* ¶ 45.

76. As set forth in more detail above and in the Manzoor Declaration, the consideration to be received by the Debtors pursuant to the Transaction Agreement is substantial, fair, and

reasonable. In addition, there exists no indication of any "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders" or similar conduct that would cause or permit the Transaction to be avoided under section 363(n) of the Bankruptcy Code. *See In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d at 147 (describing types of misconduct that negate a purchaser's good faith status (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978))). The Transaction Agreement is the result of an extensive marketing process and the product of arm's-length, good-faith negotiations between the parties thereto, under which the Canadian Court-approved SISP was crafted to ensure the maximum potential price was received by the Debtors.

77. Accordingly, the Debtors seek a finding that the Purchaser is a good faith purchaser under section 363(m) of the Bankruptcy Code and has not violated section 363(n) of the Bankruptcy Code.

WAIVER OF RULE 6004(h)

78. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). The relief sought by the Foreign Representative herein is a condition precedent to closing the Transaction Agreement and is time sensitive. Any delay in closing could jeopardize the Transaction to the detriment of the Debtors and their stakeholders. Accordingly, the Foreign Representative respectfully requests that the Court waive the 14-day stay imposed by Bankruptcy Rule 6004(h).

NOTICE

79. The Foreign Representative will serve, or cause to be served, this Motion and the Sale Recognition Hearing Notice by electronic mail and/or domestic or foreign mail upon the following parties or their counsel, if known: (a) the Office of the United States Trustee for the

District of Delaware; (b) all parties to litigation in which any Debtor is a party and that is pending in the United States as of the date that the Chapter 15 Petitions were filed; (c) all secured creditors of the Debtors in these cases; (d) all other known creditors of the Debtors in these cases; (e) all parties that were served with the CCAA Vesting Order in the Canadian Proceedings; (f) the United States Food and Drug Administration; (g) the Debtors; and (h) all other parties that have requested notice in these cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Foreign Representative requests that this Court find that no further notice is required.

[*Remainder of page intentionally left blank.*]

WHEREFORE, for the reasons set forth herein, the Foreign Representative respectfully requests that this Court enter an order, substantially in the form attached hereto as **Exhibit A** (i) granting the relief requested herein and (ii) granting the Foreign Representative and the Debtors such other and further relief as the Court deems proper and just.

Dated: June 5, 2023
Wilmington, Delaware

Respectfully submitted,

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Exhibit A

Proposed Order

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 (TMH) (Jointly Administered) **Re: D.I. __**

ORDER (I) RECOGNIZING AND ENFORCING THE CCAA VESTING ORDER, (II) APPROVING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' INTERESTS FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES, AND (III) GRANTING RELATED RELIEF

Upon consideration of the motion (the "**Motion**")[2] filed by the Foreign Representative as the "foreign representative" of the Debtors, pursuant to sections 105(a), 363, 365, 1501, 1507, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, for entry of an order (this "Order"): (a) recognizing and enforcing the CCAA Vesting Order, attached hereto as **Exhibit 1**; (b) approving, under section 363 of the Bankruptcy Code, the sale of the Purchased Shares to the Purchaser pursuant to the Transaction Agreement, free and clear of all liens, claims, encumbrances, and other interests (other than the Permitted Encumbrances); and (c) granting such other relief as the Court deems just and proper, all as more fully set forth in the Motion; and upon consideration of the Manzoor Declaration and the Pillon Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 109 and 1501; and venue being proper before this Court pursuant to § 1410; and the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and that this Court may enter a final order

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[1] The Debtors in the 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.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

consistent with Article III of the United States Constitution; and adequate and sufficient notice of the filing of the Motion having been given by the Foreign Representative; and it appearing that the relief requested in the Motion is necessary and beneficial to the Debtors; and, if deemed necessary, this Court having held a hearing (the "**Hearing**") to consider the relief requested in the Motion; and there being no objections or other responses filed that have not been overruled, withdrawn, or otherwise resolved; and after due deliberation and sufficient cause appearing therefore,

THE COURT HEREBY FINDS AND DETERMINES THAT:

A. This Court previously entered the Recognition Order [D.I.] on February 27, 2023, where this Court found that the Debtors had satisfied the requirements of, among others, sections 101(23) and (24), 1502(4), 1504, 1509, 1515, 1517, 1520, 1521, and 1522 of the Bankruptcy Code. All such findings by this Court are hereby incorporated by reference herein and such Recognition Order shall continue in effect in all respects except to the extent this Order directly modifies or directly contradicts such Recognition Order.

B. On March 9, 2023, the Canadian Court granted an order (the "CCAA SISP Approval Order") that, among other things, authorized the Debtors to implement a sale and investment solicitation process (the "SISP") in accordance with the terms thereof; and (iii) provided other relief as set forth therein.

C. On March 23, 2023, this Court entered an order [D.I. 61] (the "SISP Recognition Order," and together with the CCAA SISP Approval Order, the "SISP Orders") recognizing and enforcing the CCAA SISP Approval Order.

D. On May 31, 2023, the Canadian Court entered the CCAA Vesting Order, approving, among other things, the sale of the Purchased Shares to the Purchaser pursuant to the Transaction Agreement.

E. Based on the affidavits of service filed with, and the representations made to, this Court: (i) notice of the Motion, the Hearing, if necessary, and the CCAA Vesting Order was proper, timely, adequate, and sufficient under the circumstances of these chapter 15 cases and these proceedings and complied with the various applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules; and (ii) no other or further notice of the Motion, the CCAA Vesting Order, or the entry of this Order is necessary or shall be required.

F. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a).

G. The relief granted herein is necessary and appropriate, is in the interest of the public, promotes international comity, is consistent with the public policies of the United States, is warranted pursuant to sections 105(a), 363(b), (f), (m) and (n), 365, 1501, 1507, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, and will not cause any hardship to any parties in interest that is not outweighed by the benefits of the relief granted.

H. Based on the information contained in the Motion, the Manzoor Declaration, the Pillon Declaration and the record made at the Hearing, if necessary, the Debtors' advisors conducted the SISP to solicit interest in the Purchased Shares, the Debtors and their assets and business in accordance with the terms of the SISP Orders, and such process was non-collusive, duly noticed, and provided a reasonable opportunity to make any offer. The Foreign Representative and the Monitor support the sale of the Purchased Shares pursuant to the Transaction Agreement, and it is appropriate that the Purchased Shares be sold to the Purchaser on the terms and subject to the conditions set forth in the Transaction Agreement.

I. Based on information contained in the Motion, the Manzoor Declaration, the Pillon Declaration and the record made at the Hearing, if necessary, the relief granted herein relates to assets and interests that, under the laws of the United States, should be administered in the Canadian Proceedings.

J. The Debtors' performance under the Transaction Agreement and related agreements: (i) constitute a sound and reasonable exercise of the Debtors' business judgment; (ii) provide value and are beneficial to the Debtors and are in the best interests of the Debtors; their estates, and their stakeholders; and (iii) are reasonable and appropriate under the circumstances. The consideration provided by the Purchaser for the Purchased Shares under the Transaction Agreement constitutes fair consideration and reasonably equivalent value for the Purchased Shares under the Bankruptcy Code and other laws of the United States, any state, territory, possession thereof, or the District of Columbia.

K. The Transaction does not amount to a consolidation, merger, or *de facto* merger of the Purchaser and any of the Debtors.

L. Time is of the essence in consummating the Transaction. To maximize the value of the Purchased Shares, it is essential that the Transaction occur and be recognized and enforced in the United States promptly. The Foreign Representative, on behalf of the Debtors, has demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval and consummation of the Transaction as contemplated by the Transaction Agreement. Accordingly, there is cause to waive the stay that would otherwise be applicable under Bankruptcy Rule 6004(h), and accordingly, the transactions contemplated by the Transaction Agreement and related agreements can be closed as soon as reasonably practicable upon entry of this Order.

M. Based upon the information contained in the Motion, the Manzoor Declaration, the Pillon Declaration, the other pleadings filed in these chapter 15 cases, and the record made at any hearing on the Motion, if necessary, the Transaction Agreement and each of the transactions contemplated therein were negotiated, proposed, and entered into by the Debtors and the Purchaser in good faith, without collusion, and from arm's-length bargaining positions. The Purchaser is a "good faith purchaser" within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to all the protections afforded thereby. Neither the Debtors, the Foreign Representative, nor the Purchaser has engaged in any conduct that would cause or permit the Transaction Agreement or the consummation of the Transaction to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code.

N. The Transaction Agreement was not entered into for the purpose of hindering, delaying, or defrauding any present or future creditors of the Debtors.

O. The Foreign Representative, on behalf of itself and the Debtors, may sell the Purchased Shares free and clear of all liens, claims (as defined in section 101(5) of the Bankruptcy Code), rights, liabilities, encumbrances and other interests of any kind or nature whatsoever against the Debtors or the Purchased Shares, other than the Permitted Encumbrances, because with respect to each creditor asserting any liens, claims, encumbrances, and other interests, one or more of the standards set forth in section 363(f)(l)–(5) of the Bankruptcy Code has been satisfied. Each creditor that did not object to the Motion is deemed to have consented to the sale of the Purchased Shares free and clear of all liens, claims, encumbrances, and other interests (other than the Permitted Encumbrances) pursuant to section 363(f)(2) of the Bankruptcy Code.

P. The total consideration to be provided under the Transaction Agreement reflects the Purchaser's reliance on this Order to provide it, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, with title to and possession of the Purchased Shares free and clear of all liens, claims, encumbrances, and other interests, other than the Permitted Encumbrances.

Q. The sale of the Purchased Shares to the Purchaser will be a legal, valid, and effective sale of the Purchased Shares, and will vest the Purchaser with all rights, title, and interests in and to the Purchased Shares, free and clear of all liens, claims, encumbrances, and other interests, other than the Permitted Encumbrances.

R. The Foreign Representative, the Debtors, and the Monitor, as appropriate: (i) have full power and authority to execute the Transaction Agreement and all other documents contemplated thereby; (ii) have all the power and authority necessary to consummate the transactions contemplated by the Transaction Agreement; and (iii) upon entry of this Order, other than any consents identified in the Transaction Agreement (including with respect to antitrust matters, if any), need no consent or approval from any other Person (as defined in the CCAA Vesting Order) or governmental unit to consummate the Transaction. The Transaction has been duly and validly authorized by all necessary corporate action of the Debtors.

S. The Transaction Agreement is a valid and binding contract between the Debtors and the Purchaser and shall be enforceable pursuant to its terms. The Transaction Agreement, the Transaction, and the consummation thereof shall be specifically enforceable against and binding upon (without posting any bond) the Debtors and the Foreign Representative in these chapter 15 cases and shall not be subject to rejection or avoidance by the foregoing parties or any other Person.

T. The Purchaser would not have entered into the Transaction Agreement and would not consummate the purchase of the Purchased Shares and the related transactions, thus adversely affecting the Debtors, their estates, and their creditors, and other parties in interest, if the sale of the Purchased Shares to the Purchaser was not free and clear of all liens, claims, encumbrances, and other interests (other than the Permitted Encumbrances), or if the Purchaser would, or in the future could, be liable on account of any such lien, claim, encumbrance, or any other interest, including, as applicable, certain liabilities related to the Purchased Shares that will not be assumed by the Purchaser, as described in the Transaction Agreement.

U. A sale other than free and clear of all liens, claims, encumbrances, and other interests (other than the Permitted Encumbrances) would yield substantially less value than the sale of the Debtors pursuant to the Transaction Agreement; thus, the sale free and clear of all liens, claims, encumbrances, and other interests (other than the Permitted Encumbrances), in addition to all of the relief provided herein, is in the best interests of the Debtors, their creditors, and other parties in interest.

V. The interests of the Debtors' creditors in the United States are sufficiently protected. The relief granted herein is necessary and appropriate, in the interests of the public and international comity, consistent with the public policies of the United States, and warranted pursuant to sections 1521(b) and 1522 of the Bankruptcy Code.

W. The legal and factual bases set forth in the Motion and at the Hearing, if necessary, establish just cause for the relief granted herein.

X. Any and all findings of fact and conclusions of law announced by this Court at the Hearing are incorporated herein.

BASED ON THE FOREGOING FINDINGS OF FACT AND AFTER DUE DELIBERATION AND SUFFICIENT CAUSE APPEARING THEREFORE, IT IS HEREBY ORDERED THAT:

1. All objections, if any, to the Motion or the relief requested therein that have not been withdrawn, waived, or settled by stipulation filed with this Court, and all reservations of rights included therein, are hereby overruled on the merits.

2. The CCAA Vesting Order and all of its respective terms, including any immaterial or administrative amendments thereto, including those necessary to give effect to the substance of

such order, either pursuant to the terms therein or as approved by the Canadian Court, are fully recognized and given full force and effect in the United States in their entirety.

3. The Transaction Agreement and the Transaction contemplated thereunder, including, for the avoidance of doubt, the sale of the Purchased Shares and the transfers of the Purchased Shares and any assets located within the United States on the terms set forth in the Transaction Agreement, the CCAA Vesting Order, including all transactions contemplated thereunder, this Order, including all transactions contemplated hereunder, and all of the terms and conditions of each of the foregoing are hereby approved and authorized pursuant to sections 105, 363, 365, 1501, 1520, 1521, 1525 and 1527 of the Bankruptcy Code. The failure specifically to include any particular provision of the Transaction Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Transaction Agreement and the Transaction be authorized and approved in its entirety.

4. Pursuant to sections 105, 363, 365, 1501, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, the CCAA Vesting Order, and this Order, the Debtors, the Purchaser, and the Foreign Representative (as well as their respective officers, employees, and agents) are authorized to take any and all actions necessary or appropriate to: (a) consummate the Transaction, including the sale of the Purchased Shares to the Purchaser, in accordance with the Transaction Agreement, the CCAA Vesting Order, and this Order; and (b) perform, consummate, implement, and close fully the Transaction, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Transaction Agreement and the Transaction and to take such additional steps and all further actions as may be necessary or appropriate to the performance of the obligations contemplated by the Transaction Agreement, all without further order of the Court, and are hereby authorized and empowered to cause to be executed and filed

such statements, instruments, releases, and other documents on behalf of such Person with respect to the Purchased Shares that are necessary or appropriate to effectuate the Transaction, any related agreements, the CCAA Vesting Order, and this Order, including amended and restated certificates or articles of incorporation and by-laws or certificates or articles of amendment, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable laws of all applicable governmental units or as any of the officers of the Debtors or the Purchaser may determine are necessary or appropriate, and are hereby authorized and empowered to cause to be filed, registered, or otherwise recorded a certified copy of the CCAA Vesting Order, this Order or the Transaction Agreement, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all liens, claims, encumbrances, and other interests against the Purchased Shares. The CCAA Vesting Order and this Order are deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department, or office.

5. All Persons that are currently in possession of some or all of the Purchased Shares located in the United States or that are otherwise subject to the jurisdiction of this Court are hereby directed to surrender possession of such Purchased Shares to the Purchaser on the Closing Date.

6. This Court shall retain exclusive jurisdiction to enforce any and all terms and provisions of the CCAA Vesting Order in the United States.

Releases

7. The releases, exculpation, and injunctive provisions set forth in the CCAA Vesting Order are expressly recognized by this Court and given full force and effect in the United States.

8. Any legal, factual, equitable, or other defenses (including, but not limited to, waiver, release, estoppel, or res judicata) held by any current or former officer or director of the

Debtors in connection with any claim held by, asserted, or asserted in the future by any Person relating in any manner to such current or former officer or director's role, position, conduct, acts, or omissions as an officer or director of any Debtor are hereby preserved and shall not be limited, waived, released, modified, or affected whatsoever by the entry of this Order. Without limiting the foregoing, the rights of any current or former officer or director of any of the Debtors to (a) raise or assert that the releases, exculpation, and/or injunctive provisions contained in the CCAA Vesting Order entered in the Canadian Proceedings are applicable to them and are fully enforceable as a defense in any action brought in any court, tribunal, or forum within the United States, and (b) seek recognition of the releases, exculpation, and injunctions contained in the CCAA Vesting Order under the comity doctrine or any other similar cross-border cooperation doctrine or treaty are fully preserved and retained in full.

9. Notwithstanding anything to the contrary in this Order, the CCAA Vesting Order, or any other document, this Court shall retain exclusive jurisdiction to hear and determine all disputes which are in any forum or court within the territorial United States involving the existence, nature, scope, or enforcement of any exculpations, discharges, injunctions, and releases granted in the CCAA Vesting Order or recognized by this Order.

Transfer of the Purchased Shares Free and Clear

10. Pursuant to sections 105(a), 363, 365, 1501, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, on the Closing Date, the Purchased Shares shall be transferred and absolutely vest in the Purchaser, in accordance with CCAA Vesting Order and the Transaction Agreement, without further instrument of transfer or assignment, and such transfer shall: (a) be a legal, valid, binding, and effective transfer of the Purchased Shares to the Purchaser; (b) vest the Purchaser

with all rights, title, and interests in the Purchased Shares; and (c) be free and clear of all liens, claims, encumbrances, and other interests, other than the Permitted Encumbrances.

11. Pursuant to sections 105(a), 363(f), 365, 1501, 1520, 1521, 1525 and 1527 of the Bankruptcy Code, upon the closing of the Transaction and except with respect to solely Permitted Encumbrances: (a) no holder of a lien, claim, encumbrance, or other interest shall interfere, and each and every holder of a lien, claim, encumbrance, or other interest is enjoined from interfering, with the Purchaser's rights and title to or use and enjoyment of the Purchased Shares or the Acerus Group Property; and (b) the sale of the Purchased Shares, the Transaction Agreement, and any instruments contemplated thereby shall be enforceable against and binding upon, and not subject to rejection or avoidance by, the Debtors or any successor thereof. All Persons holding a lien, claim, encumbrance, or other interest (other than the Permitted Encumbrances) are forever barred and enjoined from asserting such lien, claim, encumbrance, or other interest (other than the Permitted Encumbrances) against the Purchased Shares, the Purchaser or its affiliates and their respective officers, directors, employees, managers, partners, members, financial advisors, attorneys, agents, and representatives, and their respective affiliates, successors, and assigns from and after closing of the Transaction.

12. Each and every federal, state, and local governmental agency or department is authorized and directed to accept (and not impose any fee, charge, or tax in connection therewith) any and all documents and instruments necessary or appropriate to consummate the sale of the Purchased Shares to the Purchaser and the Transaction generally. Effective as of the Closing Date, the CCAA Vesting Order and this Order shall constitute for any and all purposes a full and complete conveyance and transfer of the Purchased Shares to the Purchaser free and clear of all liens, claims, encumbrances, and other interests, other than the Permitted Encumbrances.

13. This Order (a) shall be effective as a determination that, as of the Closing Date, all liens, claims, encumbrances, and other interests, other than the Permitted Encumbrances, have been unconditionally released, discharged, and terminated as to the Purchaser and the Purchased Shares, and the Acerus Group Property, and that the conveyances and transfers described herein have been effected, (b) no creditors of Residual Co. 1 or Residual Co. 2 shall have any claim upon, cause of action against, or interest in, the Purchaser, the Purchased Shares, or the Acerus Group Property, and (c) is and shall be binding upon and govern the acts of all Persons, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other Persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease. Each of the foregoing Persons is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Transaction Agreement and effect the discharge of all liens, claims, encumbrances, and other interests, other than the Permitted Encumbrances pursuant to this Order and the CCAA Vesting Order and not impose any fee, charge, or tax in connection therewith.

14. The Purchaser is not and shall not be deemed to: (a) be a legal successor, or otherwise be deemed a successor, to any of the Debtors; (b) have, *de facto* or otherwise, merged with or into any or all Debtors; or (c) be a mere continuation or substantial continuation of any or all Debtors or the enterprise or operations of any or all Debtors.

15. The Transaction, including the purchase of the Purchased Shares, is undertaken by the Purchaser in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and

accordingly, the reversal or modification on appeal of the authorizations provided herein shall neither affect the validity of the Transaction nor the transfer of the Purchased Shares to the Purchaser free and clear of all liens, claims, encumbrances, and other interests, unless such authorization is duly stayed before the closing of the Transaction pending such appeal.

16. Neither the Debtors nor the Purchaser has engaged in any conduct that would cause or permit the Transaction Agreement to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code.

17. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

18. The terms and provisions of the Transaction Agreement, the CCAA Vesting Order, and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, the Purchaser, the Foreign Representative, the Debtors' creditors, and all other parties in interest, and any successors of the Debtors, the Purchaser, the Foreign Representative, and the Debtors' creditors, including any foreign representative(s) of the Debtors, trustee(s), examiner(s), or receiver(s) appointed in any proceeding, including, without limitation, any proceeding under any chapter of the Bankruptcy Code, the CCAA, or any other law, and all such terms and provisions shall likewise be binding on such foreign representative(s), trustee(s), examiner(s), or receiver(s) and shall not be subject to rejection or avoidance by the Debtors, their creditors, or any trustee(s), examiner(s), or receiver(s).

19. Subject to the terms and conditions of the CCAA Vesting Order, the Transaction Agreement, and any related agreements, documents, or other instruments, may be modified, amended, or supplemented by the parties thereto, in a writing signed by each party, and in

accordance with the terms thereof, without further order of this Court; *provided* that any such modification, amendment, or supplement does not materially change the terms of the Transaction, the Transaction Agreement, or any related agreements, documents, or other instruments and is otherwise in accordance with the terms of the CCAA Vesting Order.

20. The provisions of this Order and the Transaction Agreement are non-severable and mutually dependent. To the extent that there are any inconsistencies between the terms of this Order and the CCAA Vesting Order, on the one hand, and the Transaction Agreement, on the other, this Order and the CCAA Vesting Order shall govern.

