

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Order of Justice Osborne dated February 3, 2023 (the “**ARIO**”) and the Order of Justice Penny dated May 30, 2023 (the “**Approval and Reverse Vesting Order**”).

APPROVAL OF THE MONITOR’S FOURTH REPORT, FIFTH REPORT, ACTIVITIES AND FEES

3. **THIS COURT ORDERS AND DECLARES** that the Fourth Report of the Monitor dated June 27, 2023 (the “**Fourth Report**”), and the Fifth Report of the Monitor dated July 20, 2023 (the “**Fifth Report**”, and together with the Fourth Report, the “**Monitor’s Reports**”) and the activities of the Monitor and its counsel referred to 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.
4. **THIS COURT ORDERS** that the fees and disbursements of the Monitor for the period from January 3, 2023 to June 30, 2023 in the total amount of \$481,214.68 (exclusive of HST), and of the Monitor’s legal counsel, Fasken Martineau DuMoulin LLP (“**Fasken**”), for the period from January 17, 2023 to July 7, 2023 in the total amount of \$380,400.24 (exclusive of HST), as set out in the Fifth Report and in the Fee Affidavits at Appendices “E” and “F” thereto, be and are hereby approved.
5. **THIS COURT ORDERS** that the anticipated further fees and disbursements of the Monitor and Fasken in connection with the completion by the Monitor of its remaining duties and administration of the CCAA Proceedings, estimated not to exceed \$90,000 (inclusive of HST) (the “**Remaining Fees and Disbursements**”), all as set out in the Fifth Report, be and are hereby approved, and that the Monitor and Fasken shall not be required to pass their accounts in respect of any further activities in connection with the administration of the CCAA Proceedings, *provided, however*, that if the further fees and disbursements of the Monitor and Fasken in connection with the completion by the Monitor of its remaining duties and administration of the CCAA Proceedings

exceed the above estimate, the Monitor shall return to Court to seek approval to pay any such amounts in excess of the Remaining Fees and Disbursements pursuant to a further Order of the Court.

ADMINISTRATIVE EXPENSE AMOUNT

6. **THIS COURT ORDERS** that the Monitor shall be authorized to retain the Administrative Expense Amount as a reserve to provide for the Administrative Expense Costs (each as defined in the Fifth Report), and the anticipated further accrued and future disbursements required to complete the administration of the CCAA Proceedings, as described in the Fifth Report, in each case without further authorization from the Applicants or FGC. 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 Acerus Pharmaceuticals Corporation.

TERMINATION OF CCAA PROCEEDINGS

7. **THIS COURT ORDERS** that, upon service by the Monitor of an executed certificate in substantially the form attached hereto as Schedule "A" (the "**Termination Certificate**") on the service list in these CCAA Proceedings certifying that, to the knowledge of the Monitor, all matters to be attended to in connection with these CCAA Proceedings have been completed, these CCAA Proceedings shall be terminated without any further act or formality (the "**CCAA Termination Time**"), save and except as provided in this Order, and provided that nothing herein impacts the validity of any Orders made in these CCAA Proceedings or any action or steps taken by any Person pursuant thereto.

8. **THIS COURT ORDERS** that the Monitor is hereby directed to file a copy of the Termination Certificate with the Court as soon as is practicable following the service thereof on the service list in these CCAA Proceedings.

9. **THIS COURT ORDERS** that the Charges shall be terminated, released and discharged as of the CCAA Termination Time without any further act or formality.

MONITOR'S ENHANCED POWERS

10. **THIS COURT ORDERS** that in addition to the powers and duties of the Monitor set out in the Initial Order or any other Order of this Court in this CCAA Proceeding, and without altering in any way the limitations and obligations of Residual Cos. as a result of these proceedings, the Monitor be and is hereby authorized and empowered, but not required, to:

