**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 (5th 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

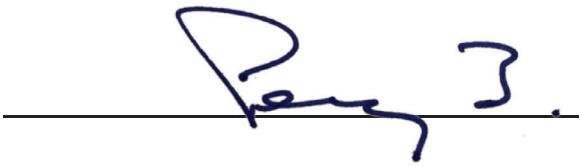
35. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date that it is made and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or a motion for leave to appeal 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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