21. Nothing in this Order shall be deemed to waive, release, extinguish, or estop the Debtors or the Foreign Representative from asserting, or otherwise impair or diminish, any right (including, without limitation, any right of recoupment), claim, cause of action, defense, offset, or counterclaim in respect of any asset or interest that is not a Purchased Share.

22. Upon the addition of either Residual Co. 1 or Residual Co. 2 as an applicant in the Canadian Proceeding pursuant to the CCAA Vesting Order and as Debtors in these chapter 15 cases, (a) any and all relief granted by and findings of this Court with respect to the Debtors since the Petition Date shall apply to each such Residual Co., as applicable, to the same extent as such relief and findings apply to the Debtors and (b) any reference in any order of this Court to a "Debtor" shall be deemed to include a reference to such Residual Co., *mutatis mutandis*. All Persons subject to the jurisdiction of the United States are permanently enjoined and restrained from taking any actions inconsistent with, or interfering with, the enforcement and implementation of the CCAA Vesting Order or any documents incorporated by the foregoing.

23. The Foreign Representative is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion and the CCAA Vesting Order.

24. Notwithstanding any provisions in the Bankruptcy Rules to the contrary, including but limited to Rules 6004(h) and 6006(d), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry and the Debtors and the Purchaser are authorized, each in its discretion, to close the Transaction immediately upon entry of this Order.

25. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Exhibit 1

CCAA Vesting Approval Order

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	TUESDAY, THE 30TH DAY
	)	
JUSTICE PENNY	)	OF MAY, 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

ORDER
(Approval and Reverse Vesting Order and Extension of Stay of Proceedings)

THIS MOTION, made by Acerus Pharmaceuticals Corporation ("**APC**" or the "**Company**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order, among other things: (i) approving the Subscription Agreement (the "**SA**") between APC and First Generation Capital Inc. ("**FGC**" or the "**Purchaser**"), dated May 15, 2023, and the transactions contemplated thereby (the "**Transactions**"), (ii) adding XXX Ontario Inc. ("**Residual Co. 1**") and XXX Ontario Inc. ("**Residual Co. 2**") as a Applicants in these CCAA proceedings; (iii) transferring and vesting all of APC's, Acerus Biopharma Inc.'s ("**ABI**"), Acerus Labs Inc.'s ("**ALI**") and Acerus Pharmaceuticals USA, LLC.'s ("**APL**" collectively with APC, ABI and ALI the "**Acerus Group**") right, title and interest in and to the Excluded Assets, Excluded Leases, Excluded Contracts, and Excluded Liabilities (all as defined in the SA) to and in Residual Co.1 and Residual Co. 2, as applicable; (iv) authorizing and directing the Company to file the Articles of Reorganization; (v) vesting all of the right, title and interest in and to the Purchased Shares (as defined in the SA) in the Purchaser; and (vi) terminating and cancelling the all Equity Interests of APC outstanding prior to the issuance of the Purchased Shares other than those Equity Interests held by and registered in the name of the Purchaser, was heard on May 30, 2023, by video conference due to the COVID-19 pandemic.

ON READING the Notice of Motion, the affidavit of Naveed Z. Manzoor, dated May 18, 2023, (the "**Manzoor Affidavit**"), the Third Report of Ernst & Young Inc. as the court appointed monitor in these CCAA proceedings (the "**Monitor**"), filed (the "**Third Report**"), the Responding Motion Record of Jones Day, the affidavit of Rebekah Blake, sworn May 25, 2023, the affidavit of Philip Yang, sworn May 29, 2023, and on hearing the submissions of counsel for the Acerus Group, counsel for the Monitor, counsel for the Purchaser, counsel for those other parties appearing as indicated by the counsel slip, Troels Keldmann for Keldmann Healthcare A/S, and Brian Gilderman for Precision Clinical Research, Inc., no one appearing for any other party, although duly served as appears from the affidavits of service of Philip Yang, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion was properly returnable on May 30 2023, and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the SA.

EXTENSION OF STAY PERIOD

3. **THIS COURT ORDERS** that the Stay Period as referred to in the Order of Justice Osborne dated February 3, 2023 is extended, until and including June 30, 2023 in respect of the Applicants.

APPROVAL AND VESTING

4. **THIS COURT ORDERS AND DECLARES** that the SA and the Transactions be and are hereby approved and that the execution of the SA by the Company is hereby authorized and approved, with such minor amendments as the parties thereto may deem necessary with the approval of the Monitor. Company is hereby authorized and directed to perform its obligations under the SA and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions and for the issuance, sale and conveyance of the Purchased Shares to the Purchaser, including the filing of the Articles of Reorganization and the cancellation or redemption of the applicable equity interests.

5. **THIS COURT ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the Company to proceed with the Transactions, and that no shareholder or other approval shall be required in connection therewith.

6. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Monitor's certificate (the "**Monitor's Closing Certificate**") to the Purchaser (the "**Closing Time**"), substantially in the form attached as Schedule "A" hereto, the following shall occur and shall be deemed to have occurred at the Closing Time in the following sequence:

(a) first, (i) with respect to APC, ABI and ALI (collectively the "**Canadian Entities**") all of their right, title and interest in and to their respective Excluded Assets shall vest absolutely and exclusively in Residual Co. 1, and all Claims and (ii) with respect to APL all of APL's right, title and interest in and to the Excluded Assets shall vest absolutely and exclusively in Residual Co. 2, and in each case, all applicable Claims and Encumbrances (each as defined below) shall continue to attach to the Excluded Assets and to the Purchase Price in accordance with paragraph 11 of this Order, in either case with the same nature and priority as they had immediately prior to the transfer;

(b) second, all Excluded Contracts, Excluded Leases and Excluded Liabilities, other than set off claims asserted as defences to any claims made by the any member of the Acerus Group, (which for certainty includes all debts, liabilities, obligations, indebtedness, contracts, leases, agreements, and undertakings of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise, including any and all encumbrances, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Initial Order or any other Order of the Court in this CCAA Proceeding; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry systems; (iii) any charges, security interests or claims evidenced by registrations pursuant to the *Land Titles Act* (Ontario), the *Registry Act* (Ontario), the *Land Registration Reform Act* (Ontario)) or any other real property or real property related registry or recording system; (iv) any ownership or third party right, title, or interest that might arise or exists as a result of the contravention of Section 44(1) of the *Land Titles Act* (Ontario)) or any predecessor of any such statutes; and (v) those Claims listed on **Schedule "B"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances listed on **Schedules "C"** hereto)) of Company (other than the Retained Liabilities) shall be channelled to, assumed by and vest absolutely and exclusively in Residual Co. 1, as to those which relate to the Canadian Entities, and Residual Co. 2, as to those that relate to APL, such that the applicable Excluded Contracts, Excluded Leases and Excluded Liabilities shall become obligations of Residual Co. 1 and Residual Co. 2, respectively, and shall no longer be obligations of the Canadian Entities or APL and all of the Canadian Entities and APL's respective assets, licenses, undertakings and properties of every nature and kind whatsoever and wherever situate, including property held in trust for the Canadian Entities and APL (the **"Acerus Group Property**"), shall be and are hereby forever released and discharged from such Excluded Contracts, Excluded Leases and Excluded Liabilities and all related Claims and all Encumbrances affecting or relating to the Acerus Group's Property are hereby expunged and discharged as against the Acerus Group's Property;

(c) third, the Articles of Reorganization shall be filed or deemed to have been filed;

(d) fourth, in consideration for the Purchase Price, the Company shall issue the Purchased Shares to the Purchaser and all of the right, title and interest in and to the Purchased Shares shall vest absolutely in the Purchaser, free and clear of and from any and all Claims and Encumbrances of any kind and in favour of any party and, for greater certainty, this Court orders that all of the Claims and Encumbrances of any kind affecting or relating to the Purchased Shares are hereby expunged and discharged as against the Purchased Shares;

(e) fifth, pursuant to the Articles of Reorganization any fractional Purchased Shares and all Equity Interests of the Company outstanding prior to the issuance of the Purchased Shares other than the Purchased Shares, including all options, conversion privileges, equity-based awards, warrants, securities, debentures, loans, notes or other rights, agreements or commitments of any character whatsoever that are held by any Person (defined below) and are convertible or exchangeable for any securities of the Company or which require the issuance, sale or transfer by the Company, of any shares or other securities of the Company and/or the share capital of the Company, or otherwise relating thereto, shall be deemed terminated and cancelled without consideration and the only Equity Interests of the Company that shall remain shall be the Purchased Shares; and

(f) sixth, the Acerus Group shall be deemed to cease being Applicants in these CCAA proceedings, and the Acerus Group shall be deemed to be released from the purview of the Initial Order and all other Orders of this Court granted in respect of these CCAA proceedings, save and except for this Order, the provisions of which (as they relate to the Acerus Group) shall continue to apply in all respects.

7. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Closing Certificate, forthwith after delivery thereof in connection with the Transactions.

8. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Company and the Purchaser regarding the satisfaction or waiver of conditions to closing under the SA and shall have no liability with respect to delivery of the Monitor's certificate.

9. **THIS COURT ORDERS** that upon delivery of the Monitor's Closing Certificate, and upon filing of a copy of this Order, together with any applicable registration fees, all governmental authorities and any other applicable registrar or government ministries or authorities exercising jurisdiction with respect to the Acerus Group, the Acerus Group Property, or the Excluded Assets (collectively, the "**Governmental Authorities**") are hereby authorized,

requested and directed to accept delivery of such Monitor's Closing Certificate and a copy of this Order as though they were originals and to register such transfers and interest authorizations as may be required to give effect to the terms of this Order and the SA. Presentment of this Order and the Monitor's Closing Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of interest against any of the Acerus Group Property and the Monitor and the Purchaser are hereby specifically authorized to discharge the registrations on the Acerus Group Property and the Excluded Assets, as applicable.

10. **THIS COURT ORDERS** that no authorization, approval or other action by and no notice to or filing with any Governmental Authority or regulatory body exercising jurisdiction over the Acerus Group Property is required for the due execution, delivery and performance by the Company of the SA.

11. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, from and after the Closing Time, subject to the funding of the Priority Payments and the Administrative Expense Amount, all Claims and Encumbrances transferred, assumed, released, expunged and discharged pursuant to paragraph 6 hereof, including against the Acerus Group, the Acerus Group Property and the Purchased Shares and Equity Interests of the Company held by the Purchaser shall attach to the Excluded Assets with the same priority as they had with respect to the Acerus Group's Property immediately prior to the Transactions, as if the Transactions had not occurred.

12. **THIS COURT ORDERS** that, pursuant to clause 7(3) (c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as amended, the Acerus Group or the Monitor, as the case may be, is authorized, permitted and directed to, at the Closing Time, disclose to the Purchaser all human resources and payroll information in the Acerus Group's records pertaining to past and current employees of the Acerus Group. The Purchaser shall maintain and protect the privacy of such information in accordance with applicable law and shall be entitled to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by the Acerus Group.

13. **THIS COURT ORDERS AND DECLARES** that, at the Closing Time and without limiting the provisions of paragraph 6 hereof, the Purchaser, Acerus Group and the Monitor

shall be deemed released from any and all claims, liabilities, (direct, indirect, absolute or contingent) or obligations with respect to any Taxes (including penalties and interest thereon) of, or that relate to the Acerus Group (provided, as it relates to the Purchaser and the Acerus Group, such release shall not apply to (a) Taxes in respect of the business and operations conducted by the Acerus Group after the Closing Time; or (b) Taxes expressly assumed as Retained Liabilities pursuant to the SA), including without limiting the generality of the foregoing, all Taxes that could be assessed against the Purchaser or the Acerus Group (including their affiliates and any predecessor corporations) pursuant to sections 160 and 160.01 of the *Income Tax Act*, R.S.C. 1985 c. 1 (5^{th} Supp.), or any provincial or foreign tax equivalent, in connection with the Acerus Group. For greater certainty, nothing in this paragraph shall release or discharge any Claims with respect to Taxes that are transferred to Residual Co.1 or Residual Co. 2.

14. **THIS COURT ORDERS** that except to the extent expressly contemplated by the SA (and, for greater certainty, excluding the Excluded Assets and Excluded Liabilities and contracts relating thereto, all contracts to which any of the Acerus Group are a party at the time of delivery of the Monitor's Closing Certificate will be and remain in full force and effect upon and following delivery of the Monitor's Closing Certificate and no individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") who is a party to any such arrangement may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

(a) any event that occurred on or prior to the Closing Time and is not continuing that would have entitled such Person to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of any of the Acerus Group);

(b) the insolvency of any Acerus Group entity or the fact that the Acerus Group obtained relief under the CCAA;

(c) any compromises, releases, discharges, cancellations, transactions, arrangements, reorganizations or other steps taken or effected pursuant to the

SA, the Transactions or the provisions of this Order, or any other Order of this Court in these CCAA proceedings; or

(d) any transfer or assignment, or any change of control of any of the Acerus Group arising from the implementation of the SA, the Transactions or the provisions of this Order.

15. **THIS COURT ORDERS** that notwithstanding any provision in the SA, the Transactions, or this Order, nothing shall provide for the transfer of any contract or agreement with the United States and its agencies, including the Department of Health and Human Services (and Secretary thereof), without compliance by a member of the Acerus Group with the terms of such contract or agreement and the United States law applicable to such contract or agreement.

16. **THIS COURT ORDERS**, for greater certainty, that (a) nothing in paragraph 14 hereof shall waive, compromise or discharge any obligations of the Acerus Group, or the Purchaser in respect of any Retained Liabilities, and (b) the designation of any Claim as a Retained Liability is without prejudice to any of the Acerus Group's, or the Purchaser's right to dispute the existence, validity or quantum of any such Retained Liability, and (c) nothing in this Order or the SA shall affect or waive the Acerus Group's, or the Purchaser's rights and defences, both legal and equitable, with respect to any Retained Liability, including, but not limited to, all rights with respect to entitlements to set-offs or recoupments against such Retained Liability.

17. **THIS COURT ORDERS** that from and after the Closing Time, all Persons shall be deemed to have waived any and all defaults of any of the Acerus Group then existing or previously committed by any of the Acerus Group, or caused by any one of the Acerus Group, directly or indirectly, or non-compliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition, or obligation, expressed or implied in any contract, or lease existing between such Person and any of the Acerus Group (including for certainty, those contracts, or leases constituting Acerus Group Property) arising directly or indirectly from the filing by the Acerus Group under the CCAA and implementation of the Transactions, including without limitation any of the matters or events listed in paragraph 14 hereof, and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under a contract, or a

lease shall be deemed to have been rescinded and of no further force or effect, provided that nothing herein shall be deemed to excuse any of the Acerus Group, or the Purchaser from performing their obligations under the SA or be a waiver of defaults by any of the Acerus Group or the Purchaser under the SA and the related documents.

18. **THIS COURT ORDERS** that, from and after the Closing Time, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations and assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against the Acerus Group or the Purchaser relating in any way to or in respect of any Excluded Assets, Excluded Liabilities, Excluded Leases, or Excluded Contracts and any other claims, obligations and other matters that are waived, released, expunged or discharged pursuant to this Order.

19. **THIS COURT ORDERS** that from and after the Closing Time:

(a) the nature of the Retained Liabilities, as retained by the Acerus Group, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Transactions or this Order;

(b) the nature of the Excluded Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to Residual Co.1 and Residual Co. 2, as applicable;

(c) any Person that prior to the Closing Time had a valid right or claim against the Acerus Group under or in respect of any Excluded Contract, Excluded Lease, or Excluded Liability (each an "**Excluded Liability Claim**") shall no longer have an Excluded Liability Claim against the Acerus Group, but will have an equivalent Excluded Liability Claim against Residual Co.1 or Residual Co. 2, as applicable, in respect of the Excluded Contract, Excluded Lease, or Excluded Liability from and after the Closing Time in its place and stead, and nothing in this Order limits, lessens or extinguishes the Excluded Liability Claim of any Person as against Residual Co.1 and/or Residual Co. 2; and

(d) any Person with an Excluded Liability Claim against Residual Co. 1and/or Residual Co. 2 following the Closing Time shall have the same rights, priority and entitlement as against Residual Co.1 and/or Residual Co. 2 as such Person, with an Excluded Liability Claim, had against the applicable Acerus Group entity prior to the Closing Time.

20. **THIS COURT ORDERS AND DECLARES** that, as of the Closing Time:

(a) Residual Co.1 and Residual Co. 2 shall be companies to which the CCAA applies; and

(b) Residual Co.1 and Residual Co. 2 shall be added as Applicants in these CCAA proceedings and all references in any Order of this Court in respect of these CCAA proceedings to (i) an "Applicant" or the "Applicants" shall refer to and include Residual Co.1 and Residual Co. 2, and (ii) "Property" shall include the current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, of Residual Co.1 and Residual Co. 2 (collectively the "**Residual Co. Property**"), and, for greater certainty, each of the Charges (as defined in the Amended and Restated Initial Order dated February 3, 2023), shall constitute a charge on the Residual Co. Property.

PRIORITY PAYMENTS

21. **THIS COURT ORDERS AND DIRECTS** that the Priority Payments, as necessary and permitted by the SA, shall be distributed by the Company from the cash on hand on the Closing Date consistent with the Implementation Steps.

22. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these CCAA proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C 195, c. B-3, as amended (the "**BIA**"), in respect of Residual Co. 1 or Residual Co. 2 and any bankruptcy order issued pursuant to any such applications;

(c) any assignment in bankruptcy made in respect of any of the Acerus Group, Residual Co.1 or Residual Co. 2; or

(d) any foreign law equivalent of (b) or (c),

the SA, the implementation of the Transactions (including without limitation the transfer and vesting of the Excluded Assets, Excluded Contracts, Excluded Leases and Excluded Liabilities in and to Residual Co.1 and Residual Co. 2, as applicable, the transfer and vesting of the Purchased Shares in and to the Purchaser, the payment of the Priority Payments by the Company and any payments by or to the Purchaser, any of the Acerus Group entities, Residual Co.1, Residual Co. 2, or the Monitor authorized herein, or pursuant to the SA) shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Acerus Group, Residual Co.1 and/or Residual Co. 2 and shall not be void or voidable by creditors of the Acerus Group, Residual Co.1 or Residual Co. 2, as applicable, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the CCAA, the BIA or any other applicable federal, provincial or foreign legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

23. **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 and its legal counsel and their respective present and former directors, officers, partners, employees, and advisors shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the Initial Order and any other Order of this Court and all such indemnities, charges, protections and priorities shall apply and extend to the Monitor and its legal counsel and their respective present and former directors, officers, partners, employees, and advisors in the fulfillment of the Monitor’s duties and the carrying out of the provisions of this Order.

24. **THIS COURT ORDERS** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except with leave of the Court following a motion brought on not less than fifteen (15) days’ notice to the Monitor and its legal counsel. The entities related or affiliated with the Monitor or belonging to the same group as the Monitor (including, without limitation, any agents, employees, legal counsel or other advisors retained or employed by the Monitor) shall benefit from the protection granted to the Monitor under the present paragraph.

25. **THIS COURT ORDERS** that the Monitor shall not, as a result of this Order or any matter contemplated hereby: (a) be deemed to have taken part in the management or supervision of the management of the Acerus Group, Residual Co. 1 or Residual Co. 2, or to have taken or maintained possession or control of the business or property of any of the Acerus Group, Residual Co. 1 or Residual Co. 2, or any part thereof; or (b) be deemed to be in Possession (as defined in the Initial Order) of any property of the Acerus Group, Residual Co. 1 or Residual Co. 2 within the meaning of any applicable Environmental Legislation (as defined in the Initial Order) or otherwise.

26. **THIS COURT ORDERS** that nothing in this Order, including the release of the Acerus Group from the purview of these CCAA proceedings pursuant to paragraph 6(f) hereof and the addition of Residual Co. 1 and Residual Co. 2 as Applicants in these CCAA proceedings, shall affect, vary, derogate from, limit or amend any rights, approvals and protections afforded to the Monitor in these CCAA proceedings and EY shall continue to have the benefit of, any and all rights and approvals and protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order, any other Orders in these CCAA proceedings or otherwise, including all approval, protections and stays of proceedings in favour of EY in its capacity as Monitor, all of which are expressly continued and confirmed.

27. **THIS COURT ORDERS** that notwithstanding anything contained in this Order, the Monitor, its employees and representatives shall are not and shall not be or be deemed to be, a director, officer, or employee of Residual Co. 1 or Residual Co. 2, *de facto* or otherwise, and shall incur no liability as a result of acting in accordance with this Order, other than any liability arising as a direct result of the gross negligence or wilful misconduct of the Monitor.

28. **THIS COURT ORDERS** that nothing in this Order shall constitute or be deemed to constitute the Monitor as receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of Residual Co. 1, or Residual Co. 2.

29. **THIS COURT ORDERS** that in the event of a conflict between the terms of this Order and those of the Initial Order or any other Order of this Court, the provisions of this Order shall govern.

30. **THIS COURT ORDERS** that the First Report of the Monitor dated February 2, 2023, the Second Report of the Monitor dated March 7, 2023, the Third Report, and the activities of the Monitor as set out therein be and are hereby approved provided, however,

that only the Monitor, in its personal capacity and only with respect to its own liability, shall be entitled to rely upon or utilize in any way such approval.