- (a) take any and all actions and steps, and execute all documents and writings, on behalf of, and in the name of Residual Cos. in order to facilitate the performance of any ongoing obligations of Residual Cos., including with respect to any Excluded Liability Claim, and to carry out the Monitor's duties under this Order or any other Order of this Court in this CCAA Proceeding;
- (b) exercise any powers which may be properly exercised by a board of directors of Residual Cos.;
- (c) cause Residual Cos. to retain the services of any person as an employee, consultant, or other similar capacity all under the supervision and direction of the Monitor and on the terms as agreed with the Monitor;
- (d) open one or more new accounts (the "**Residual Cos. Accounts**") into which all funds, monies, cheques, instruments and other forms of payment payable to Residual Cos. shall be deposited from and after the making of this Order from any source whatsoever and to operate and control, as applicable, on behalf of Residual Cos., the Residual Cos. Accounts in such manner as the Monitor, in its sole discretion, deems necessary or appropriate to assist with the exercise of the Monitor's powers and duties;
- (e) cause Residual Cos. to perform such other functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the winding-down of Residual Cos. or the distribution of the proceeds of the Residual Cos. property or any other related activities, including in connection with bringing the CCAA Proceedings to an end;
- (f) engage, deal, communicate, negotiate, agree and settle with any creditor or other stakeholder of Residual Cos. in the name of or on behalf of Residual Cos.;
- (g) claim or cause Residual Cos. to claim any and all insurance refunds or tax refunds, including refunds of harmonized sales taxes, to which Residual Cos. is entitled;

- (h) have access to all books and records that are the property of Residual Cos. in Residual Cos.' possession or control in addition to the Acerus Group's books and records which were retained by the Residual Cos. in accordance with the Subscription Agreement;
- (i) assign Residual Cos., or cause Residual Cos. to be assigned into bankruptcy, and the Monitor shall be entitled but not obligated to act as trustee in bankruptcy thereof;
- (j) consult with Canada Revenue Agency with respect to any issues arising in respect of this CCAA Proceeding; and
- (k) apply to this Court for advice and directions or any orders necessary or advisable to carry out its powers and obligations under this Order or any other Order granted by this Court including for advice and directions with respect to any matter.

11. **THIS COURT ORDERS** that notwithstanding anything contained in this Order, the Monitor is not and shall not be or be deemed to be, a director, officer, or employee of Residual Cos. or the Applicants.

12. **THIS COURT ORDERS** that, without limiting the provisions of the Initial Order, Residual Cos. shall remain in possession and control of its Property and Business (each as defined in the Initial Order) and the Monitor shall not take, or be deemed to have taken, possession or control of the Property or the Business of Residual Cos., or any part thereof.

13. **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 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 the fulfillment of its duties and the carrying out of the provisions of this Order.

14. **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 the Residual Cos. within the meaning of any relevant legislation and that any distributions to creditors of Residual Cos. by the Monitor will be deemed to have been made by Residual Cos.

15. **THIS COURT ORDERS** that the power and authority granted to the Monitor by virtue of this Order shall, if exercised in any case, be paramount to the power and authority of Residual Cos. with respect to such matters and, 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.

DISCHARGE OF THE MONITOR AND CRO

16. **THIS COURT ORDERS** that effective at the CCAA Termination Time, EY and FAAN Advisors shall be and are hereby discharged from its duties as the Monitor and CRO, respectively, and shall have no further duties, obligations or responsibilities as Monitor or CRO from and after the CCAA Termination Time, provided that, notwithstanding its discharge as Monitor and CRO, EY and FAAN Advisors shall have the authority to carry out, complete or address any matters in its role as Monitor or CRO, respectively, that are ancillary or incidental to these CCAA Proceedings following the CCAA Termination Time, as may be required.

17. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the Monitor's and CRO's discharge or the termination of these CCAA Proceedings, nothing herein shall affect, vary, derogate from, limit or amend, and the Monitor and the CRO shall continue to have the benefit of, all of the rights, approvals and protections in favour of the Monitor and CRO at law or pursuant to the CCAA, the ARIO, Approval and Reverse Vesting Order, or any other Order of this Court in these CCAA Proceedings or otherwise, all of which are expressly continued and confirmed following the CCAA Termination Time, including in connection with any other actions taken by the Monitor following the CCAA Termination Time with respect to the Applicants or these CCAA Proceedings.

18. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the Monitor or CRO in any way arising from or related to their capacity or conduct as Monitor or CRO, respectively, except with prior leave of this Court on not less than fifteen (15) days prior written notice to the Monitor or CRO, as applicable.

BANKRUPTCY

19. **THIS COURT ORDERS** that upon filing of the Termination Certificate; (a) the Applicants are authorized to make an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency*

Act, R.S.C. 1985, c. B-3, as amended (the “**BIA**”); and (b) EY is authorized to act as the trustee-in-bankruptcy of each of the Applicants.