RELEASES

31. **THIS COURT ORDERS** that effective upon the filing of the Monitor's Closing Certificate, (i) the current and former directors, officers, employees, legal counsel and advisors to the Acerus Group; (ii) the CRO (iii) the Monitor and its legal counsel and their respective present and former directors, officers, partners, employees, and advisors; (iv) FGC, in its capacities as secured lender to the Acerus Group and majority shareholder of APC, and its current and former directors, officers, employees, legal counsel and advisors; and (v) the Purchaser and its current and former directors, officers, employees, legal counsel and advisors (collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future liabilities, claims (including, without limitation, claims for contribution or indemnity), indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part of any act or omission, transaction, dealing or other occurrence existing or taking place prior to the filing of the Monitor's Closing Certificate, or undertaken or completed in connection with or pursuant to the terms of this Order and that relate in any manner whatsoever to the Acerus Group, or any of its operations, assets and property (current or historical), obligations, business or affairs or theses CCAA proceedings and/or the Chapter 15 Case, or arising in connection with or relating to the SA, the completion of the Transactions, the closing documents, any agreement, document, instrument, matter or transaction involving the Acerus Group arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transactions (collectively, the "**Released Claims**"), which Released Claims are hereby and shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, provided that nothing herein shall release any claim that that is not permitted to be released pursuant to section 5.1(2) of the CCAA, or any obligations of any Released Party under, or in connection with the SA or the closing documents. **"Releasing Parties"** means any and all Persons (not including the Acerus Group and their respective current and former affiliates), and their

current and former affiliates' current and former members, directors, managers, officers, investment committee members, special committee members, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, assigns, participants, subsidiaries, affiliates, partners, limited partners, general partners, affiliated investment funds or investment vehicles , managed accounts or funds, and each of their respective current and former members, equity holders, officers, directors, managers, principals, members, management companies, advisory board members, investment fund advisors or managers, employees, agents, trustees, investment managers, financial advisors, partners, legal counsel, accountants, investment bankers, consultants, representatives and other professionals. For certainty, nothing in this order shall release, or be deemed to release APL or any individuals that have been named as defendants in the Jones Day Litigation from any potential liability in the Jones Day Litigation.

GENERAL

32. **THIS COURT ORDERS** that, having been advised of the provisions of Multilateral Instrument 61-101 "Protection of Minority Security Holders in Special Transactions" relating to the requirement for "minority" shareholder approval in certain circumstances, no meeting of shareholders or other holders of Equity Interests in the Acerus Group is required to be held in respect of the Transactions and accordingly, there is no requirement to send any disclosure document related to the Transactions to such shareholders or other holders of Equity Interests.

33. **THIS COURT ORDERS** that, following the Closing Time, the Purchaser and the Acerus Group shall be authorized to take all steps as may be necessary to affect the discharge of the Claims and Encumbrances as against the Acerus Group, the Purchased Shares, those Equity Interests of the Company held by the Purchaser and the Acerus Group Property.

34. **THIS COURT ORDERS** that, following the Closing Time, the title of these proceedings is hereby changed to

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

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF. XX AND YY

35. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date that it is made and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original signing, entry and filing when the Court returns to regular operations.

36. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

37. **THIS COURT DECLARES** that the Monitor or the Acerus Group shall be authorized to apply as they may consider necessary or desirable, with or without notice, to any other court, tribunal or administrative body whether in Canada, the United States, or elsewhere, for order which aid and complement this Order. All courts, tribunals and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Acerus group and the Monitor as may be deemed necessary or appropriate for that purpose.

38. **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 including the United States Bankruptcy Court for the District of Delaware overseeing the Acerus Group's proceedings under Chapter 15 of the U.S. Bankruptcy Code in Case No. 23-10111-MFW, to give effect to this Order and to assist Residual Co.1, Residual Co. 2, the Acerus Group, 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 Residual Co.1, Residual Co. 2, the Monitor, as an officer of this Court, and to the Company, in its capacity as Foreign Representative of the Acerus Group, as may be necessary or desirable to give effect to this Order, or to assist Residual Co.1, Residual Co. 2, the Monitor, the Acerus Group and their respective agents in carrying out the terms of this Order.

39. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Prevailing Eastern time on the date hereof; provided that, the transaction steps set out in paragraph 6 hereof shall be deemed to have occurred sequentially, on after the other, in the order set out in paragraph 6 hereof.

Schedule A – Form of Monitor's Closing Certificate

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 PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION,
ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC. (each an "**Applicant**" and collectively the "**Applicants**")

RECITALS

A. Pursuant to the Initial Order of Justice Osborne of the Ontario Superior Court of Justice (Commercial List), (the "**Court**") dated January 26, 2023, as amended and restated, the Applicants were granted protection from their creditors pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and Ernst & Young Inc., was appointed as the monitor ("**Monitor**") of the Applicants. (the "**Monitor**").

B. Pursuant to the Approval and Vesting Order of the Court, dated May XX, 2023, (the "**AVO**"), the Court approved the transactions (the "**Transactions**") contemplated by the Subscription Agreement dated April XX, 2023, (the "**SA**"), between the Company and First Generation Capital Inc. (the "**Purchaser**"), and ordered, *inter alia*, that: (i) all of the Acerus Group's right, title and interest in and to the Excluded Assets shall vest absolutely and exclusively in Residual Co.1 and/or Residual Co. 2, as applicable; (ii) all of the Excluded Contracts, Excluded Leases and Excluded Liabilities shall be transferred to, assumed by and vest in Residual Co.1 and Residual Co. 2, as applicable; and (iii) all of the right, title and interest in and to the Purchased Shares shall vest absolutely and exclusively in the Purchaser, free and clear of and from any and all Claims and Encumbrances, which vesting is, in each case, to be effective upon the delivery by the Monitor to the Purchaser of a certificate confirming that the Monitor has received written confirmation in the form and substance satisfactory to the Monitor from the Company and the Purchaser that all conditions to closing have been satisfied or waived by the parties to the SA.

D. Capitalized terms not defined herein shall have the meaning given to them in the Order.

THE MONITOR CERTIFIES the following:

1. The Monitor has received written confirmation from the Company, in form and substance satisfactory to the Monitor, that the Priority Payments have been paid by the Company**.**

2. The Monitor has received written confirmation from the Company and the Purchaser, in form and substance satisfactory to the Monitor, that all conditions to closing have been satisfied or waived by the parties to the SA.

3. This Monitor's closing certificate was delivered by the Monitor at Toronto on _________, 2023.

Ernst & Young Inc., in its capacity as Monitor of the Acerus Group and not in its personal or corporate capacity.

Per:________________________________
Name:
Title:

Schedule "B" - Encumbrances to be Deleted and Expunged from the Acerus Group

Personal Property Security Act (Ontario) Registrations to be Deleted and Expunged

1.	Reference File No.	77186631
	Debtor	Acerus Pharmaceuticals Corporation
	Secured Party	First Generation Capital Inc.
	Collateral Classification	Inventory, Equipment, Accounts, Other, Motor Vehicle Included
	General Collateral Description	N/A
2.	Reference File No.	789285879
	Debtor	Acerus Biopharma Inc.
	Secured Party	First Generation Capital Inc.
	Collateral Classification	Inventory, Equipment, Accounts, Other, Motor Vehicle Included
	General Collateral Description	N/A
3.	Reference File No.	789285897
	Debtor	Acerus Labs Inc.
	Secured Party	First Generation Capital Inc.
	Collateral Classification	Inventory, Equipment, Accounts, Other, Motor Vehicle Included
	General Collateral Description	N/A

Ontario Land Titles Registrations to be Deleted and Expunged

	Encumbrance	Registration Number	Party	Amount	Registration Date
	NIL	NIL	NIL	NIL	NIL

UCC-1 Financing Statement to be Deleted and Expunged

1.	UCC Filing Number	20220613784
	Debtor	Acerus Pharmaceuticals USA, LLC
	Secured Party	First Generation Capital Inc.
	State	Delaware
	Collateral Description	All assets

Schedule "C" - Permitted Encumbrances

Permitted Encumbrances in Respect of the Acerus Group Property

- Encumbrances securing Retained Liabilities to the extent that such Retained Liabilities are secured by Encumbrances as of the Closing Time

- Encumbrances given to a public utility or any Governmental Authority when required by such utility or authority in connection with the operations of that person in the ordinary course of the business but only insofar as they relate to any amounts not due as at the Closing Date

- The reservations, limitations, provisos and conditions (if any) expressed in any original grant from the Crown

- Encumbrances for taxes, assessments or governmental charges incurred in the ordinary course that are not yet due and payable or the validity of which is being actively and diligently contested in good faith by the Acerus Group and in respect of which the Acerus Group has established on its books reserves considered by it and its auditors to be adequate therefor

- Normal and customary rights of setoff or compensation upon deposits in favour of depository institutions, and liens of a collecting bank on cheques and other payment items in the course of collection

- Servitudes, easements, rights of way or similar rights in land granted to or reserved by other persons including minor title defects effecting real property such as reservations and limitations expressed in any original grant from the Crown or as a result of statutory reservations and exceptions to title

- Encumbrances imposed by Applicable Law which rank in priority to the Encumbrances in respect of the DIP Facility Loan Agreement amounts including, but not limited to, Encumbrances of mechanics, labourers, workmen, builders, contractors, suppliers of material or architects or other similar Encumbrances incidental to construction, maintenance or repair operations, provided such Encumbrances secure amounts which are not yet due or delinquent and have not been registered on title to any real property or written notice thereof has not been received by Company or Purchaser

- Encumbrances associated with, and financing statements evidencing, the rights of equipment lessors under any of the personal property leases

- Undetermined or inchoate liens and charges incidental to construction or repairs or operations which have not at such time been filed pursuant to law against Company or which relate to obligations not due or delinquent

- The right reserved to or vested in any municipality or government, or to any statutory or public authority, by the terms of any lease, license, franchise, grant or permit acquired by Company or any statutory provision to terminate any such lease, license, franchise, grant or permit, or to require annual or other periodic payments as a condition to the continuance thereof.

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

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

ORDER
(APPROVAL AND REVERSE VESTING ORDER)

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Lawyers for the Applicants

<u>Exhibit B</u>

Transaction Agreement

SUBSCRIPTION AGREEMENT

ACERUS PHARMACEUTICALS CORPORATION

as Company

-and-

FIRST GENERATION CAPITAL INC.

as Purchaser

TABLE OF CONTENTS

SUBSCRIPTION AGREEMENT

THIS SUBSCRIPTION AGREEMENT is made as of May 15, 2023

BETWEEN:

Acerus Pharmaceuticals Corporation ("**APC**" or "**Company**")

-and-

First Generation Capital Inc. ("**Purchaser**")

RECITALS:

A. APC is a public pharmaceutical company based in Mississauga, Ontario that directly and indirectly through its subsidiaries 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 (collectively, the "**Business**").

B. On January 26, 2023, the Acerus Group commenced proceedings under the CCAA before the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**") to, among other things, seek creditor protection for, and certain relief in respect of, certain of the members of the Acerus Group.

C. On January 29, 2023, APC, as duly appointed foreign representative, on behalf of the Acerus Group, commenced ancillary recognition proceedings pursuant to Chapter 15 of the US Bankruptcy Code, in the U.S. Bankruptcy Court and a provisional recognition order was entered on January 31, 2023, with a further recognition order entered on February 27, 2023 (the "**U.S. Proceedings**").

D. On March 9, 2023, the Acerus Group obtained an order under the CCAA Court approving, among other things, the SISP (the "**SISP Order**"), which was further recognized under the U.S. Proceedings by an order entered March 23, 2023 (the "**SISP Recognition Order**").

E. Pursuant to the SISP, Purchaser has been selected as a Successful Bidder and the transaction hereunder selected as a Successful Bid, and as such Purchaser has agreed to buy and Company has agreed to sell the Purchased Shares on and pursuant to the terms set forth herein.

NOW THEREFORE, the Parties agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

In this Agreement,

"**ABI**" means Acerus Biopharma Inc.

"**Acerus Group**" means Company, ABI, ALI and APL.

"**Administration Charge**" has the meaning given to it in the Initial Order.

"**Administrative Expense Amount**" means cash in an amount of the Administrative Expense Costs and CCAA Charge Amount and shall be paid by the members of the Acerus Group to the Monitor on the Closing Date out of the cash and cash equivalents of the members of the Acerus Group as at the Closing Date and held in trust by the Monitor for the benefit of Persons entitled to be paid the Administrative Expense Costs and CCAA Charge Amount, subject to the terms hereof;

"**Administrative Expense Costs**" means the reasonable and documented fees and costs of the Monitor and its professional advisors and professional advisors of the members of the Acerus Group and Residual Cos. in each case for services performed prior to and, other than in respect of the members of the Acerus Group, after the Closing Date, in each case, relating directly or indirectly to the CCAA Proceedings, the U.S. Proceedings, and this Agreement and including without limitation: (i) costs required to wind down and/or dissolve and/or bankrupt Residual Cos.; and (ii) costs and expenses required to administer the Excluded Assets, Excluded Liabilities and Residual Cos.; (iii) the success fee owing to the CRO pursuant to its engagement letter; (iv) costs related to a premium for a run-off policy of the Acerus Group's existing director and officer liability insurance policy.

"**Affiliate**" means, with respect to any specified Person, any other Person which, directly or indirectly, through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person (for the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise). For greater certainty, an Affiliate of a Person shall include such Person's investment funds and managed accounts and any funds managed or directed by the same investment advisor. Notwithstanding the above, Purchaser and its Affiliates on one hand, and the Acerus Group and Residual Cos. on the other hand, shall not be considered Affiliates of each other for the purposes of this Agreement.

"**Agreement**" means this subscription agreement and all attachments and Exhibits, in each case as the same may be supplemented, amended, restated or replaced from time to time, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this transaction agreement and all attached Exhibits, and unless otherwise indicated, references to Articles, Sections, and Exhibits are to Articles, Sections, and Exhibits in this transaction agreement.

"**ALI**" means Acerus Labs Inc.

"**APL**" means Acerus Pharmaceuticals USA, LLC.

"**Applicable Law**" means any transnational, domestic or foreign, federal, provincial, territorial, state, local or municipal (or any subdivision of any of them) law (including common law and civil law), statute, ordinance, rule, regulation, restriction, limit, by-law (zoning or otherwise), judgment, order, direction or any consent, exemption, Transaction Regulatory Approval, or any other legal requirements of, or agreements with, any Governmental Authority, that applies in whole or in part to the transactions contemplated by this Agreement, the members of the Acerus Group, Purchaser, the Business, or any of the Purchased Shares or the Retained Liabilities.

"**Applicants**" means the Acerus Group and the Residual Cos. (at the time the Residual Cos. become Applicants).

"**Articles of Reorganization**" means articles of reorganization in respect of Company's authorized and issued capital to: (i) create a new class of shares of the company, being the Class "A" Common shares; and (ii) provide for the redemption or cancellation of the common shares and other equity interests thereof other than the Purchased Shares by Company for no consideration on Closing; such articles of reorganization to be in form and substance satisfactory to Purchaser, acting reasonably.

"**Business**" has the meaning given to such term in Recital A.

"**Business Day**" means any day, other than a Saturday or Sunday, on which the principal commercial banks in Toronto, Ontario are open for commercial banking business during normal banking hours.

"**Causes of Action**" means any action, claim, cross claim, third party claim, damage, judgment, cause of action, controversy, demand, right, action, suit, obligation, liability, debt, account, defense, offset, power, privilege, license, lien, indemnity, interest, guaranty, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, matured or unmatured, suspected or unsuspected, in contract or in tort, at law or in equity, or pursuant to any other theory of law or otherwise, of the members of the Acerus Group against any Person, in each case based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Closing Time (which Causes of Action for the avoidance of doubt shall be retained by the applicable member of the Acerus Group on Closing).

"**CCAA**" means the *Companies' Creditors Arrangement Act* (Canada).

"**CCAA Charge Amount**" means cash in an amount sufficient to satisfy the amounts owing in respect of obligations secured by the CCAA Charges (without duplication to amounts satisfied as Administrative Expense Costs, Employee Priority Claims or Priority Payments).

"**CCAA Charges**" means the Administration Charge, Directors' Charge and KERP Charge.

"**CCAA Court**" has the meaning given to such term in Recital B.

"**CCAA Order**" means the order of the CCAA Court pursuant to the CCAA commencing the CCAA Proceedings, as amended, restated, supplemented and/or modified from time to time.

"**CCAA Proceedings**" means the proceedings commenced under the CCAA by the Applicants pursuant to the Initial Order.

"**Claims**" means any and all demands, claims, liabilities, actions, causes of action, counterclaims, expenses, costs, damages, losses, suits, debts, sums of money, refunds, accounts, indebtedness, rights of recovery, rights of set-off, rights of recoupment and liens of whatever nature (whether direct or indirect, absolute or contingent, asserted or unasserted, secured or unsecured, matured or not yet matured due or to become due, accrued or unaccrued or liquidated or unliquidated) and including all costs, fees and expenses relating thereto.

"**Closing**" means the completion of the purchase of the Purchased Shares and the transactions in accordance with the provisions of this Agreement.

"**Closing Date**" means a date no later than five (5) Business Days after the conditions set forth in Article 7 have been satisfied or waived, other than the conditions set forth in Article 7 that by their terms are to be satisfied or waived at the Closing (or such other date agreed to by the Parties in writing); provided that, if there is to be a Closing hereunder, then the Closing Date shall be no later than the Outside Date.

"**Closing Documents**" means all contracts, agreements, certificates and instruments required by this Agreement to be delivered at or before the Closing.

"**Closing Time**" means 10:00 a.m. (Toronto time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing Time shall take place.

"**Code**" means the United States Internal Revenue Code of 1986, as amended.

"**Company**" has the meaning given to such term in the preamble to this Agreement.

"**Confidential Information**" means non-public, confidential, personal or proprietary information which is furnished to Purchaser or any of its Affiliates by Company or any of the members of the Acerus Group' representatives, including information about identifiable individuals, any information relating to the members of the Acerus Group, or any customer or supplier of the members of the Acerus Group, but does not include information that is or becomes generally available to the public other than as a result of disclosure by Purchaser or its representatives in breach of this Agreement or that is received by Purchaser from an independent third party that, to the knowledge of Purchaser, obtained it lawfully and was under no duty of confidentiality (except to the extent that applicable privacy laws do not exclude such information from the definition of personal information) or that is independently developed by Purchaser or its representatives without reference to any Confidential Information.

"**Credit Bid Consideration**" has the meaning given to such term in Section 3.1.

"**CRO**" means FAAN Advisors Group Inc., in its capacity as Chief Restructuring Officer of the Applicants.

"**DIP Facility Loan Agreement**" means the DIP Facility Loan Agreement dated as of January 26, 2023 between APC and APL (as borrowers), the Purchaser (as lender), and each of the guarantors thereto (being each of ABI and ALI as of the date hereof) as such loan agreement may be amended, restated, supplemented and/or otherwise modified from time to time in accordance with the terms thereof.

“**Directors Charge**” has the meaning given to it in the Initial Order.

“**Employee Priority Claims**” means any Claim for: (i) accrued and unpaid wages and vacation pay owing to an employee of any of the members of the Acerus Group whose employment was terminated between the Filing Date and the Closing Date, including the Terminated Employees; and (ii) unpaid amounts provided for in Section 6(5)(a) of the CCAA.

“**Employment Agreements**” means, collectively, the employment agreements, the management compensation plans, and indemnification agreements of, or for the benefit of, the directors, officers and employees of any of the members of the Acerus Group that, on or prior to the Closing, have not resigned, in each case, in existence on the date hereof; provided, however, that Employment Agreements shall not include employment agreements, the management compensation plans, and indemnification agreements of, or for the benefit of, the directors, officers and employees of any of the members of the Acerus Group that have been terminated or disclaimed without the consent of Purchaser.

“**Encumbrance**” means any security interest (whether contractual, statutory or otherwise), lien, prior claim, charge, hypothec, reservation of ownership, pledge, encumbrance, mortgage, trust (including any statutory, deemed or constructive trust), option or adverse claim or encumbrance of any nature or kind.

“**Equity Interests**” means any capital share, capital stock, partnership, membership, joint venture or other ownership or equity interest, participation or securities (whether voting or nonvoting, whether preferred, common or otherwise, and including share appreciation, contingent interest or similar rights) of a Person.

“**ETA**” means the *Excise Tax Act* (Canada).

“**Excluded Assets**” has the meaning given to such term in Section 2.2.

“**Excluded Contracts**” means contracts of the members of the Acerus Group as specified on Schedule 2.2(c).

“**Excluded Leases**” means those leases of the members of the Acerus Group as specified in Schedule 2.2(c).

“**Excluded Liabilities**” has the meaning given to such term in Section 2.4.

“**Filing Date**” means January 26, 2023.

“**Final Order**” means with respect to any order or judgment of the CCAA Court or the U.S. Bankruptcy Court, or any other court of competent jurisdiction, with respect to the subject matter addressed in the CCAA Proceedings or the Chapter 15 Cases or the docket of any court of competent jurisdiction, that such order or judgement has not been vacated, set aside, reversed, stayed, modified or amended, and as to which the applicable periods to appeal, or seek certiorari or move for a new trial, reargument, or rehearing has expired and no appeal, leave to appeal, or petition for certiorari or other proceedings for a new trial, reargument, or rehearing has been timely taken or filed, or as to which any appeal has been taken or any petition for certiorari or leave to appeal that has been timely filed has been withdrawn or resolved in a manner acceptable to Company and Purchaser, each acting reasonably, by the highest court to which the order or judgment was appealed or from which leave to appeal or certiorari was sought or the new trial, reargument, or rehearing shall have been denied, resulted in no modification of such order or has otherwise been dismissed with prejudice; provided, however, that the possibility that a motion under Rule 60 of the United States Federal Rules of Civil Procedure, or any analogous rule under the U.S. Bankruptcy Rules, may be filed relating to such order shall not cause such order to not be a Final Order.

"**Fundamental Representations and Warranties of Company**" means the representations and warranties of Company included in Sections 4.1 [Due Authorization and Enforceability of Obligations], 4.2 [Existence and Good Standing] and 4.4 [Absence of Conflicts].

"**GAAP**" means generally accepted accounting principles as set out in the *CPA Canada Handbook – Accounting* for an entity that prepares its financial statements in accordance with International Financial Reporting Standards, at the relevant time, applied on a consistent basis.

"**Governmental Authority**" means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity (i) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them, or (ii) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

"**GST/HST**" means all goods and services tax and harmonized sales tax imposed under Part IX of the ETA or any other statute in any jurisdiction of Canada.

"**Implementation Steps**" has the meaning given to such term in Section 2.7(b).

"**Initial Order**" means the Amended and Restated Initial Order dated February 3, 2023 granted by the CCAA Court pursuant to the CCAA as may be further amended and restated from time to time.

"**Intercompany Claim**" means any claim that may be asserted against any of the members of the Acerus Group by or on behalf of any of the members of the Acerus Group or any of their affiliated companies, partnerships, or other corporate entities.

"**KERP Charge**" has the meaning given to it in the Initial Order.

"**Loan Agreements**" means, collectively: (i) the Third Amended & Restated Secured Grid Promissory Note dated March 30, 2022 between APC (as borrower), and Purchaser (as lender), as amended by Amendment #1 to Third Amended and Restated Secured Grid Promissory Note dated June 23 2022, Amendment #2 to Third Amended and Restated Secured Grid Promissory Note dated August 4, 2022 and Amended #3 to Third Amended and Restated Secured Grid Promissory Note dated December 21, 2022; and (ii) the Loan Agreement between APC and APL (as borrowers), and each of ABI and ALI (as guarantors), and Purchaser (as lender), dated December 21, 2022, each as may be amended, restated, supplemented and/or otherwise modified from time to time in accordance with the terms thereof.

"**Material Adverse Effect**" means any change, effect, event, occurrence, state of facts or development that has had a material adverse effect on: (i) the business, assets, liabilities, financial conditions or results of operations of the members of the Acerus Group, taken as a whole; or (ii) prevents the ability of any of the members of the Acerus Group to perform its obligations under, or to consummate the transactions contemplated by, this Agreement, but excluding any such change, effect, event, occurrence, state of facts or development attributable to or arising from: (A) general economic or business conditions; (B) Canada, the U.S. or foreign economies, or financial, banking or securities markets in general, or other general business, banking, financial or economic conditions (including: (I) any disruption in any of the foregoing markets; (II) any change in the currency exchange rates; or (III) any decline or rise in the price of any security, commodity, contract or index); (C) acts of God or other calamities, pandemics (including COVID-19 and any Governmental Authorities response thereto), national or international political or social conditions, including the engagement and/or escalation by the U.S. or Canada in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the U.S. or Canada or any of their territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the U.S. or Canada; (D) the identity of Purchaser or its Affiliates; (E) conditions affecting generally the industry in which the members of the Acerus Group participates; (F) the public announcement of, entry into or pendency of, actions required or contemplated by or performance of obligations under, this Agreement or the transactions contemplated by this Agreement, or the identity of the Parties; (G) changes in Applicable Laws or the interpretation thereof; (H) any change in GAAP or other accounting requirements or principles; (I) national or international political, labor or social conditions; (J) the failure of the members of the Acerus Group to meet or achieve the results set forth in any internal projections (but not the underlying facts giving rise to such failure unless such facts are otherwise excluded pursuant to the clauses contained in this definition); or (K) any change resulting from compliance with the terms of, or any actions taken (or not taken) by any Party pursuant to or in accordance with, this Agreement; provided that the exceptions set forth in clauses (A), (B), (C), (E), (G), (H) or (I) shall not apply to the extent that such event is disproportionately adverse to the members of the Acerus Group, taken as a whole, as compared to other companies in the industries in which the members of the Acerus Group operate.

"**Monitor**" means Ernst & Young Inc., as Court-appointed monitor of the members of the Acerus Group in the CCAA Proceeding and not in its personal or corporate capacity.

"**Monitor's Certificate**" means the certificate delivered to Purchaser and filed with the CCAA Court by the Monitor certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor from Company and Purchaser that all conditions to Closing have been satisfied or waived by the applicable Parties and the transactions contemplated by this Agreement have been completed.

“**Order**” means any order of the Court made in the CCAA Proceedings, any order of the U.S. Bankruptcy Court made in the U.S. Proceedings, or any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.

“**Outside Date**” has the meaning given to such term in Section 10.1(b).

“**Parties**” means Company and Purchaser collectively, and “**Party**” means either Company or Purchaser, as the context requires.

“**Permitted Encumbrances**” means the Encumbrances listed in Schedule 1.1(b)(1).

“**Person**” includes an individual, partnership, firm, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, entity, corporation, unincorporated association, or organization, syndicate, committee, court appointed representative, the government of a country or any political subdivision thereof, or any agency, board, tribunal, commission, bureau, instrumentality, or department of such government or political subdivision, or any other entity, howsoever designated or constituted, including any Taxing Authority, and the trustees, executors, administrators, or other legal representatives of an individual, and for greater certainty includes any Governmental Authority.

“**Post-Closing Straddle Tax Period**” has the meaning given to such term in Section 8.4(c).

“**Post-Filing Claim**” or “**Post-Filing Claims**” means any or all indebtedness, liability, or obligation of the members of the Acerus Group of any kind that arises during and in respect of the period commencing on the Filing Date and ending on the day immediately preceding the Closing Date in respect of services rendered or supplies provided to the members of the Acerus Group during such period; provided that, for certainty, such amounts are not a Restructuring Period Claim or a Restructuring Period D&O Claim.

“**Priority Payments**” means those priority payments prescribed under subsections 6(3), 6(5) and 6(6) of the CCAA, and the amounts owing under the Employee Priority Claims, and including those amounts identified in the Implementation Steps.

“**Purchase Price**” has the meaning given to such term in Section 3.1.

“**Purchased Shares**” has the meaning given to such term in Section 2.1(a).

“**Purchaser**” has the meaning given to such term in the preamble to this Agreement.

“**Released Claims**” means all claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions, informations or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including “claims” as defined in the CCAA or the U.S. Bankruptcy Code and including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

“**Residual Cos.**” means each of “**Residual Co. 1**” and “**Residual Co. 2**”, to be formed by Company, each such entities in form satisfactory to Purchaser, acting reasonably, prior to the Closing; provided, that no such entity shall be a flow through entity for Canadian or U.S. tax purposes unless approved by Purchaser, and each a “**Residual Co.**”.

“**Restructuring Period Claim**” means any Claim owed by any member of the Acerus Group arising out of the restructuring, disclaimer, resiliation, termination or breach by such member of the Acerus Group on or after the Filing Date of any contract, lease or other agreement, whether written or oral.

“**Restructuring Period D&O Claim**” means any Claim against one or more of the directors and/or officers of a member of the Acerus Group arising after the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any assessments and any right or ability of any Person to advance a claim for contribution, indemnity or otherwise against any of such directors and/or officers with respect to any matter, action, cause or chose in action, whether existing at present or arising or commenced in the future, for which any such director or officer is alleged to be, by statute or otherwise by law or equity, liable to pay in his or her capacity as a director or officer.

“**Retained Liabilities**” has the meaning given to such term in Section 2.3.

“**SISP**” means the Sale and Investment Solicitation Process approved by the SISP Order, as may be amended by the CCAA Court from time to time.

“**SISP Order**” has the meaning ascribed to it in the preamble.

“**SISP Recognition Order**” has the meaning ascribed to it in the preamble.

“**Successful Bid(s)**” has the meaning given to such term in the SISP.

“**Successful Bidder(s)**” has the meaning given to such term in the SISP.

“**Tax**” and “**Taxes**” means taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever (including withholding on amounts paid to or by any Person) imposed by any Taxing Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Taxing Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, escheat, property, development, occupancy, employer health, payroll, employment, health, disability, severance, unemployment, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all license, franchise and registration fees and all employment insurance, health insurance and Canada, Ontario and other government pension plan premiums or contributions.

"**Tax Act**" means the *Income Tax Act* (Canada) and shall also include a reference to any applicable and corresponding provisions under the income tax laws of a province or territory of Canada, as applicable.

"**Tax Return**" means any return, declaration, report, statement, information statement, form, election, amendment, claim for refund, schedule or attachment thereto or other document filed or required to be filed with a Taxing Authority with respect to Taxes.

"**Taxing Authority**" means His Majesty the King in right of Canada, His Majesty the King in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof, the United States Internal Revenue Service, any similar revenue or taxing authority of the U.S. and each and every state and locality of the U.S., and any Canadian, U.S. or other Governmental Authority exercising taxing authority or power, and "Taxing Authority" means any one of the Taxing Authorities.

"**Terminated Employees**" means those individuals employed by a member of the Acerus Group whose employment has or shall be terminated by the applicable member of the Acerus Group, including those deemed to be terminated pursuant to Section 8.5(c).

"**Transaction Regulatory Approvals**" means any material licenses, permits or approvals required from any Governmental Authority or under any Applicable Laws relating to the business and operations of the members of the Acerus Group that would be required to be obtained in order to permit the members of the Acerus Group and Purchaser to complete the transactions contemplated by this Agreement.

"**U.S.**" means the United States of America.

"**U.S. Bankruptcy Code**" means title 11 of the United States Code, 11 U.S.C. §§ 101 et seq, as amended.

"**U.S. Bankruptcy Court**" means the United States Bankruptcy Court for the District of Delaware, overseeing the U.S. Proceedings.

"**U.S. Proceedings**" has the meaning given to such term in Recital C.

"**Vesting Order**" means an order of the CCAA Court substantially in the form of Schedule 1.1(b)(2) (or as otherwise acceptable to Purchaser and Company, each acting reasonably).

"**Vesting Recognition Motion**" has the meaning given to such term in subsection 9.1(f).

"**Vesting Recognition Order**" means an order of the U.S. Bankruptcy Court entered in the U.S. Proceedings in form and substance acceptable to Purchaser, acting reasonably, which shall, among other things, recognize and give effect to the Vesting Order and otherwise recognize this Agreement and the transactions contemplated hereby.

1.2 Statutes

Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules and regulations made under it, as it or they may have been or may from time to time be amended, re-enacted or replaced.

1.3 Headings, Table of Contents, etc.

The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and do not affect the interpretation of this Agreement. The recitals to this Agreement are an integral part of this Agreement.

1.4 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing gender include all genders.

1.5 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian dollars. References to "$" are to Canadian dollars. References to USD$ are to United States Dollars.

1.6 Certain Phrases

In this Agreement (i) the words "including", "includes" and "include" and any derivatives of such words mean "including (or includes or include) without limitation" and (ii) the words "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". The expression "Article", "Section" and other subdivision followed by a number, mean and refer to the specified Article, Section or other subdivision of this Agreement.

1.7 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon (i) such a determination of invalidity or unenforceability or (ii) any change in Applicable Law or other action by any Governmental Authority which materially detracts from the legal or economic rights or benefits, or materially increases the obligations, of any Party or any of its Affiliates under this Agreement, the Parties shall negotiate to modify this Agreement in good faith so as to effect the original intent of the Parties as closely as possible in an acceptable manner so that the transactions contemplated by this Agreement be consummated as originally contemplated to the fullest extent possible.

1.8 Knowledge

Any reference to the knowledge of (i) Company or the members of the Acerus Group, means the actual knowledge, after reasonable inquiry of Edward Gudaitis, and (ii) Purchaser, means the actual knowledge, after reasonable inquiry, of Ian Ihnatowycz.

1.9 Entire Agreement

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement among the Parties, and set out all the covenants, promises, warranties, representations, conditions and agreements among the Parties in connection with the subject matter of this Agreement, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, precontractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral among the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

1.10 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by all Parties hereto. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

1.11 Governing Law; Jurisdiction and Venue

This Agreement, the rights and obligations of the Parties under this Agreement, and any Claim or controversy directly or indirectly based upon or arising out of this Agreement or the transactions contemplated by this Agreement (whether based on contract, tort or any other theory), including all matters of construction, validity and performance, shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof. The Parties consent to the jurisdiction and venue of the CCAA Court for the resolution of any such disputes arising under this Agreement. Each Party agrees that service of process on such Party as provided in Section 12.7 shall be deemed effective service of process on such Party.

1.12 Incorporation of Schedules and Exhibits

Any schedule or exhibit attached thereto, and any schedule or exhibit attached to this Agreement, is an integral part of this Agreement.

1.13 Accounting Terms

All accounting terms used in this Agreement are to be interpreted in accordance with GAAP unless otherwise specified.

1.14 Non-Business Days

Whenever payments are to be made or an action is to be taken on a day which is not a Business Day, such payment will be made or such action will be taken on or not later than the next succeeding Business Day.

1.15 Computation of Time Periods

If any action may be taken within, or any right or obligation is to expire at the end of, a period of days under this Agreement, then the first day of the period is not counted, but the day of its expiry is counted.

ARTICLE 2
PURCHASE AND SALE

2.1 Agreement to Purchase and Sell Purchased Shares

(a) Upon and subject to the terms and conditions of this Agreement, at the Closing and effective as of the Closing Time, and subject to the completion of the Implementation Steps required to be completed prior to the Closing Time, Company shall issue to Purchaser, and Purchaser shall purchase from Company, free and clear of all Encumbrances (other than Permitted Encumbrances), 1,000,000,000,000,000 Class "A" Common shares of Company from treasury (the "**Purchased Shares**").

(b) Pursuant to the Vesting Order, in accordance with the Implementation Steps, all Equity Interests of Company outstanding prior to the issuance of the Purchased Shares other than the Purchased Shares shall be cancelled, without consideration, and the Purchased Shares shall represent 100% of the outstanding Equity Interests in Company after such cancellation and issuance.

(c) For the avoidance of doubt, upon the Closing and after the completion of the Implementation Steps, Company and each and every direct and indirect subsidiary of Company shall be wholly owned, directly or indirectly, by Purchaser.

2.2 Excluded Assets

Notwithstanding any provision of this Agreement to the contrary, as of the Closing, the assets of the members of the Acerus Group shall not include any of the following assets, together with any other assets as set forth on Schedule 2.2 (collectively, the "**Excluded Assets**"):

(a) the Tax records and returns, and books and records pertaining thereto and other documents, in each case, that primarily or solely relate to any of the Excluded Liabilities, provided that the applicable member of the Acerus Group may take copies of all Tax records and books and records pertaining to such records (as redacted, if applicable) to the extent necessary or useful for the carrying on of the Business after Closing, including the filing of any Tax Return, provided, however that Residual Cos. shall retain the original copies of any of the records required to be provided to the applicable member of the Acerus Group hereunder (and provide the applicable member of the Acerus Group with a copy thereof) to the extent Residual Cos. are required to do so under Applicable Law;

(b) the Administrative Expense Amount;

(c) the Excluded Contracts;

(d) the Excluded Leases;

(e) all communications, information or records, written or oral, that are in any way related to (i) the transactions contemplated by this Agreement, (ii) the sale of the Purchased Shares, (iii) any Excluded Asset or (iv) any Excluded Liability;

(f) any rights which accrue to Residual Cos. under the transaction documents; and

(g) any other asset, including contracts and leases, identified by Purchaser to Company in writing as an Excluded Asset no later than two (2) Business Days before the Closing Date.

2.3 Retained Liabilities

Pursuant to this Agreement and the Vesting Order, as of the Closing Time the only obligations and liabilities of the Acerus Group shall consist of only the items specifically set forth below, as applicable (collectively, the "**Retained Liabilities**"); provided, for the avoidance of doubt the Retained Liabilities of any member of the Acerus Group pursuant to this Section 2.3 shall continue to be liabilities of the applicable member of the Acerus Group (and, except as applied to Section 2.3(c)) no other Person) as of the Closing; provided, further, however, that each of the members of the Acerus Group shall take such steps as are necessary to ensure that any claim that could give rise to responsible person liability is satisfied if the applicable member of the Acerus Group is, for any reason, unable to satisfy such claim:

(a) all Post-Filing Claims;

(b) all liabilities of the members of the Acerus Group arising from and after Closing;

(c) (A) Tax liabilities of the members of the Acerus Group for any tax period or the portion thereof beginning on or after the Filing Date, and (B) any other Taxes, including sales or use taxes, payable to a Taxing Authority for any period whereby the nonpayment of which by any member of the Acerus Group could result in a responsible person (including for greater certainty, employees, officers or directors) associated with a member of the Acerus Group being held personally liable for such nonpayment, excluding from (A), for the avoidance of doubt (x) all income tax or similar liabilities of any member of the Acerus Group for any tax period ending prior to the Filing Date, other than Taxes with respect to which any current or former employee, officer, director or other individual may be held liable under any applicable statute imposing responsible person liability for unpaid taxes, and (y) any Tax or similar liability directly and solely related to the Excluded Assets, other than Taxes with respect to which any current or former employee, officer, director or other individual may be held liable under any applicable statute imposing responsible person liability for unpaid taxes (excluding, for the avoidance of doubt, any such person serving in such capacity at a Residual Co.);

(d) Intercompany Claims between members of the Acerus Group;

(e) any and all indemnification obligations of the members of the Acerus Group to current and former directors, officers and or other person employed or previously employed by the members of the Acerus Group (excluding, for the avoidance of doubt, Residual Cos.), provided that such indemnification both: (i) arises under the corporate by-laws of the applicable member of the Acerus Group; and (ii) is covered under the director and officer insurance policies of such member of the Acerus Group, and only to the extent covered by such director and officer insurance policy; and

(f) those specific Retained Liabilities set forth in Schedule 2.3.

2.4 Excluded Liabilities

Except as expressly retained pursuant to or specifically contemplated by Section 2.3, all Claims and all debts, obligations, and liabilities of the members of the Acerus Group or any predecessors of the members of the Acerus Group, of any kind or nature, shall be assigned and become the sole obligation of the Residual Cos. pursuant to the terms of the Vesting Order and this Agreement, and, as of the Closing, the members of the Acerus Group shall not have any obligation, duty, or liability of any kind whatsoever, except as expressly retained pursuant to Section 2.3, whether accrued, contingent, known or unknown, express or implied, primary or secondary, direct or indirect, liquidated, unliquidated, absolute, accrued, contingent or otherwise, and whether due or to become due, and such liabilities or obligations shall be the sole responsibility of the applicable Residual Co., including inter alia, the non-exhaustive list of those certain Liabilities set forth in Schedule 2.4, and any and all liability relating to any change of control provision that may arise in connection with the change of control contemplated by the transactions hereunder and to which the members of the Acerus Group may be bound as at Closing, all liabilities relating to or under the Excluded Contracts, the Excluded Leases and Excluded Assets, liabilities for employees whose employment with Company or its Affiliates is terminated on or before Closing, including the Terminated Employees, the Restructuring Period Claims, and the Restructuring Period D&O Claims (collectively, the "**Excluded Liabilities**"). For avoidance of doubt, Excluded Liabilities shall not include any debts, obligations, liabilities or Encumbrances that are or are deemed to be an interest in land and, to the extent that any of the Excluded Liabilities listed in Schedule 2.4 hereof is determined by the Court to be an interest in land, and any interest in land shall be deemed to be Retained Liabilities hereunder. Purchaser may, with the consent of Company, which consent shall not be unreasonably withheld, amend the clarifying items listed in Schedule 2.4 as specifically enumerated Excluded Liabilities no later than two (2) Business Days before the Closing Date.

2.5 Transfer of Excluded Liabilities to Residual Co. 1 and Residual Co. 2

On the Closing Date, pursuant to the terms of the Vesting Order, the members of the Acerus Group shall assign and transfer the Excluded Liabilities: (i) relating to each of APC, ABI and ALI to Residual Co. 1; and (ii) relating to APL to Residual Co. 2, and each such Residual Co. shall assume the applicable Excluded Liabilities. All of the Excluded Liabilities shall be discharged from the members of the Acerus Group as of the Closing, pursuant to the Vesting Order.

2.6 Transfer of Excluded Assets to Residual Co. 1 and Residual Co. 2

On the Closing Date, pursuant to the terms of the Vesting Order and, where applicable, in consideration for Residual Cos. assuming the Excluded Liabilities pursuant to Section 2.5 from a member of the Acerus Group, the members of the Acerus Group shall assign and transfer the Excluded Assets (i) relating to each of APC, ABI and ALI to Residual Co. 1; and (ii) relating to APL to Residual Co. 2, and the Excluded Assets shall be vested in the applicable Residual Co. pursuant to the Vesting Order.

2.7 Pre-Closing and Closing Reorganization

(a) The specific mechanism for implementing the Closing, payment of the Credit Bid Consideration, and the structure of the transactions contemplated by this Agreement shall be structured in a tax efficient manner mutually agreed upon by the parties, each acting reasonably.

(b) On or prior to the Closing Date, the members of the Acerus Group shall effect the transaction steps and pre-closing reorganization (collectively, the "**Implementation Steps**") of the members of the Acerus Group as set forth on a schedule to be agreed upon by Company and Purchaser, each acting reasonably, at least seven (7) days prior to the hearing of the members of the Acerus Group's motion to the CCAA Court seeking the Vesting Order; provided that in no event will the Implementation Steps described in Schedule 2.7(c) be materially prejudicial to the interests of Purchaser under the other sections of this Agreement. The Implementation Steps may include, without limitation, the formation of new entities required to implement the transactions contemplated by this Agreement in a tax efficient manner, consistent with Section 2.7(a).