20. **THIS COURT ORDERS** that, upon EY’s appointment as licensed insolvency trustee for each of the Applicants (the “**Trustee**”), the Trustee may administer the bankruptcy estates of the Applicants as follows:

- (a) a single court file number and title of proceeding of “In the Matter of the Bankruptcy of 15177561 Canada Inc. and 15177570 Canada Inc.”;
- (b) the Trustee is authorized to administer the bankrupt estates of the Applicants as if such estates were a single bankrupt estate for the purpose of carrying out its administrative duties and responsibilities as trustee under the BIA with respect to the administration of bankrupt estates generally, including without limitation as follows:
 - (i) the Trustee is authorized to send notice of the first meeting of creditors (the “**Notice**”) in the manner prescribed by section 102 of the BIA by sending the Notice together with directions to download documents to accompany the notice set out in section 102(2) of the BIA (the “**Forms**”);
 - (ii) meetings of creditors and inspectors in the bankrupt estates of the Applicants may be convened through one combined advertisement and conducted jointly provided that the results of any creditors’ vote shall be separately tabulated for each such bankrupt estate;
 - (iii) the Trustee is authorized to use a consolidated form of proof of claim that directs creditors to identify the bankrupt estate in which a claim is made for voting and for distribution purposes;
 - (iv) the Trustee is authorized to maintain a consolidated bank account with respect to the Applicants’ respective bankruptcy estates;
 - (v) the Trustee is authorized to issue consolidated reports in respect of the bankruptcy estates of the Applicants;

- (vi) the Trustee is authorized to perform a consolidated making, filing, advertising and distribution of all filings and notices in the bankrupt estates of the Applicants required under the BIA; and
- (vii) a single group of inspectors shall be the inspectors for the consolidated bankruptcy estates of the Applicants.

21. **THIS COURT ORDERS** that this procedural consolidation is not a substantive consolidation of the bankrupt estates of the Applicants and will automatically terminate if the Trustee is replaced as licensed insolvency trustee of any, but not all, of the estates of the Applicants.

22. **THIS COURT ORDERS** that, upon the appointment of the Trustee, the Monitor shall be authorized to transfer to the Trustee such amounts as the Monitor expects will be required in payment of the anticipated fees and disbursements of the Trustee and Fasken in connection with the administration of the Applicants' bankruptcy proceedings.

EXTENSION OF THE STAY PERIOD

23. **THIS COURT ORDERS** that the Stay Period be and is hereby extended to the earlier of (i) the CCAA Termination Time, and (ii) such other date as this Court may order.

RELEASE

24. **THIS COURT ORDERS** that "Released Claims" as defined pursuant to the Approval and Reverse Vesting Order shall include any and all present and future liabilities or claims 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) against the CRO or Naveed Manzoor which may be incurred as result of acting as a director or officer of Residual Cos.

UNSEALING

25. **THIS COURT ORDERS** that Confidential Appendix "E" to the Third Report of the Monitor dated May 25, 2023 is hereby unsealed and shall form part of the public record.

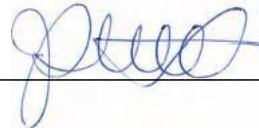
GENERAL

26. **THIS COURT ORDERS** that the Applicants or the Monitor may apply to the Court as necessary to seek further orders and directions to give effect to this Order.

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

28. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

29. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.



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 15177561
CANADA INC. and 15177570 CANADA INC

Applicants

TERMINATION CERTIFICATE

RECITALS

1. Ernst & Young Inc. ("**EY**") was appointed as the Monitor of the Applicants in the within proceedings commenced under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to an Initial Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated January 26, 2023 (as amended, the "**Initial Order**").
2. Pursuant to an Order of this Court dated July 24, 2023 (the "**CCAA Termination Order**"), among other things, EY shall be discharged as the Monitor and the Applicants' CCAA proceedings shall be terminated upon the service of this Termination Certificate on the service list in these CCAA proceedings, all in accordance with the terms of the CCAA Termination Order.
3. Unless otherwise indicated herein, capitalized terms used in this Termination Certificate shall have the meaning given to them in the CCAA Termination Order.

THE MONITOR CERTIFIES the following:

1. To the knowledge of the Monitor, all matters to be attended to in connection with the Applicants' CCAA proceedings (Court File No. CV-23-00693595-00CL) have been completed.

ACCORDINGLY, the CCAA Termination Time as defined in the CCAA Termination Order has occurred.

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DATED at Toronto, Ontario this _____ day of _____, 2023.

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

Per: _____

Name:

Title:

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 15177561 CANADA INC. and 15177570 CANADA INC.

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

CCAA TERMINATION ORDER

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