(c) The Implementation Steps shall occur, and be deemed to have occurred in the order and manner to be set out in Schedule 2.7(c).

(d) The steps to be taken and the compromises and releases to be effective on the Closing Date are deemed to occur and be effected in the steps and sequential order set forth in Schedule 2.7(c), beginning on or before the Closing Date at such time as is specified therein.

ARTICLE 3
PURCHASE PRICE AND RELATED MATTERS

3.1 Purchase Price

The purchase price payable by Purchaser for the Purchased Shares (the "**Purchase Price**") shall be the release of the applicable members of the Acerus Group from all amounts outstanding and obligations owing to Purchaser pursuant to the Loan Agreements and the DIP Facility Loan Agreement as of the Closing Date, including the principal amount of such claims and interest accrued as of the Closing Date, which amount as of April 28, 2023 is **USD$62,187,732.63**, plus all accrued and unpaid interest thereon through to and including the Closing Date, plus any fees and expenses associated therewith (such aggregate amount, the "**Credit Bid Consideration**").

3.2 Payment of Certain Liabilities

On the Closing Date, the members of the Acerus Group shall satisfy, in accordance with the Implementation Steps, the Priority Payments as required to be paid on Closing in the Vesting Order such that all the Priority Payments shall be satisfied in full in connection with the Closing.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF COMPANY

Company represents and warrants, on behalf of itself and all other members of the Acerus Group, to Purchaser as follows, and acknowledges that Purchaser is relying upon the following representations and warranties in connection with its purchase of the Purchased Shares:

4.1 Due Authorization and Enforceability of Obligations

Subject to the granting of the Vesting Order and Vesting Recognition Order, this Agreement has been duly authorized, executed and delivered by it, and constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

4.2 Existence and Good Standing

Each of the members of the Acerus Group is validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and (i) has all requisite power and authority to execute and deliver this Agreement and (ii) has taken all requisite corporate or other action necessary for it to execute and deliver this Agreement and to perform its obligations hereunder and consummate the transaction contemplated hereunder.

4.3 Sophisticated Parties

Each of the members of the Acerus Group (i) is a sophisticated party with sufficient knowledge and experience to evaluate properly the terms and conditions of this Agreement, (ii) has conducted its own analysis and made its own decision to enter into this Agreement and has obtained such independent advice in this regard as it deemed appropriate, and (iii) has not relied on such analysis or decision of any Person other than its own independent advisors.

4.4 Absence of Conflicts

The execution and delivery of this Agreement by Company and the completion by Company of its obligations hereunder and the consummation of the transactions contemplated herein do not and will not violate or conflict with any Applicable Law, (subject to the receipt of any Transaction Regulatory Approvals and the granting of the Vesting Order and Vesting Recognition Order) and will not result (with due notice or the passage of time or both) in a violation, conflict or breach of, or constitute a default under, or require any consent to be obtained under the certificate of incorporation, articles, by-laws or other constituent documents of any member of the Acerus Group. Subject to the granting of the Vesting Order and Vesting Recognition Order, the execution, delivery and performance by Company does not and will not violate any Order.

4.5 Approvals and Consents

The execution and delivery of this Agreement by Company, the completion by Company of its obligations hereunder and the consummation by Company of the transactions contemplated herein, do not and will not require any consent or approval or other action, with or by, any Governmental Authority, other than as contemplated by the Transaction Regulatory Approvals and the entry of the Vesting Order by the CCAA Court and Vesting Recognition Order by the U.S. Bankruptcy Court.

4.6 No Actions

Except for as previously disclosed in writing to the Purchaser, there is not, as of the date hereof, pending or, to Company's knowledge, threatened against any member of the Acerus Group or any of its properties, nor has any member of the Acerus Group received any written notice in respect of, any claim, potential claim, litigation, action, suit, arbitration, investigation or other proceeding before any Governmental Authority or legislative body, other than the CCAA Court, that, would prevent Company from executing and delivering this Agreement, performing its obligations hereunder and consummating the transactions and agreements contemplated by this Agreement.

4.7 Subsidiaries

Schedule 4.7 sets forth a complete and correct list of the name and jurisdiction of organization of each member of the Acerus Group.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Company as follows, and acknowledges that Company is relying upon the following representations and warranties in connection with the sale of the Purchased Shares:

5.1 Due Authorization and Enforceability of Obligations

This Agreement has been duly authorized, executed and delivered by Purchaser, and, assuming the due authorization, execution and delivery by it, this Agreement constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

5.2 Existence and Good Standing

Purchaser is validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder and consummate the transactions contemplated by this Agreement.

5.3 Sophisticated Party

Purchaser (i) is a sophisticated party with sufficient knowledge and experience to evaluate properly the terms and conditions of this Agreement, (ii) has conducted its own analysis and made its own decision to enter into this Agreement and has obtained such independent advice in this regard as it deemed appropriate, and (iii) has not relied on such analysis or decision of any Person other than its own independent advisors.

5.4 Absence of Conflicts

The execution and delivery of this Agreement by Purchaser and the completion by Purchaser of its obligations hereunder and the consummation of the transactions contemplated herein do not and will not violate or conflict with any Applicable Law, or any of its properties or assets, (subject to the receipt of any Transaction Regulatory Approvals) and will not result (with due notice or the passage of time or both) in a violation, conflict or breach of, or constitute a default under, or require any consent to be obtained under its certificate of incorporation, articles, by-laws or other constituent documents.

5.5 Approvals and Consents

The execution and delivery of this Agreement by Purchaser, the completion by Purchaser of its obligations hereunder and the consummation by Purchaser of the transactions contemplated herein, do not and will not require any consent or approval or other action, with or by, any Governmental Authority, other than as contemplated by the Transaction Regulatory Approvals and the granting of the Vesting Order by the CCAA Court and Vesting Recognition Order by the U.S. Bankruptcy Court.

5.6 No Actions

There is not, as of the date hereof, pending or, to Purchaser's knowledge, threatened against it or any of its properties, nor has Purchaser received notice in respect of, any claim, potential claim, litigation, action, suit, arbitration, investigation or other proceeding before any Governmental

Authority or legislative body, other than the CCAA Court, that, would prevent it from executing and delivering this Agreement, performing its obligations hereunder and consummating the transactions and agreements contemplated by this Agreement.

5.7 Accredited Investor

Purchaser is an "accredited investor", as such term is defined in NI 45-106 and in Rule 501 of Regulation D under the United States Securities Act of 1933 (the "**Securities Act**") and it was not created or used solely to purchase or hold securities as an accredited investor as described in paragraph (m) of the definition of "accredited investor" in NI 45-106 and acknowledges that the Purchased Shares may be subject to resale restrictions under applicable securities laws. The Purchased Shares are being acquired by Purchaser for its own account, and not with a view to, or for the offer or sale in connection with, any public distribution or sale of the Purchased Shares or any interest in them.

5.8 Credit Bid; Availability of Funds

Purchaser has executed, on or prior to the date hereof, the requisite instruction letters to fully authorize Purchaser, and Purchaser is duly authorized, to, among other things, deliver the Credit Bid Consideration in connection with the consummation of the Closing hereunder.

ARTICLE 6
AS IS, WHERE IS

Purchaser acknowledges and agrees that it has conducted to its satisfaction an independent investigation and verification of the Business, the Purchased Shares, the Retained Liabilities and all related operations of the members of the Acerus Group, and, based solely thereon and the advice of its financial, legal and other advisors, has determined to proceed with the transactions contemplated by this Agreement. The Purchaser has relied solely on the results of its own independent investigation and verification and, except for the representations and warranties of the Company expressly set forth in Article 4, the Purchaser understands, acknowledges and agrees that all other representations, warranties, conditions and statements of any kind or nature, expressed or implied (including any relating to the future or historical financial condition, results of operations, prospects, assets or liabilities of the members of the Acerus Group or the Business, or the quality, quantity or condition of the Purchased Shares) are specifically disclaimed by the Company, the other members of Acerus Group, their respective financial and legal advisors and the Monitor and its legal counsel. THE PURCHASER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF THE COMPANY EXPRESSLY AND SPECIFICALLY SET FORTH IN Article 4: (A) THE PURCHASER IS ACQUIRING THE PURCHASED SHARES ON AN "AS IS, WHERE IS" BASIS; AND (B) NONE OF THE COMPANY, THE OTHER MEMBERS OF THE ACERUS GROUP, THE MONITOR OR ANY OTHER PERSON (INCLUDING ANY REPRESENTATIVE OF THE COMPANY, THE OTHER MEMBERS OF THE ACERUS GROUP OR THE MONITOR WHETHER IN ANY INDIVIDUAL, CORPORATE OR ANY OTHER CAPACITY) IS MAKING, AND THE PURCHASER IS NOT RELYING ON, ANY REPRESENTATIONS, WARRANTIES, CONDITIONS OR OTHER STATEMENTS OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED,

STATUTORY OR OTHERWISE, AS TO ANY MATTER CONCERNING THE MEMBERS OF THE ACERUS GROUP, THE BUSINESS, THE PURCHASED SHARES, THE RETAINED LIABILITIES, THE EXCLUDED ASSETS, THE EXCLUDED LIABILITIES, THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT, OR THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED TO (OR OTHERWISE ACQUIRED BY) THE PURCHASER OR ANY OF ITS RESPECTIVE REPRESENTATIVES, INCLUDING WITH RESPECT TO MERCHANTABILITY, PHYSICAL OR FINANCIAL CONDITION, DESCRIPTION, FITNESS FOR A PARTICULAR PURPOSE, OR IN RESPECT OF ANY OTHER MATTER OR THING WHATSOEVER, INCLUDING ANY AND ALL CONDITIONS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, PURSUANT TO ANY APPLICABLE LAWS IN ANY JURISDICTION, WHICH THE PURCHASER CONFIRMS DO NOT APPLY TO THIS AGREEMENT, AND ARE HEREBY WAIVED IN THEIR ENTIRETY BY THE PURCHASER.

ARTICLE 7
CONDITIONS

7.1 Conditions for the Benefit of Purchaser and Company

The respective obligations of Purchaser and Company to consummate the transactions contemplated by this Agreement are subject to the satisfaction of, or compliance with, at or prior to the Closing Time, each of the following conditions:

(a) *No Law* – no provision of any Applicable Law and no judgment, injunction or Order preventing or otherwise frustrating the consummation of the purchase of the Purchased Shares or any of the other transactions pursuant to this Agreement, including, for the avoidance of doubt, a cease trade or similar order issued by a Governmental Authority in respect of any member of the Acerus Group, shall be in effect;

(b) *Final Orders* – each of the SISP Order and the Vesting Order shall have been issued and entered and shall be Final Orders;

(c) *Final U.S. Orders* – the SISP Recognition Order and Vesting Recognition Order shall have been issued and entered by the U.S. Bankruptcy Court and shall be Final Orders; and

(d) *Transaction Regulatory Approvals* – the members of the Acerus Group shall have received all required Transaction Regulatory Approvals, and all required Transaction Regulatory Approvals shall be in full force and effect, except for Transaction Regulatory Approvals that need not be in full force and effect prior to Closing.

The Parties acknowledge that the foregoing conditions are for the mutual benefit of Company and Purchaser. Any condition in this Section 7.1 may be waived by Company and by Purchaser, in whole or in part, without prejudice to any of their respective rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver will be binding on Company or Purchaser, as applicable, only if made in writing.

7.2 Conditions for the Benefit of Purchaser

The obligation of Purchaser to consummate the transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver by Purchaser of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of Purchaser):

(a) *Performance of Covenants* – the covenants contained in this Agreement to be performed or complied with by Company at or prior to the Closing Time shall have been performed or complied with in all material respects as at the Closing Time;

(b) *Truth of Representations and Warranties* – (i) the Fundamental Representations and Warranties of Company shall be true and correct in all respects as of the Closing Date, as if made at and as of such date (except for *de minimus* inaccuracies) and (ii) all other representations and warranties of Company contained in Article 4 shall be true and correct in all respects as of the Closing Date, as if made at and as of such date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date) except where the failure to be so true and correct would not, in the aggregate, have a Material Adverse Effect (and, for this purpose, any reference to "**material**", "**Material Adverse Effect**" or other concepts of materiality in such representation and warranties shall be ignored);

(c) *Officer's Certificates* – Purchaser shall have received a certificate confirming the satisfaction of the conditions contained in Sections 7.2(a) (*Performance of Covenants*) and 7.2(b) (*Truth of Representations and Warranties*), signed for and on behalf of Company without personal liability by an executive officer of Company or other Persons acceptable to Purchaser, in each case in form and substance reasonably satisfactory to Purchaser;

(d) *No Material Adverse Effect* – since the date hereof, no change effect, event, occurrence, state of facts or development shall have occurred that resulted in, or would reasonably be expected to result in, a Material Adverse Effect;

(e) *Company's Deliverables* – Company shall have delivered to Purchaser all of the deliverables contained in Section 11.2 in form and substance reasonably satisfactory to Purchaser;

(f) *Implementation Steps* – the members of the Acerus Group shall have completed the Implementation Steps that are required to be completed prior to Closing, in form and substance reasonably acceptable to Purchaser, acting reasonably;

(g) *Terminated Employees* - the applicable member of the Acerus Group shall have terminated the employment of the Terminated Employees, and all liabilities owing to any such Terminated Employees in respect of such terminations, including all amounts owing on account of or damages in lieu of, statutory notice, termination payments, severance, benefits, bonuses or other compensation or entitlements, shall be Excluded Liabilities which, pursuant the Vesting Order, shall be assigned and transferred as against the applicable member of the Acerus Group to and assumed by Residual Co.

(h) *Sufficient Funds* – As of immediately prior to the Closing, the aggregate amount of cash held by the members of the Acerus Group shall be sufficient to pay all amounts to be paid by the members of the Acerus Group pursuant to this Agreement and the Vesting Order.

7.3 Conditions for the Benefit of Company

The obligation of Company to consummate the transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver where applicable by Company of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of Company):

(a) *Truth of Representations and Warranties* – the representations and warranties of Purchaser contained in Article 5 will be true and correct in all respects on and as of the date of this Agreement and on and as of the Closing Date as if made on and as of such date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date) except where the failure to be so true and correct would not reasonably be expected to have a material and adverse effect on Purchaser's ability to consummate the transactions contemplated by this Agreement;

(b) *Performance of Covenants* – the covenants contained in this Agreement to be performed by Purchaser at or prior to the Closing Time shall have been performed in all material respects as at the Closing Time;

(c) *Officer's Certificate* – Company shall have received a certificate confirming the satisfaction of the conditions contained in Sections 7.3(a) and 7.3(b) signed for and on behalf of Purchaser without personal liability by an executive officer of Purchaser or other Persons acceptable to Company, acting in a commercially reasonable manner, in each case, in form and substance satisfactory to Company, acting in a commercially reasonable manner; and

(d) *Purchaser Deliverables* – Purchaser shall have delivered to Company all of the deliverables contained in Section 11.3 in form and substance satisfactory to Company, acting in a commercially reasonable manner.

(e) *Sufficient Funds* – as of immediately prior to the Closing, the aggregate amount of cash held by the members of the Acerus Group shall be sufficient to pay all amounts to be paid by the members of the Acerus Group pursuant to this Agreement and the Vesting Order, including the Administrative Expense Amount.

ARTICLE 8
ADDITIONAL AGREEMENTS OF THE PARTIES

8.1 Access to Information

(a) Until the Closing Time, Company shall give to Purchaser's personnel engaged in the transactions contemplated by this Agreement and their accountants, legal advisers, consultants, financial advisors and representatives during normal business hours reasonable access to its premises and to all of the books and records relating to the Business, the members of the Acerus Group, the Retained Liabilities and the employees, and shall furnish them with all such information relating to the Business, the members of the Acerus Group, the Retained Liabilities and the employees as Purchaser may reasonably request in connection with the transactions contemplated by this Agreement; provided that such access shall be conducted at Purchaser's expense, in accordance with Applicable Law and under supervision of Company's personnel and in such a manner as to maintain confidentiality, and Company will not be required to provide access to or copies of any such books and records if: (i) the provision thereof would cause Company to be in contravention of any Applicable Law; or (ii) making such information available would: (1) result in the loss of any lawyer-client or other legal privilege; or (2) cause Company to be found in contravention of any Applicable Law, or contravene any fiduciary duty or agreement (including any confidentiality agreement to which Company or any of its Affiliates are a party). Notwithstanding anything in this Section 8.1 to the contrary, any such investigation shall be conducted upon reasonable advance notice and in such manner as does not materially disrupt the conduct of the Business or the possible sale thereof to any other Person.

(b) Following the Closing, the members of the Acerus Group shall make all books and records of the members of the Acerus Group reasonably available to the Monitor and any trustee in bankruptcy of any of the members of the Acerus Group upon at least five (5) Business Days prior notice, for a period of seven (7) years after Closing, and shall, at such party's expense, permit any of the foregoing Persons to take copies thereof as they may determine to be necessary or useful to accomplish their respective roles; provided that Purchaser shall not be obligated to make such books and records available to the extent that doing so would: (i) violate Applicable Law; (ii) jeopardize the protection of a solicitor-client privilege; or (iii) unreasonably interfere with the ongoing business and operations of the members of the Acerus Group and their Affiliates, as determined by the members of the Acerus Group, acting reasonably.

8.2 Approvals and Consents

(a) The Parties shall use commercially reasonable efforts to apply for and obtain any Transaction Regulatory Approvals as soon as reasonably practicable and no later than the time limits imposed by Applicable Laws, in accordance with Section 8.2(b), in each case at the sole cost and expense of Company.

(b) The Parties shall use commercially reasonable efforts to apply for and obtain the Transaction Regulatory Approvals and shall co-operate with one another in connection with obtaining such approvals. Without limiting the generality of the foregoing, the Parties shall: (i) give each other reasonable advance notice of all meetings or other oral communications with any Governmental Authority relating to the Transaction Regulatory Approvals, as applicable, and provide as soon as practicable but in any case, if any, within the required time, any additional submissions, information and/or documents requested by any Governmental Authority necessary, proper or advisable to obtain the Transaction Regulatory Approvals; (ii) not participate independently in any such meeting or other oral communication without first giving the other Party (or their outside counsel) an opportunity to attend and participate in such meeting or other oral communication, unless otherwise required or requested by such Governmental Authority; (iii) if any Governmental Authority initiates an oral communication regarding the Transaction Regulatory Approvals, promptly notify the other Party of the substance of such communication; (iv) subject to Applicable Laws relating to the exchange of information, provide each other with a reasonable advance opportunity to review and comment upon and consider in good faith the views of the other in connection with all written communications (including any filings, notifications, submissions, analyses, presentations, memoranda, briefs, arguments, opinions and proposals) made or submitted by or on behalf of a Party with a Governmental Authority regarding the Transaction Regulatory Approvals as applicable; and (v) promptly provide each other with copies of all written communications to or from any Governmental Authority relating to the Transaction Regulatory Approvals as applicable.

(c) Each of the Parties may, as advisable and necessary, reasonably designate any competitively or commercially sensitive material provided to the other under this Section 8.2 as "Outside Counsel Only Material", provided that the disclosing Party also provides a redacted version to the receiving Party. Such materials and the information contained therein shall be given only to the outside legal counsel of the recipient and, subject to any additional agreements between the Parties, will not be disclosed by such outside legal counsel to employees, officers or directors of the recipient unless express written permission is obtained in advance from the source of the materials or its legal counsel.

(d) The obligations of either Party to use its commercially reasonable efforts to obtain the Transaction Regulatory Approvals does not require either Party (or any Affiliate thereof) to undertake any divestiture of any business or business segment of such Party, to agree to any material operating restrictions related thereto or to incur any material expenditure(s) related therewith, unless agreed to by the Parties. In connection with obtaining the Transaction Regulatory Approvals, no member of the Acerus Group shall agree to any of the foregoing items without the prior written consent of Purchaser.

8.3 Covenants Relating to this Agreement

(a) Each of the Parties shall perform all obligations required to be performed by the applicable Party under this Agreement, co-operate with the other Parties in connection therewith and do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable, the transactions contemplated by this Agreement and, without limiting the generality of the foregoing, from the date hereof until the Closing Date, each Party shall and, where appropriate, shall cause each of its Affiliates to:

(i) negotiate in good faith and use its commercially reasonable efforts to take or cause to be taken all actions and to do, or cause to be done, all things necessary, proper or advisable to satisfy the conditions precedent to the obligations of such Party hereunder (including, where applicable, negotiating in good faith with the applicable Governmental Authorities and/or third Persons in connection therewith), and to cause the fulfillment at the earliest practicable date of all of the conditions precedent to the other Party's obligations to consummate the transactions contemplated hereby; and

(ii) not take any action, or refrain from taking any action, or permit any action to be taken or not taken, which would reasonably be expected to prevent, materially delay or otherwise impede the consummation of the transactions contemplated by this Agreement.

(b) From the date hereof until the Closing Date, Purchaser hereby agrees, and hereby agrees to cause its representatives to, keep Company informed on a reasonably current basis, and no less frequently than on a weekly basis through teleconference or other meeting, and as reasonably requested by Company or the Monitor, as to Purchaser's progress in terms of the satisfaction of the conditions precedent contained herein.

(c) From the date hereof until the Closing Date, Company hereby agrees, and hereby agrees to cause its representatives to, keep Purchaser informed on a reasonably current basis, and no less frequently than on a weekly basis through teleconference or other meeting, and as reasonably requested by Purchaser or the Monitor, as to Company's progress in terms of the satisfaction of the conditions precedent contained herein.

(d) Company and Purchaser agree to execute and deliver such other documents, certificates, agreements and other writings, reasonably necessary for the consummation of the transactions contemplated by this Agreement, and to take such other actions to consummate or implement as soon as reasonably practicable, the transactions contemplated by this Agreement.

(e) From the date hereof until the Closing Date, Company hereby agrees, and hereby agrees to cause its representatives to, promptly notify Purchaser of (i) any event, condition, or development that has resulted in the inaccuracy in a material respect or material breach of any representation or warranty, covenant or agreement contained in this Agreement, or (ii) any Material Adverse Effect occurring from and after the date hereof prior to the Closing Date.

(f) Company and Purchaser agree to use commercial reasonable efforts to timely prepare and file all documentation and pursue all steps reasonably necessary to obtain any material third-party consents and approvals as may be required in connection with the transaction contemplated by this Agreement.

(g) The Company and the Purchaser shall cooperate and use commercially reasonable efforts to have the Company to cease to be a reporting issuer (or equivalent thereof) in the applicable jurisdictions of Canada as soon as reasonably practicable after the Closing Date.

8.4 Tax Matters

(a) Purchaser and Company agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Purchased Shares and the Retained Liabilities as is reasonably necessary for the preparation and filing of any Tax Return, claim for refund or other required filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution of any suit or other proceedings relating to Tax matters and for the answer to any governmental or regulatory inquiry relating to Tax matters. Purchaser and Company also agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the members of the Acerus Group, the Purchased Shares and the Retained Liabilities as is reasonably necessary for Purchaser to acquire them in a tax efficient manner for both Company and the members of the Acerus Group.

(b) Purchaser and Company shall each be responsible for the preparation of their own statements required to be filed under the Tax Act, the ETA and the Code and other similar forms and returns in accordance with Applicable Law.

(c) For all purposes under this Agreement for which it is necessary to apportion taxes in a taxable period which includes (but does not end on) the Closing Date or Filing Date, as applicable (a "**Straddle Period**"), all real property Taxes, personal property Taxes and similar ad valorem obligations shall be apportioned between the taxable period up to and including the Closing Date or Filing Date, as applicable (such portion of such Straddle Period, the "**Pre-Closing Straddle Tax Period**") and the taxable period after the Closing Date or Filing Date, as applicable (such portion of such Straddle Period, the "**Post-Closing Straddle Tax Period**"), on a per diem basis. Except as otherwise provided herein, with respect to the Purchased Shares, Company shall be liable for the proportionate amount of such real property Taxes, personal property Taxes and similar ad valorem obligations that are attributable to the Pre-Closing Straddle Tax Period, and Purchaser shall be liable for the proportionate amount of such real property Taxes, personal property Taxes and similar ad valorem obligations that are attributable to the Post-Closing Straddle Tax Period. For all purposes under this Agreement, in the case of any Tax based upon or related to income, receipts, sales, use, payroll, or withholding, in respect of any Straddle Period, the portion of such Tax allocable to the Pre-Closing Straddle Tax Period shall be deemed to be the amount that would be payable if the relevant Straddle Period ended on and included the Closing Date or Filing Date, as applicable. To the extent such closing of the books method is not incorporated under the law of a jurisdiction for particular types of entities, allocations of income among the periods shall be made to replicate the closing of the books method to the maximum extent possible.

8.5 Employee Matters

(a) Purchaser may in as many separate instances as it may require, notify Company that Purchaser wishes to interview any employees or contractors or consultants of the Acerus Group, and upon receipt of a request thereof Company will use all commercially reasonable efforts to facilitate such interviews as soon as reasonably practicable. Purchaser may, but is not obligated to, in the name of the applicable member of the Acerus Group, make conditional (upon Closing) continued or new (as applicable) offers of employment on such terms as it may determine in its absolute and sole discretion.

(b) Purchaser shall make commercially reasonable efforts to make such offers in writing on or prior to the date that is ten (10) days prior to the anticipated Closing Date, provided that such offers shall be made no later than five (5) days prior to the anticipated Closing Date, and leave such offers open for acceptance up to and including one (1) day prior to the Closing Date. Notwithstanding any other provision of this Agreement, Purchaser has no obligation to offer employment to any employee.

(c) In the event:

(i) no conditional offer of employment is made to such employee of the Acerus Group; or

(ii) an employee who receives an offer of employment rejects such offer in writing or fails to accept such offer of employment up to and including one (1) day prior to the Closing Date,

such employee shall be deemed to be a Terminated Employee.

8.6 Administrative Expense Amount

(a) On the Closing Date, the members of the Acerus Group shall pay to the Monitor the Administrative Expense Amount, which the Monitor shall hold in trust for the benefit of Persons entitled to be paid the Administrative Expense Costs and amounts secured by the CCAA Charges.

(b) From time to time after the Closing Date, the Monitor may pay from the Administrative Expense Amount the Administrative Expense Costs and amounts secured by the CCAA Charges at its sole discretion and without further authorization from Company or Purchaser. Any unused portion of the Administrative Expense Amount after payment or reservation for all Administrative Expense Costs, as determined by the Monitor, shall be transferred by the Monitor to Company.

(c) Notwithstanding the foregoing or anything else contained herein or elsewhere, each of Company and Purchaser acknowledges and agrees that: (i) the Monitor's obligations hereunder are and shall remain limited to those specifically set out in this Section 8.5(a); and (ii) Monitor is acting solely in its capacity as the CCAA Court-appointed Monitor of the Applicants pursuant to the CCAA Order and not in its personal or corporate capacity, and the Monitor has no liability in connection with this Agreement whatsoever, in its personal or corporate capacity or otherwise, save and except for and only to the extent of the Monitor's gross negligence or intentional fault.

(d) The Parties acknowledge that the Monitor may rely upon the provisions of this Section 8.5(a) notwithstanding that the Monitor is not a party to this Agreement. The provisions of this Section 8.5(a) shall survive the termination or non-completion of the transactions contemplated by this Agreement.

8.7 Release by Purchaser

Except in connection with any obligations of Company or the Monitor contained in this Agreement and any Closing Documents, effective as of the Closing, Purchaser and its Affiliates hereby releases and forever discharges the Company, the Monitor, the CRO, and their respective Affiliates, and each of their respective successors and assigns, and all present and former officers, directors, partners, members, shareholders, limited partners, employees, agents, financial and legal advisors of each of them, from any and all actual or potential Released Claims which such Person had, has or may have in the future to the extent relating to the Business, the Purchased Shares or the Retained Liabilities, save and except for Released Claims arising out of fraud, bad faith or illegal acts (unless such Person believed in good faith that its conduct was legal).

8.8 Release by Company

Except in connection with any obligations of Purchaser and the Monitor contained in this Agreement and any Closing Documents, effective as of the Closing, Company and its Affiliates hereby release and forever discharges Purchaser, the Monitor and their respective Affiliates, and each of their respective successors and assigns, and all former and present officers, directors, partners, members, shareholders, limited partners, employees, agents, financial and legal advisors of each of them, from any and all actual or potential Released Claims which such Person had, has or may have in the future to the extent relating to (i) the Purchased Shares; (ii) all other Equity Interests of the Company which remain after the application of the Vesting Order, (ii) the Retained Liabilities, (iii) the Excluded Assets or (iv) the Excluded Liabilities, save and except for Released

Claims arising out of fraud, bad faith or illegal acts (unless such Person believed in good faith that its conduct was legal).

ARTICLE 9
INSOLVENCY PROVISIONS

9.1 Court Orders and Related Matters

(a) From and after the date of this Agreement and until the Closing Date, Company shall deliver to Purchaser drafts of any and all pleadings, motions, notices, statements, applications, schedules, and other papers to be filed or submitted by any member of the Acerus Group in connection with or related to this Agreement, including with respect to the Vesting Order and the Vesting Recognition Order, for Purchaser's prior review at least three (3) days in advance of service and filing of such materials (or where circumstances make it impracticable to allow for three (3) days' review, with as much opportunity for review and comment as is practically possible in the circumstances). Company acknowledges and agrees (i) that any such pleadings, motions, notices, statements, applications, schedules, or other papers shall be in form and substance satisfactory to Purchaser, acting reasonably, and (ii) to consult and cooperate with Purchaser regarding any discovery, examinations and hearing in respect of any of the foregoing, including the submission of any evidence, including witnesses testimony, in connection with such hearing.

(b) Notice of the motions seeking the issuance of the Vesting Order and the Vesting Recognition Order shall be served or be caused to be served by Company on all Persons required to receive notice under Applicable Law and the requirements of the CCAA, the CCAA Court, the U.S. Bankruptcy Code, the U.S. Bankruptcy Court and any other Person determined necessary by Company or Purchaser, acting reasonably.

(c) Notwithstanding any other provision herein, it is expressly acknowledged and agreed that in the event that: (i) the Vesting Order has not been issued and entered by the CCAA Court by May 31, 2023 or such later date agreed to in writing by Purchaser in its sole discretion; or (ii) the Vesting Recognition Order has not been issued and entered by the U.S. Bankruptcy Court within twenty-eight (28) days of the Vesting Order being entered by the CCAA Court or such later date agreed to in writing by Purchaser in its sole discretion, Purchaser may terminate this Agreement.

(d) If the Vesting Order, the Vesting Recognition Order as applicable, relating to this Agreement is appealed or a motion for leave to appeal, rehearing, reargument or reconsideration is filed with respect thereto, Company agrees (subject to the available liquidity of the Company) to take all action as may be commercially reasonable and appropriate to defend against such appeal, petition or motion.

(e) Company acknowledges and agrees, that the Vesting Order, and the Vesting Recognition Order shall provide that, on the Closing Date and concurrently with the Closing, the Purchased Shares shall be transferred to Purchaser free and clear of all Encumbrances, other than Permitted Encumbrances.

(f) Upon the entry of the Vesting Order the Company shall cause APC, as duly appointed and recognized foreign representative in the Chapter 15 Cases, to seek recognition of the Vesting Order and this Agreement by the U.S. Bankruptcy Court (the "**Vesting Recognition Motion**"). Concurrently with the filing of the Vesting Recognition Motion, APC shall seek entry of an order from the U.S. Bankruptcy Court shortening the notice period of the Vesting Recognition Motion to a period not greater than fourteen (14) days. For the avoidance of doubt, the U.S. Bankruptcy Court's granting or denial of APC's request to shorten the notice period of the Vesting Recognition Motion shall not constitute grounds for termination under Article 10 of this Agreement.

ARTICLE 10
TERMINATION

10.1 Termination

This Agreement may be terminated at any time prior to Closing as follows:

(a) by mutual written consent of Company and Purchaser;

(b) by Purchaser or Company, if Closing has not occurred on or before June 30, 2023 or such later date agreed to by both Company and Purchaser in writing in consultation with the Monitor (the "**Outside Date**"), provided that the terminating Party is not in breach of any representation, warranty, covenant or other agreement in this Agreement which would prevent the satisfaction of the conditions in Article 7 by the Outside Date;

(c) by Purchaser or Company, if at any time after the date hereof any of the conditions in Article 7 is not capable of being satisfied by the applicable dates required in Article 7 of this Agreement or if not otherwise required, by the Outside Date;

(d) by Purchaser, pursuant to Section 9.1(c);

(e) by Purchaser, upon the appointment of a receiver, trustee in bankruptcy or similar official in respect of any member of the Acerus Group or any of the property of any member of the Acerus Group, other than with the prior written consent of Purchaser;

(f) by Purchaser or Company, upon the termination, dismissal or conversion of the CCAA Proceedings or the U.S. Proceedings;

(g) by Purchaser or Company, upon dismissal of the motion for the Vesting Order or the Vesting Recognition Order (or if any such order is stayed, vacated or varied without the consent of Purchaser);

(h) by Purchaser or Company, if a court of competent jurisdiction, including the CCAA Court or the U.S. Bankruptcy Court, or other Governmental Authority has issued an Order or taken any other action to restrain, enjoin or otherwise prohibit the consummation of Closing and such Order or action has become a Final Order;

(i) by Company, if there has been a material violation or breach by Purchaser of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 7.1 or Section 7.3, as applicable, by the Outside Date and such violation or breach has not been waived by Company or cured within ten (10) Business Days after written notice thereof from Company, unless Company is in material breach of their obligations under this Agreement which would prevent the satisfaction of the conditions set forth in Section 7.1 or Section 7.2, as applicable, by the Outside Date; and

(j) by Purchaser, if there has been a material violation or breach by Company of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 7.1 or Section 7.2, as applicable, by the Outside Date and such violation or breach has not been waived by Company or cured within ten (10) Business Days after written notice thereof from Purchaser, unless Purchaser is in material breach of its obligations under this Agreement which would prevent the satisfaction of the conditions set forth in Section 7.1 or Section 7.3, as applicable, by the Outside Date.

The Party desiring to terminate this Agreement pursuant to this Section 10.1 (other than pursuant to Section 10.1(a)) shall give written notice of such termination to the other Party or Parties, as applicable, specifying in reasonable detail the basis for such Party's exercise of its termination rights.

10.2 Effect of Termination

In the event of termination of this Agreement pursuant to Section 10.1, this Agreement shall become void and of no further force or effect without liability of any Party to any other Party to this Agreement except that: (i), this Section 10.2, Section 12.1, Section 12.3, Section 12.5, Section 12.6, Section 12.77 and Section 11.8 shall survive; and (ii) no termination of this Agreement shall relieve any Party of any liability for any wilful breach by it of this Agreement, or impair the right of any Party to compel specific performance by any other Party of its obligations under this Agreement in accordance with Section 12.3.

ARTICLE 11
CLOSING

11.1 Location and Time of the Closing

The Closing shall take place at the Closing Time on the Closing Date at the offices of Stikeman Elliott LLP in Toronto, or at such other location as may be agreed upon by the Parties.

11.2 Company's Deliveries at Closing

At Closing, Company shall deliver to Purchaser the following:

(a) a true copy of each of the Vesting Order, the SISP Order, the Vesting Recognition Order, the SISP Recognition Order, each of which shall be final;

(b) executed copy of the Monitor's Certificate;

(c) a certificate of a senior officer or director of Company (in such capacity and without personal liability) in form and substance reasonably satisfactory to Purchaser : (i) certifying that the board of directors of Company, has adopted resolutions (in a form attached to such certificate) authorizing the execution, delivery and performance of this Agreement and the transactions contemplated herein, as applicable, which resolutions are in full force and effect and have not been superseded, amended or modified as of the Closing Date; and (ii) certifying as to the incumbency and signatures of the officers and directors of Company;

(d) the certificates contemplated by Section 7.2(c);

(e) confirmation of the due incorporation and organization of Residual Co. on the terms set forth herein;

(f) evidence of the filing of the Articles of Reorganization; and

(g) all other documents as reasonably requested by Purchaser in good faith.

11.3 Purchaser's Deliveries at Closing

At Closing, Purchaser shall deliver to Company:

(a) the payment in the form of a release contemplated by Section 3.1;

(b) a certificate of a senior officer or director of Purchaser (in such capacity and without personal liability), in form and substance reasonably satisfactory to Company: (i) certifying that the board of directors has adopted resolutions (in a form attached to such certificate) authorizing the execution, delivery and performance of this Agreement and the transactions contemplated herein, as applicable, which resolutions are in full force and effect and have not been superseded, amended or modified as of the Closing Date; and (ii) certifying as to the incumbency and signature of the authorized signatory of Purchaser executing this Agreement and the other transaction documents contemplated herein, as applicable;

(c) the certificate contemplated by Section 7.3(c); and

(d) all other documents as reasonably requested by Company in good faith.

11.4 Monitor

When all conditions to Closing set out in Article 7 other than delivery by the Company to the Purchaser of an executed copy of the Monitor's Certificate have been satisfied and/or waived by Company or Purchaser, as applicable, Company and Purchaser, or their respective counsel, shall each deliver to the Monitor written confirmation that all conditions to Closing other than delivery by the Company to the Purchaser of an executed copy of the Monitor's Certificate have been satisfied or waived. Upon receipt of such written confirmation, the Monitor shall: (i) issue forthwith its Monitor's Certificate in accordance with the Vesting Order; and (ii) file as soon as practicable a copy of the Monitor's Certificate with the CCAA Court (and shall provide a true copy of such filed certificate to Company and Purchaser). The Parties hereby acknowledge and agree that the Monitor will be entitled to file the Monitor's Certificate with the CCAA Court without independent investigation upon receiving written confirmation from Company and Purchaser that all conditions to Closing have been satisfied or waived, and the Monitor will have no liability to Company or Purchaser or any other Person as a result of filing the Monitor's Certificate.

11.5 Simultaneous Transactions

All actions taken and transactions consummated at the Closing shall be deemed to have occurred in the manner and sequence set forth in the Implementation Steps and the Vesting Order (subject to the terms of any escrow agreement or arrangement among the Parties relating to the Closing), and no such transaction shall be considered consummated unless all are consummated.

11.6 Further Assurances

As reasonably required by a Party in order to effectuate the transactions contemplated by this Agreement, Purchaser and Company shall execute and deliver at (and after) the Closing such other documents, and shall take such other actions, as are necessary or appropriate, to implement and make effective the transactions contemplated by this Agreement.

ARTICLE 12
GENERAL MATTERS

12.1 Confidentiality

After the Closing Time, Company shall maintain the confidentiality of all confidential information relating to the Business and the members of the Acerus Group (but does not include information that is or becomes generally available to the public other than as a result of disclosure by Purchaser or its representatives in breach of this Agreement or that is received by Purchaser from an independent third party that, to the knowledge of Purchaser, obtained it lawfully and was under no duty of confidentiality (except to the extent that applicable privacy laws do not exclude such information from the definition of personal information) or that is independently developed by Purchaser or its representatives without reference to any Confidential Information), including the Confidential Information, except any disclosure of such information and records as may be required by Applicable Law. If Company or any member of the Acerus Group, or any of its or their respective representatives, becomes legally compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar judicial or administrative process, to disclose any such information, such party shall, or shall cause Company or its representative to, provide Purchaser with reasonably prompt prior oral or written notice of such requirement (including any report, statement, testimony or other submission to such Governmental Authority) to the extent legally permissible and reasonably practicable, and cooperate with Purchaser, at Purchaser's expense, to obtain a protective order or similar remedy to cause such information not to be disclosed; provided that in the event that such protective order or other similar remedy is not obtained, Company shall, or shall cause the applicable member of the Acerus Group or representative to, furnish only that portion of such information that has been legally compelled, and shall, or shall cause such Affiliate or representative to, exercise its commercially reasonable efforts to obtain assurance that confidential treatment will be accorded such disclosed information. Company shall instruct each member of the Acerus Group and representatives having access to such information of such obligation of confidentiality and shall be responsible for any breach of the terms of this Section 12.1 by any of the members of the Acerus Group or representatives.

12.2 Public Notices

No press release or other announcement concerning the transactions contemplated by this Agreement shall be made by Company or Purchaser without the prior consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed); provided, however, that subject to the last sentence of this Section 12.2, any Party may, without such consent, make such disclosure if the same is required by Applicable Law (including the CCAA Proceedings and the U.S. Proceedings) or by any stock exchange on which any of the securities of such Party or any of its Affiliates are listed, or by any insolvency or other court or securities commission, or other similar Governmental Authority having jurisdiction over such Party or any of its Affiliates, and, if such disclosure is required, the Party making such disclosure shall use commercially reasonable efforts to give prior oral or written notice to the other Party to the extent legally permissible and reasonably practicable, and if such prior notice is not legally permissible or reasonably practicable, to give such notice reasonably promptly following the making of such disclosure. Notwithstanding the foregoing: (i) this Agreement may be filed by Company: (A) with the CCAA Court and the U.S. Bankruptcy Court; and (B) on its profile on www.sedar.com; and (ii) the transactions contemplated in this Agreement may be disclosed by Company to the CCAA Court and the U.S. Bankruptcy Court. The Parties further agree that:

(a) the Monitor may prepare and file reports and other documents with the CCAA Court and the U.S. Bankruptcy Court containing references to the transactions contemplated by this Agreement and the terms of such transactions; and

(b) Company, Purchaser and their respective professional advisors may prepare and file such motions, affidavits, materials, reports and other documents with the CCAA Court and the U.S. Bankruptcy Court containing references to the transactions contemplated by this Agreement and the terms of such transactions as may reasonably be necessary to complete the transactions contemplated by this Agreement or to comply with their obligations in connection therewith.

Purchaser shall be afforded an opportunity to review and comment on such materials prior to their filing; provided in the case of reports or other documents prepared or to be filed by the Monitor with the CCAA Court or the U.S. Bankruptcy Court the Purchaser shall be entitled to review only factual information contained therein relating to the terms of the transactions contemplated in this Agreement. The Parties may issue a joint press release announcing the execution and delivery of this Agreement, in form and substance mutually agreed to them.

12.3 Injunctive Relief

(a) The Parties agree that irreparable harm would occur for which money damages would not be an adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to seek specific performance, injunctive and other equitable relief to prevent breaches or threatened breaches of this Agreement, and to enforce compliance with the terms of this Agreement, without any requirement for the securing or posting of any bond in connection with the obtaining of any such specific performance, injunctive or other equitable relief, this being in addition to any other remedy to which the Parties may be entitled at law or in equity.

(b) Each Party hereby agrees not to raise any objections to the availability of the equitable remedies provided for herein and the Parties further agree that by seeking the remedies provided for in this Section 12.3, a Party shall not in any respect waive its right to seek any other form of relief that may be available to a Party under this Agreement.

(c) Notwithstanding anything herein to the contrary herein, under no circumstances shall a Party be permitted or entitled to receive both monetary damages and specific performance and election to pursue one shall be deemed to be an irrevocable waiver of the other.

12.4 Survival

None of the representations, warranties, covenants (except the covenants in Article 2, Article 3, Article 12 and Sections 8.1(b), 8.4, 8.7 and 8.8, to the extent they are to be performed after the Closing) of any of the Parties set forth in this Agreement, in any Closing Document to be executed and delivered by any of the Parties (except any covenants included in such Closing Documents, which, by their terms, survive Closing) or in any other agreement, document or certificate delivered pursuant to or in connection with this Agreement or the transactions contemplated hereby shall survive the Closing.

12.5 Non-Recourse

No past, present or future director, officer, employee, incorporator, member, partner, securityholder, Affiliate, agent, lawyer or representative of the respective Parties, in such capacity, shall have any liability for any obligations or liabilities of Purchaser or Company, as applicable, under this Agreement, or for any Causes of Action based on, in respect of or by reason of the transactions contemplated hereby.

12.6 Assignment; Binding Effect

No Party may assign its right or benefits under this Agreement without the consent of each of the other Parties, except that without such consent Purchaser may, upon prior notice to Company, assign this Agreement, or any or all of its rights and obligations hereunder, to one or more of its Affiliates; provided that no such assignment or direction shall relieve Purchaser of its obligations hereunder. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and permitted assigns. Although no Parties to this Agreement, the Monitor and the CRO and their respective Affiliates and advisors shall have the benefits expressed to be conferred upon them in this Agreement including in Article 6 and sections 8.7, 8.8 and 11.4 (in respect of the Monitor) hereof. Subject to the preceding sentence, nothing in this Agreement shall create or be deemed to create any third Person beneficiary rights in any Person not a Party to this Agreement.

12.7 Notices

Any notice, request, demand or other communication required or permitted to be given to a Party pursuant to the provisions of this Agreement will be in writing and will be effective and deemed given under this Agreement on the earliest of: (i) the date of personal delivery; (ii) the date of transmission by email, with confirmed transmission and receipt (if sent during normal business hours of the recipient, if not, then on the next Business Day); (iii) two (2) days after deposit with a nationally-recognized courier or overnight service such as Federal Express; or (iv) five (5) days after mailing via certified mail, return receipt requested. All notices not delivered personally or by email will be sent with postage and other charges prepaid and properly addressed to the Party to be notified at the address set forth for such Party:

(a) If to Purchaser at:

First Generation Capital Inc.
Scotia Plaza
Suite 3515, 40 King Street West
Toronto, ON, M5H 3Y

Attention: Ian Ihnatowycz

Email: ian@generationcapitalmgmt.com

and to:

Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
3400, 22 Adelaide Street W.
Toronto, ON M5H 4E3

Attention	Alex MacFarlane Lynn McGrade Xiaodi Jin
Email:	amacfarlane@blg.com lmcgrade@blg.com xjin@blg.com

(b) If to Company at:

Acerus Pharmaceuticals Corporation
Suite 205, 7025 Langer Drive
Mississauga, Ontario L5N 0E8

Attention:	Naveed Manzoor
Email:	naveed@faanadvisors.com

and to:

Stikeman Elliott LLP
Commerce Court West
5300, 199 Bay St.
Toronto, ON M5L 1B9

Attention:	Elizabeth Pillon Lee Nicholson Philip Yang
Email:	lpillon@stikeman.com leenicholson@stikeman.com pyang@stikeman.com

and to:

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

Attention: Alex Morrison
Michael Hayes
Allen Yao

Email: alex.f.morrison@parthenon.ey.com
michael.hayes@parthenon.ey.com
allen.yao@parthenon.ey.com

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.

12.8 Counterparts; Electronic Signatures

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Execution of this Agreement may be made by electronic signature which, for all purposes, shall be deemed to be an original signature.

12.9 Language

The Parties have expressly required that this Agreement and all documents and notices relating hereto be drafted in English.

[Signature pages to follow]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

ACERUS PHARMACEUTICALS CORPORATION

DocuSigned by:
Naveed Manzoor
090F0FC3FAE4473...

By: ________________
Name: Naveed Manzoor
Title: Chief Restructuring Officer

By: ________________________________
Name:
Title:

We have the authority to bind the corporation.

FIRST GENERATION CAPITAL INC.

By: ________________________________
Name: Ian Ihnatowycz
Title: President & CEO

Schedule 1.1(b)(1)
Permitted Encumbrances

- Encumbrances securing Retained Liabilities to the extent that such Retained Liabilities are secured by Encumbrances as of the Closing Time;

- Encumbrances given to a public utility or any Governmental Authority when required by such utility or authority in connection with the operations of that person in the ordinary course of the business but only insofar as they relate to any amounts not due as at the Closing Date;

- the reservations, limitations, provisos and conditions (if any) expressed in any original grant from the Crown;

- Encumbrances for taxes, assessments or governmental charges incurred in the ordinary course that are not yet due and payable or the validity of which is being actively and diligently contested in good faith by the Acerus Group and in respect of which the Acerus Group has established on its books reserves considered by it and its auditors to be adequate therefor;

- normal and customary rights of setoff or compensation upon deposits in favour of depository institutions, and liens of a collecting bank on cheques and other payment items in the course of collection;

- servitudes, easements, rights of way or similar rights in land granted to or reserved by other persons including minor title defects effecting real property such as reservations and limitations expressed in any original grant from the Crown or as a result of statutory reservations and exceptions to title;

- Encumbrances imposed by Applicable Law which rank in priority to the Encumbrances in respect of the DIP Facility Loan Agreement amounts including, but not limited to, Encumbrances of mechanics, labourers, workmen, builders, contractors, suppliers of material or architects or other similar Encumbrances incidental to construction, maintenance or repair operations, provided such Encumbrances secure amounts which are not yet due or delinquent and have not been registered on title to any real property or written notice thereof has not been received by Company or Purchaser;

- Encumbrances associated with, and financing statements evidencing, the rights of equipment lessors under any of the personal property leases;

- undetermined or inchoate liens and charges incidental to construction or repairs or operations which have not at such time been filed pursuant to law against Company or which relate to obligations not due or delinquent; and

- the right reserved to or vested in any municipality or government, or to any statutory or public authority, by the terms of any lease, license, franchise, grant or permit acquired by Company or any statutory provision to terminate any such lease, license, franchise, grant or permit, or to require annual or other periodic payments as a condition to the continuance thereof.

Schedule 1.1(b)(2)
Form of Vesting Order

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

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

ORDER
(Approval and Vesting Order)

THIS MOTION, made by Acerus Pharmaceuticals Corporation ("**APC**" or the "**Company**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order, among other things: (i) approving the Subscription Agreement (the "**SA**") between APC and First Generation Capital Inc. ("**FGC**" or the "**Purchaser**"), dated April 2X, 2023, and the transactions contemplated thereby (the "**Transactions**"), (ii) adding XXX Ontario Inc. ("**Residual Co. 1**") and XXX Ontario Inc. ("**Residual Co. 2**") as a Applicants in these CCAA proceedings; (iii) transferring and vesting all of APC's, Acerus Biopharma Inc.'s ("**ABI**"), Acerus Labs Inc.'s ("**ALI**") and Acerus Pharmaceuticals USA, LLC.'s ("**APL**" collectively with APC, ABI and ALI the "**Acerus Group**") right, title and interest in and to the Excluded Assets, Excluded Leases, Excluded Contracts, and Excluded Liabilities (all as defined in the SA) to and in Residual Co.1 and Residual Co. 2, as applicable; (iv) authorizing and directing the Company to file the Articles of Reorganization; (v) vesting all of the right, title and interest in and to the Purchased Shares (as defined in the SA) in the Purchaser; and (vi) terminating and cancelling the all Equity Interests of APC outstanding prior to the issuance of the Purchased Shares other than those Equity Interests held by and registered in the name of the Purchaser, was heard on May XX, 2023, by video conference due to the COVID-19 pandemic.

ON READING the Notice of Motion, the affidavit of XX, dated May XX, 2023, (the "**XX Affidavit**") the XX Report of Ernst & Young as the court appointed monitor in these CCAA proceedings (the "**Monitor**"), filed (the "**XX Report**"), and on hearing the submissions of counsel for the Acerus Group, counsel for the Monitor, counsel for the Purchaser and counsel for those other parties appearing as indicated by the counsel slip, no one appearing for any other party, although duly served as appears from the affidavits of service of XX sworn May XX, 2023, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion was properly returnable on May ● 2023, and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the SA.

APPROVAL AND VESTING

3. **THIS COURT ORDERS AND DECLARES** that the SA and the Transactions be and are hereby approved and that the execution of the SA by the Company is hereby authorized and approved, with such minor amendments as the parties thereto may deem necessary with the approval of the Monitor. Company is hereby authorized and directed to perform its obligations under the SA and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions and for the issuance, [sale and conveyance of the Purchased Shares to the Purchaser], including the filing of the Articles of Reorganization [and the cancellation or redemption of the applicable equity interests].

4. **THIS COURT ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the Company to proceed with the Transactions, and that no shareholder or other approval shall be required in connection therewith.

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Monitor's certificate (the "**Monitor's Closing Certificate**") to the Purchaser (the "**Closing Time**"), substantially in the form attached as Schedule "A" hereto, the following shall occur and shall be deemed to have occurred at the Closing Time in the following sequence:

(a) first, (i) with respect to APC, ABI and ALI (collectively the "**Canadian Entities**") all of their right, title and interest in and to their respective Excluded Assets shall vest absolutely and exclusively in Residual Co. 1, and all Claims and (ii) with respect to APL all of APL's right, title and interest in and to the Excluded Assets shall vest absolutely and exclusively in Residual Co. 2, and in each case, all applicable Claims and Encumbrances (each as defined below) shall continue to attach to the Excluded Assets and to the Purchase Price in accordance with paragraph 10 of this Order, in either case with the same nature and priority as they had immediately prior to the transfer;

(b) second, all Excluded Contracts, Excluded Leases and Excluded Liabilities, other than set off claims asserted as defences to any claims made by the any member of the Acerus Group, (which for certainty includes all debts, liabilities, obligations, indebtedness, contracts, leases, agreements, and undertakings of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise, including any and all encumbrances, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Initial Order or any other Order of the Court in this CCAA Proceeding; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry systems; (iii) any charges, security interests or claims evidenced by registrations pursuant to the *Land Titles Act* (Ontario), the *Registry Act* (Ontario), the *Land Registration Reform Act* (Ontario)) or any other real property or real property related registry or recording system; (iv) any ownership or third party right, title, or interest that might arise or exists as a result of the contravention of Section 44(1) of the *Land Titles Act* (Ontario)) or any predecessor of any such statutes; and (v) those Claims listed on **Schedule "B"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances listed on **Schedules "C"** hereto)) of Company (other than the Retained Liabilities) shall be channelled to, assumed by and vest absolutely and exclusively in Residual Co. 1, as to those which relate to the Canadian Entities, and Residual Co. 2, as to those that relate to APL, such that the applicable Excluded Contracts, Excluded Leases and Excluded Liabilities shall become obligations of Residual Co. 1 and Residual Co. 2, respectively, and shall no longer be obligations of the Canadian Entities or APL and all of the Canadian Entities and APL's respective assets, licenses, undertakings and properties of every nature and kind whatsoever and wherever situate, including property held in trust for the Canadian Entities and APL (the **"Acerus Group Property**"), shall be and are hereby forever released and discharged from such Excluded Contracts, Excluded Leases and Excluded Liabilities and all related Claims and all Encumbrances affecting or relating to the Acerus Group's Property are hereby expunged and discharged as against the Acerus Group's Property;

(c) third, the Articles of Reorganization shall be filed or deemed to have been filed;

(d) fourth, in consideration for the Purchase Price, the Company shall issue the Purchased Shares to the Purchaser and all of the right, title and interest in and to the Purchased Shares shall vest absolutely in the Purchaser, free and clear of and from any and all Claims and Encumbrances of any kind and in favour of any party and, for greater certainty, this Court orders that all of the Claims and

Encumbrances of any kind affecting or relating to the Purchased Shares are hereby expunged and discharged as against the Purchased Shares;

(e) fifth, pursuant to the Articles of Reorganization any fractional Purchased Shares and all Equity Interests of the Company outstanding prior to the issuance of the Purchased Shares other than the Purchased Shares, including all options, conversion privileges, equity-based awards, warrants, securities, debentures, loans, notes or other rights, agreements or commitments of any character whatsoever that are held by any Person (defined below) and are convertible or exchangeable for any securities of the Company or which require the issuance, sale or transfer by the Company, of any shares or other securities of the Company and/or the share capital of the Company, or otherwise relating thereto, shall be deemed terminated and cancelled without consideration and the only Equity Interests of the Company that shall remain shall be the Purchased Shares; and

(f) sixth, the Acerus Group shall be deemed to cease being Applicants in these CCAA proceedings, and the Acerus Group shall be deemed to be released from the purview of the Initial Order and all other Orders of this Court granted in respect of these CCAA proceedings, save and except for this Order, the provisions of which (as they relate to the Acerus Group) shall continue to apply in all respects.

6. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Closing Certificate, forthwith after delivery thereof in connection with the Transactions.

7. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Company and the Purchaser regarding the satisfaction or waiver of conditions to closing under the SA and shall have no liability with respect to delivery of the Monitor's certificate.

8. **THIS COURT ORDERS** that upon delivery of the Monitor's Closing Certificate, and upon filing of a copy of this Order, together with any applicable registration fees, all

governmental authorities and any other applicable registrar or government ministries or authorities exercising jurisdiction with respect to the Acerus Group, the Acerus Group Property, or the Excluded Assets (collectively, the "**Governmental Authorities**") are hereby authorized, requested and directed to accept delivery of such Monitor's Closing Certificate and a copy of this Order as though they were originals and to register such transfers and interest authorizations as may be required to give effect to the terms of this Order and the SA. Presentment of this Order and the Monitor's Closing Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of interest against any of the Acerus Group Property and the Monitor and the Purchaser. [are hereby specifically authorized to discharge the registrations on the Acerus Group Property and the Excluded Assets, as applicable.]

9. **THIS COURT ORDERS** that no authorization, approval or other action by and no notice to or filing with any Governmental Authority or regulatory body exercising jurisdiction over the Acerus Group Property is required for the due execution, delivery and performance by the Company of the SA.

10. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, from and after the Closing Time, subject to the funding of the Priority Payments and the Administrative Expense Amount, all Claims and Encumbrances transferred, assumed, released, expunged and discharged pursuant to paragraph 5 hereof, including against the Acerus Group, the Acerus Group Property and the Purchased Shares and Equity Interests of the Company held by the Purchaser shall attach to the Excluded Assets with the same priority as they had with respect to the Acerus Group's Property immediately prior to the Transactions, as if the Transactions had not occurred.

11. **THIS COURT ORDERS** that, pursuant to clause 7(3) (c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as amended, the Acerus Group or the Monitor, as the case may be, is authorized, permitted and directed to, at the Closing Time, disclose to the Purchaser all human resources and payroll information in the Acerus Group's records pertaining to past and current employees of the Acerus Group. The Purchaser shall maintain and protect the privacy of such information in accordance with

applicable law and shall be entitled to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by the Acerus Group.

12. **THIS COURT ORDERS AND DECLARES** that, at the Closing Time and without limiting the provisions of paragraph 5 hereof, the Purchaser, Acerus Group and the Monitor shall be deemed released from any and all claims, liabilities, (direct, indirect, absolute or contingent) or obligations with respect to any Taxes (including penalties and interest thereon) of, or that relate to the Acerus Group (provided, as it relates to the Purchaser and the Acerus Group, such release shall not apply to (a) Taxes in respect of the business and operations conducted by the Acerus Group after the Closing Time; or (b) Taxes expressly assumed as Retained Liabilities pursuant to the SA), including without limiting the generality of the foregoing, all Taxes that could be assessed against the Purchaser or the Acerus Group (including their affiliates and any predecessor corporations) pursuant to sections 160 and 160.01 of the *Income Tax Act*, R.S.C. 1985 c. 1 (5^{th} Supp.), or any provincial or foreign tax equivalent, in connection with the Acerus Group. For greater certainty, nothing in this paragraph shall release or discharge any Claims with respect to Taxes that are transferred to Residual Co.1 or Residual Co. 2.

13. **THIS COURT ORDERS** that except to the extent expressly contemplated by the SA (and, for greater certainty, excluding the Excluded Assets and Excluded Liabilities and contracts relating thereto, all contracts to which any of the Acerus Group are a party at the time of delivery of the Monitor's Closing Certificate will be and remain in full force and effect upon and following delivery of the Monitor's Closing Certificate and no individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") who is a party to any such arrangement may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

(a) any event that occurred on or prior to the Closing Time and is not continuing that would have entitled such Person to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of any of the Acerus Group);

(b) the insolvency of any Acerus Group entity or the fact that the Acerus Group obtained relief under the CCAA;

(c) any compromises, releases, discharges, cancellations, transactions, arrangements, reorganizations or other steps taken or effected pursuant to the SA, the Transactions or the provisions of this Order, or any other Order of this Court in these CCAA proceedings; or

(d) any transfer or assignment, or any change of control of any of the Acerus Group arising from the implementation of the SA, the Transactions or the provisions of this Order.

14. **THIS COURT ORDERS**, for greater certainty, that (a) nothing in paragraph 13 hereof shall waive, compromise or discharge any obligations of the Acerus Group, or the Purchaser in respect of any Retained Liabilities, and (b) the designation of any Claim as an Retained Liability is without prejudice to any of the Acerus Group's, or the Purchaser's right to dispute the existence, validity or quantum of any such Retained Liability, and (c) nothing in this Order or the SA shall affect or waive the Acerus Group's, or the Purchaser's rights and defences, both legal and equitable, with respect to any Retained Liability, including, but not limited to, all rights with respect to entitlements to set-offs or recoupments against such Retained Liability.

15. **THIS COURT ORDERS** that from and after the Closing Time, all Persons shall be deemed to have waived any and all defaults of any of the Acerus Group then existing or previously committed by any of the Acerus Group, or caused by any one of the Acerus Group, directly or indirectly, or non-compliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition, or obligation, expressed or implied in any contract, or lease existing between such Person and any of the Acerus Group

(including for certainty, those contracts, or leases constituting Acerus Group Property) arising directly or indirectly from the filing by the Acerus Group under the CCAA and implementation of the Transactions, including without limitation any of the matters or events listed in paragraph 13 hereof, and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under a contract, or a lease shall be deemed to have been rescinded and of no further force or effect, provided that nothing herein shall be deemed to excuse any of the Acerus Group, or the Purchaser from performing their obligations under the SA or be a waiver of defaults by any of the Acerus Group or the Purchaser under the SA and the related documents.

16. **THIS COURT ORDERS** that, from and after the Closing Time, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations and assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against the Acerus Group or the Purchaser relating in any way to or in respect of any Excluded Assets, Excluded Liabilities, Excluded Leases, or Excluded Contracts and any other claims, obligations and other matters that are waived, released, expunged or discharged pursuant to this Order.

17. **THIS COURT ORDERS** that from and after the Closing Time:

(a) the nature of the Retained Liabilities, as retained by the Acerus Group, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Transactions or this Order;

(b) the nature of the Excluded Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to Residual Co.1 and Residual Co. 2, as applicable;

(c) any Person that prior to the Closing Time had a valid right or claim against the Acerus Group under or in respect of any Excluded Contract, Excluded Lease, or Excluded Liability (each an "**Excluded Liability Claim**") shall no longer have an Excluded Liability Claim against the Acerus Group, but will have an equivalent Excluded Liability Claim against Residual Co.1 or Residual Co. 2, as applicable, in respect of the Excluded Contract, Excluded Lease, or Excluded Liability from and after the Closing Time in its place and stead, and nothing in this Order limits, lessens or extinguishes the Excluded Liability Claim of any Person as against Residual Co.1 and/or Residual Co. 2; and

(d) any Person with an Excluded Liability Claim against Residual Co. 1and/or Residual Co. 2 following the Closing Time shall have the same rights, priority and entitlement as against Residual Co.1 and/or Residual Co. 2 as such Person, with an Excluded Liability Claim, had against the applicable Acerus Group entity prior to the Closing Time.

18. **THIS COURT ORDERS AND DECLARES** that, as of the Closing Time:

(a) Residual Co.1 and Residual Co. 2 shall be companies to which the CCAA applies; and

(b) Residual Co.1 and Residual Co. 2 shall be added as Applicants in these CCAA proceedings and all references in any Order of this Court in respect of these CCAA proceedings to (i) an "Applicant" or the "Applicants" shall refer to and include Residual Co.1 and Residual Co. 2, and (ii) "Property" shall include the current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, of Residual Co.1 and Residual Co. 2 (collectively the "**Residual Co. Property**"), and, for greater certainty, each of the Charges (as defined in the Amended and Restated Initial Order dated February [XX], 2023), shall constitute a charge on the Residual Co. Property.

PRIORITY PAYMENTS

19. **THIS COURT ORDERS AND DIRECTS** that the Priority Payments, as necessary and permitted by the SA, shall be distributed by the Company from the cash on hand on the Closing Date consistent with the Implementation Steps.

20. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these CCAA proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C 195, c. B-3, as amended (the "**BIA**"), in respect of Residual Co. 1 or Residual Co. 2 and any bankruptcy order issued pursuant to any such applications;

(c) any assignment in bankruptcy made in respect of any of the Acerus Group, Residual Co.1 or Residual Co. 2; or

(d) any foreign law equivalent of (b) or (c),

the SA, the implementation of the Transactions (including without limitation the transfer and vesting of the Excluded Assets, Excluded Contracts, Excluded Leases and Excluded Liabilities in and to Residual Co.1 and Residual Co. 2, as applicable, the transfer and vesting of the Purchased Shares in and to the Purchaser, the payment of the Priority Payments by the Company and any payments by or to the Purchaser, any of the Acerus Group entities, Residual Co.1, Residual Co. 2, or the Monitor authorized herein, or pursuant to the SA) shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Acerus Group, Residual Co.1 and/or Residual Co. 2 and shall not be void or voidable by creditors of the Acerus Group, Residual Co.1 or Residual Co. 2, as applicable, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the CCAA, the BIA or any other applicable federal, provincial or foreign legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

21. **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 and its legal counsel

and their respective present and former directors, officers, partners, employees, and advisors shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the Initial Order and any other Order of this Court and all such indemnities, charges, protections and priorities shall apply and extend to the Monitor and its legal counsel and their respective present and former directors, officers, partners, employees, and advisors in the fulfillment of the Monitor's duties and the carrying out of the provisions of this Order.

22. **[THIS COURT ORDERS** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except with leave of the Court following a motion brought on not less than fifteen (15) days' notice to the Monitor and its legal counsel. The entities related or affiliated with the Monitor or belonging to the same group as the Monitor (including, without limitation, any agents, employees, legal counsel or other advisors retained or employed by the Monitor) shall benefit from the protection granted to the Monitor under the present paragraph.]

23. **THIS COURT ORDERS** that the Monitor shall not, as a result of this Order or any matter contemplated hereby: (a) be deemed to have taken part in the management or supervision of the management of the Acerus Group, Residual Co. 1 or Residual Co. 2, or to have taken or maintained possession or control of the business or property of any of the Acerus Group, Residual Co. 1 or Residual Co. 2, or any part thereof; or (b) be deemed to be in Possession (as defined in the Initial Order) of any property of the Acerus Group, Residual Co. 1 or Residual Co. 2 within the meaning of any applicable Environmental Legislation (as defined in the Initial Order) or otherwise.

24. **THIS COURT ORDERS** that nothing in this Order, including the release of the Acerus Group from the purview of these CCAA proceedings pursuant to paragraph 5(f) hereof and the addition of Residual Co. 1 and Residual Co. 2 as Applicants in these CCAA proceedings, shall affect, vary, derogate from, limit or amend any rights, approvals and protections afforded to the Monitor in these CCAA proceedings and EY shall continue to have the benefit of, any and all rights and approvals and protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order, any other Orders in these CCAA proceedings or

otherwise, including all approval, protections and stays of proceedings in favour of EY in its capacity as Monitor, all of which are expressly continued and confirmed.

25. **THIS COURT ORDERS** that notwithstanding anything contained in this Order, the Monitor, its employees and representatives shall are not and shall not be or be deemed to be, a director, officer, or employee of Residual Co. 1 or Residual Co. 2, *de facto* or otherwise, and shall incur no liability as a result of acting in accordance with this Order, other than any liability arising as a direct result of the gross negligence or wilful misconduct of the Monitor.

26. **THIS COURT ORDERS** that nothing in this Order shall constitute or be deemed to constitute the Monitor as receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of Residual Co. 1, or Residual Co. 2.

27. **THIS COURT ORDERS** that in the event of a conflict between the terms of this Order and those of the Initial Order or any other Order of this Court, the provisions of this Order shall govern.

28. **THIS COURT ORDERS** that the ● Report and the activities of the Monitor as set out therein be and are hereby approved provided, however, that only the Monitor, in its personal capacity and only with respect to its own liability, shall be entitled to rely upon or utilize in any way such approval.

RELEASES

29. **THIS COURT ORDERS** that effective upon the filing of the Monitor's Closing Certificate, (i) the current and former directors, officers, employees, legal counsel and advisors to the Acerus Group; (ii) the Monitor and its legal counsel and their respective present and former directors, officers, partners, employees, and advisors; (iii) FGC, in its capacities as secured lender to the Acerus Group and majority shareholder of APC, and its current and former directors, officers, employees, legal counsel and advisors; and (iv) the Purchaser and its current and former directors, officers, employees, legal counsel and advisors (collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future liabilities, claims (including, without limitation, claims for contribution or indemnity), indebtedness, demands, actions, causes of action, counterclaims,

suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part of any act or omission, transaction, dealing or other occurrence existing or taking place prior to the filing of the Monitor's Closing Certificate, or undertaken or completed in connection with or pursuant to the terms of this Order and that relate in any manner whatsoever to the Acerus Group, or any of its operations, assets and property (current or historical), obligations, business or affairs or theses CCAA proceedings and/or the Chapter 15 Case, or arising in connection with or relating to the SA, the completion of the Transactions, the closing documents, any agreement, document, instrument, matter or transaction involving the Acerus Group arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transactions (collectively, the "**Released Claims**"), which Released Claims are hereby and shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, provided that nothing herein shall release any claim that that is not permitted to be released pursuant to section 5.1(2) of the CCAA, or any obligations of any Released Party under, or in connection with the SA or the closing documents. **"Releasing Parties"** means any and all Persons (not including the Acerus Group and their respective current and former affiliates), and their current and former affiliates' current and former members, directors, managers, officers, investment committee members, special committee members, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, assigns, participants, subsidiaries, affiliates, partners, limited partners, general partners, affiliated investment funds or investment vehicles , managed accounts or funds, and each of their respective current and former members, equity holders, officers, directors, managers, principals, members, management companies, advisory board members, investment fund advisors or managers, employees, agents, trustees, investment managers, financial advisors, partners, legal counsel, accountants, investment bankers, consultants, representatives and other professionals. For certainty, nothing in this paragraph shall release, or be deemed to release APL or any individuals that have been named as defendants in the Jones Day Litigation from any potential liability in the Jones Day Litigation.

GENERAL

30. **THIS COURT ORDERS** that, having been advised of the provisions of Multilateral Instrument 61-101 “Protection of Minority Security Holders in Special Transactions” relating to the requirement for “minority” shareholder approval in certain circumstances, no meeting of shareholders or other holders of Equity Interests in the Acerus Group is required to be held in respect of the Transactions and accordingly, there is no requirement to send any disclosure document related to the Transactions to such shareholders or other holders of Equity Interests.

31. **THIS COURT ORDERS** that, following the Closing Time, the Purchaser and the Acerus Group shall be authorized to take all steps as may be necessary to affect the discharge of the Claims and Encumbrances as against the Acerus Group, the Purchased Shares, those Equity Interests of the Company held by the Purchaser and the Acerus Group Property.

32. **THIS COURT ORDERS** that, following the Closing Time, the title of these proceedings is hereby changed to

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

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF. XX AND YY

33. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date that it is made and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original signing, entry and filing when the Court returns to regular operations.

34. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

35. **THIS COURT DECLARES** that the Monitor or the Acerus Group shall be authorized to apply as they may consider necessary or desirable, with or without notice, to any

other court, tribunal or administrative body whether in Canada, the United States, or elsewhere, for order which aid and complement this Order. All courts, tribunals and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Acerus group and the Monitor as may be deemed necessary or appropriate for that purpose.

36. **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 including the United States Bankruptcy Court for the District of Delaware overseeing the Acerus Group's proceedings under Chapter 15 of the U.S. Bankruptcy Code in Case No. [XX-XXXX], to give effect to this Order and to assist Residual Co.1, Residual Co. 2, the Acerus Group, 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 Residual Co.1, Residual Co. 2, the Monitor, as an officer of this Court, and to the Company, in its capacity as Foreign Representative of the Acerus Group, as may be necessary or desirable to give effect to this Order, or to assist Residual Co.1, Residual Co. 2, the Monitor, the Acerus Group and their respective agents in carrying out the terms of this Order.

37. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Prevailing Eastern time on the date hereof; provided that, the transaction steps set out in paragraph 5 hereof shall be deemed to have occurred sequentially, on after the other, in the order set out in paragraph 5 hereof.

Schedule A – Form of Monitor's Closing Certificate

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 PLAN OF COMPROMISE OR ARRANGEMENT OF ACERUS PHARMACEUTICALS CORPORATION, ACERUS BIOPHARMA INC., ACERUS LABS INC. AND ACERUS PHARMACEUTICALS USA, LLC. (each an "**Applicant**" and collectively the "**Applicants**")

RECITALS

A. Pursuant to the Initial Order of Justice Osborne of the Ontario Superior Court of Justice (Commercial List), (the "**Court**") dated January 26, 2023, as amended and restated, the Applicants were granted protection from their creditors pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and Ernst & Young Inc., was appointed as the monitor ("**Monitor**") of the Applicants. (the "**Monitor"**).

B. Pursuant to the Approval and Vesting Order of the Court, dated May XX, 2023, (the "**AVO**"), the Court approved the transactions (the "**Transactions**") contemplated by the Subscription Agreement dated April XX, 2023, (the "**SA**"), between the Company and First Generation Capital Inc. (the "**Purchaser**"), and ordered, *inter alia*, that: (i) all of the Acerus Group's right, title and interest in and to the Excluded Assets shall vest absolutely and exclusively in Residual Co.1 and/or Residual Co. 2, as applicable; (ii) all of the Excluded Contracts, Excluded Leases and Excluded Liabilities shall be transferred to, assumed by and vest in Residual Co.1 and Residual Co. 2, as applicable; and (iii) all of the right, title and interest in and to the Purchased Shares shall vest absolutely and exclusively in the Purchaser, free and clear of and from any and all Claims and Encumbrances, which vesting is, in each case, to be effective upon the delivery by the Monitor to the Purchaser of a certificate confirming that the Monitor has received written confirmation in the form and substance satisfactory to the Monitor from the Company and the Purchaser that all conditions to closing have been satisfied or waived by the parties to the SA.

D. Capitalized terms not defined herein shall have the meaning given to them in the Order.

THE MONITOR CERTIFIES the following:

1. The Monitor has received written confirmation from the Company, in form and substance satisfactory to the Monitor, that the Priority Payments have been paid by the Company.

2. The Monitor has received written confirmation from the Company and the Purchaser, in form and substance satisfactory to the Monitor, that all conditions to closing have been satisfied or waived by the parties to the SA.

3. This Monitor's closing certificate was delivered by the Monitor at Toronto on __________, 2023.

Ernst & Young Inc., in its capacity as Monitor of the Acerus Group and not in its personal or corporate capacity.

Per:____________________________________
Name:
Title:

Schedule "B" - Encumbrances to be Deleted and Expunged from the Acerus Group

Personal Property Security Act (Ontario) Registrations to be Deleted and Expunged

1.	Reference File No.	
	Debtor	
	Secured Party	
	Collateral Classification	
	General Collateral Description	
2.	Reference File No.	
	Debtor	
	Secured Party	
	Collateral Classification	
	General Collateral Description	
3.	Reference File No.	
	Debtor	
	Secured Party	
	Collateral Classification	
	General Collateral Description	
4.	Reference File No.	
	Debtor	
	Secured Party	
	Collateral Classification	
	General Collateral Description	
5.	Reference File No.	
	Debtor	
	Secured Party	
	Collateral Classification	
	General Collateral Description	

Ontario Land Titles Registrations to be Deleted and Expunged

	Encumbrance	Registration Number	Party	Amount	Registration Date

Schedule "C" - Permitted Encumbrances

Permitted Encumbrances in Respect of the Acerus Group Property

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

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

ORDER
(APPROVAL AND VESTING ORDER)

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Lawyers for the Applicants

136956903:v1

Schedule 2.2
Excluded Assets

Nil

Schedule 2.2(c)
Excluded Contracts and Excluded Leases

- Consulting Agreement between APL and CNF Pharma, LLC dated effective April 1, 2022
- Consulting Agreement between APL and Samuel Herschkowitz dated effective April 1, 2022
- Board Matters Letter Agreement between APC and Samuel Herschkowitz and Seymour Fein dated on or about February 25, 2022
- Board Observer Rights Letter Agreement between APC and Seymour Fein dated on or about February 25, 2022
- Payment Administration Agreement between David B. Foltz, Dr. Samuel Herschkowitz, and APC dated March 7, 2022
- Agreement and Plan of Merger by and among APC, Lazarus Merger Sub, Inc. Serenity Pharmaceuticals LLC, the Key Securityholders (as defined in such agreement), and Dr. Samuel Herschkowitz as Securityholder Representative dated February 25, 2022
- Amended and Restated Promissory note from APC to the Serenity Securityholders dated September 30, 2022, originally in the principal amount of USD$4,907,876.02
- Engagement letter of Torreya Capital, LLC as Strategic Advisor with APC dated March 10, 2021
- Any and all agreements with Syneos Health, including but not limited to the Master Commercial Services Agreement between APC and inVentiv Commercial Services, LLC dated May 6, 2019
- License, Development and Supply Agreement between Acerus Pharmaceuticals SRL and Apsen Farmaceutica S.A. dated October 18, 2017
- Amended Product Development Agreement between Trimel Biopharma SRL, Keldmann Healthcare A/S and Keldmann Innovation A/S dated December 30, 2009
- Development and License Agreement between Bentley Pharmaceuticals, Inc. and APL dated February 4, 2008 and subsequent Agreement and First Amendment to Development and License Agreement dated on or about March 31, 2010, and the related Assignment and Assumption Agreement dated May 28, 2017 between Allergan Sales, LLC and Allergan, Inc. and APL
- Manufacturing Agreement dated July 15, 2014 and subsequent Quality Agreement on Contract Manufacturing dated January 16, 2015, in each case between APL and DPT Lakewood, LLC

- Agreement and First Amendment to Development and License Agreement between CPEX Pharmaceuticals, Inc. and Serenity Pharmaceuticals LLC dated March 31, 2010

- Letter Agreement re Desmopressin Acetate Active Pharmaceutical Ingredient between Plantex USA, Inc. and APL dated June 23, 2010, including any and all amendments thereto, including verbal amendments

- License, Transfer, and Development Agreement between APL and Allergan Sales, LLC, and Allergan USA, Inc. dated March 31, 2010 and Assignment and Assumption Agreement among Serenity Pharmaceuticals LLC and Allergan Sales, LLC and Allergan, Inc. dated May 28, 2017

- Client Agreement between Symphony Health Solutions Corporation and APC dated February 6, 2020

- License and Supply Agreement between Acerus Pharmaceuticals SRL and Aytu Bioscience, Inc. dated April 22, 2016, as amended by the Amended and Restated License and Supply Agreement between APC and Aytu Bioscience, Inc. dated July 29, 2019 and terminated by the Termination and Transition Agreement between APC and Aytu Bioscience Inc. dated March 31, 2021

- User-Customer Agreement for AMA Physician Professional Data between Source Healthcare Analytics, LLC and APC dated February 25, 2020

- Asset Purchase Agreement between Alyvant Therapeutics, Inc. and Alyvant GmbH and APL dated July 14, 2021

- Office Lease between The Canada Life Assurance Company and APC dated April 22, 2021

- those agreements, engagement letters, work orders, statements of work, or other contracts between an Acerus Group entity and each of: ZS Associates Canada Consulting ULC, Cadent Medical Communications, Piramal Pharma Solutions, Synapse Medcom, Six Degrees Worldwide Inc., The adpharm Inc., Professional Targeted Marketing, Aceelero GmbH, LifeSci Advisors, Impres Inc., GWL Realty Advisors Inc., Darrow Associates, Bionical, Q4 Inc., Ardena Bioanalytical Laboratory, Deerfield Agency, Deeth Williams Wall LLP, FXAP, and Buttermore and Foltz

and in each case including all amendments, restatements, addendums, modifications, work orders, revisions, statements of work and other documentation or supplements issued thereunder.

Schedule 2.3
Additional Retained Liabilities

1. Liabilities (contingent) of APL related to the Jones Day Litigation.

The "**Jones Day Litigation**" means the case filed by Jones Day against Serenity Pharmaceuticals, LLC, Samuel Herschkowitz and Alain Kodsi, No. 657373/2019 (NY Sup. Ct. NY Cnty), and all actions, claims, counterclaims made in connection therewith.

Schedule 2.4
Non-Exhaustive List of Certain Enumerated Excluded Liabilities

1. Liabilities (contingent) of any member of the Acerus Group other than APL related to the Jones Day Litigation,

For greater certainty, the Purchaser and the Acerus Group shall not assume any liabilities (contingent) of any individual that is a named defendant to the Jones Day Litigation.

Schedule 2.7(c)
Implementation Steps

1. At least three (3) Business Days prior to the Closing Date, the Company shall form each of the Residual Cos. in accordance with the terms contained herein, in form satisfactory to Purchaser, acting reasonably, and the directors thereof shall not include the directors or related parties of the Purchaser, and no such entity shall be a flow through entity for Canadian or U.S. tax purposes unless approved by Purchaser.

2. At least two (2) Business Days prior to the Closing Date, all employees deemed to be Terminated Employees pursuant to Section 8.5 will be terminated by the Company, and all Employee Priority Claims shall be calculated to include such Terminated Employees and if not paid at the time of such termination by the Company, shall be included in the calculation of the Priority Payments required to be paid by the Company at Closing.

3. At Closing, the following amounts shall be paid and satisfied from the funds on hand of the Acerus Group:

    a. the Priority Payments in accordance with the Vesting Order and Section 3.2 hereof; and

    b. the Administrative Expense Amount to the Monitor in accordance with the Vesting Order and Section 8.5(a) hereof.

Schedule 4.7
Subsidiaries

	Name	**Jurisdiction of Incorporation**
1.	Acerus Biopharma Inc.	Ontario
2.	Acerus Labs Inc.	Ontario
3.	Acerus Pharmaceuticals USA, LLC.	Delaware

Schedule 6.1(e)
Transaction Regulatory Approvals to be Obtained Prior to the Closing Time

1. A partial revocation order in respect of each of the FFCTOs and other cease trade orders in effect in respect of ACP which impair the ability of ACP to issue the Purchased Shares and to redeem and cancel the Equity Interests subject to redemption and cancellation hereunder.

Exhibit C

Sale Recognition Hearing Notice

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 (TMH) (Jointly Administered) **Re: D.I. ___**

NOTICE OF SALE RECOGNITION HEARING

PLEASE TAKE NOTICE that, on June 5, 2023, Acerus Pharmaceuticals Corporation, in its capacity as the authorized foreign representative (the "Foreign Representative") of the above-captioned debtors (the "Debtors"), which are the subject of proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 in the Ontario Superior Court of Justice, Commercial List (the "Canadian Proceedings,"[2] and such court, the "Canadian Court"), filed the *Foreign Representative's Motion for Entry of an Order (I) Recognizing and Enforcing the CCAA Vesting Order, (II) Approving the Sale of the Debtors Free and Clear of Liens, Claims, and Encumbrances, and (III) Granting Related Relief* [D.I. [●]] (the "Sale Recognition Motion")[3], requesting entry of an order (the "Order"): (a) recognizing and enforcing the Canadian Court's *Approval and Vesting Order* (the "CCAA Vesting Order"), attached to the Order as **Exhibit 1**; (b) approving, under section 363 of the Bankruptcy Code, the sale of the Debtors to the Purchaser pursuant to the definitive purchase agreement (as amended, and which may further be amended in

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[1] The Debtors in the 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.

[2] Information on the Canadian Proceedings and documents filed in connection therewith, can be found at the website of the Monitor at https://www.ey.com/ca/acerus.

[3] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Sale Recognition Motion.

accordance with the terms of the CCAA Vesting Order), attached to the CCAA Vesting Order as Schedule A, free and clear of all liens, claims, encumbrances, and other interests (other than the Permitted Encumbrances); and (c) granting related relief.

PLEASE TAKE FURTHER NOTICE that, pursuant to the *Order Pursuant to Bankruptcy Rule 9006(c) and Local Rule 9006-1(e) Shortening the Notice Period for Foreign Representative's Motion for Entry of an Order (I) Recognizing and Enforcing the CCAA Vesting Order, (II) Approving the Sale of the Debtors Free and Clear of Liens, Claims, and Encumbrances, and (III) Granting Related Relief* [D.I. [●]] (the "Order Shortening Notice"), a hearing on the Sale Recognition Motion (the "Sale Recognition Hearing") is currently scheduled to take place on **[●], at [●] a./p.m. (prevailing Eastern Time)**, before the Honorable Thomas M. Horan of the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3rd Floor, Courtroom No. [●], Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order Shortening Notice, any objections or responses to the Sale Recognition Motion, and the relief requested therein, must be filed on or before **[●], not later than 4:00 p.m. (prevailing Eastern Time)** (the "Objection Deadline").

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTION OR RESPONSE TO THE SALE RECOGNITION MOTION, OR THE RELIEF REQUESTED THEREIN, IS FILED BY THE OBJECTION DEADLINE, THE COURT MAY ENTER AN ORDER GRANTING THE SALE RECOGNITION MOTION WITHOUT HOLDING A HEARING.

PLEASE TAKE FURTHER NOTICE that copies of all documents filed in these chapter 15 cases may be obtained free of charge by visiting the Court's website at https://ecf.deb.uscourts.gov (a PACER login and password are required to retrieve a document), or free of charge at the website of the Monitor at https://www.ey.com/ca/acerus.

PLEASE TAKE FURTHER NOTICE that your rights may be affected. You should read the Sale Recognition Motion carefully and discuss it with your attorney if you have one in connection with these chapter 15 cases. If you do not have an attorney, you may wish to consult one.

PLEASE TAKE FURTHER NOTICE that if you do not want the Court to grant the relief requested by the Foreign Representative, or if you want the Court to consider your views on any matter requested by the Sale Recognition Motion, then you or your attorney must file and serve an objection in accordance with procedures set forth herein. If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought by the Foreign Representative and may enter an order granting the relief requested.

[*Signature page follows*]

Dated: June [●], 2023
Wilmington, Delaware

Respectfully submitted,

BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP

/s/ DRAFT

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