

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Recombinetics, Inc., *et al.*,

Debtors.¹

Chapter 11 (Subchapter V)

Case No. 24-12593 (____)

(Joint Administration Requested)

**DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS (I) PROHIBITING
UTILITY COMPANIES FROM ALTERING, REFUSING, OR DISCONTINUING
UTILITY SERVICES, (II) DEEMING UTILITY COMPANIES ADEQUATELY
ASSURED OF FUTURE PAYMENT, (III) ESTABLISHING PROCEDURES
FOR DETERMINING ADDITIONAL ADEQUATE ASSURANCE OF
PAYMENT, AND (IV) GRANTING RELATED RELIEF**

Recombinetics, Inc. and its above-captioned affiliates (collectively, the “Debtors”), the debtors and debtors in possession in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), hereby file this motion (this “Motion”) for the entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** (the “Proposed Interim Order”) and **Exhibit B** (the “Proposed Final Order,” and together with the Proposed Interim Order, the “Proposed Orders”), (i) prohibiting the Debtors’ utility service providers from altering, refusing, or discontinuing utility services on account of pre-petition invoices; (ii) deeming the Debtors’ utility service providers adequately assured of future payment; (iii) establishing procedures for determining additional adequate assurance of future payment and authorizing the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Recombinetics, Inc. (1470), Acceligen, Inc. (N/A), Regenevida, Inc. (N/A), Surrogen, Inc. (N/A), and Therillume, Inc. (4995). The mailing address for each of the Debtors is 3388 Mike Collins Drive, Eagan, Minnesota 55121.

Debtors to provide additional adequate assurance of future payment to their utility service providers; and (vi) granting related relief. In support of the Motion, the Debtors rely upon and incorporate by reference the *Declaration of Rocco Morelli in Support of Debtors' Chapter 11 Petitions and First Day Motions and Applications* (the "First Day Declaration").² In further support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012 (the "Amended Standing Order"). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution.³ Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief sought herein are sections 105(a) and 366 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the First Day Declaration.

³ Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the Debtors consent to the Court's entry of a final judgment or order with respect to this Motion if it is determined that the Court, absent consent of the parties, cannot enter a final order consistent with Article III of the United States Constitution.

GENERAL BACKGROUND

3. On the date hereof (the “Petition Date”), each of the Debtors filed with the Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their businesses and manage their properties as debtors and debtors in possession pursuant to section 1184 of the Bankruptcy Code. No request has been made for the appointment of a trustee or an examiner. The Debtors have requested that the Chapter 11 Cases be jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b).

4. The Debtors have elected to proceed as subchapter V debtors and, accordingly, a Subchapter V Trustee will be appointed in these Chapter 11 Cases on or shortly after the Petition Date.

5. As set forth in the First Day Declaration, the Debtors are a gene editing company that focuses on the editing of animal cells and embryos for strategic commercial applications worldwide, with the aim of improving human health outcomes as well as the sustainability of animal agriculture and aquaculture. Additional information regarding the Debtors’ businesses, capital structure, and the circumstances leading to the filing of the Chapter 11 Cases is set forth in the First Day Declaration.

BACKGROUND RELATING TO THE MOTION

A. Utility Companies and Utility Services

6. In connection with the operation of their businesses, the Debtors utilize the services of various utility companies (each, a “Utility Company,” and collectively, the “Utility

Companies”) that provide natural gas and electricity services (collectively, the “Utility Services”). Attached hereto as **Exhibit C**⁴ is a list (the “Utility Service List”) of Utility Companies providing services to the Debtors as of the Petition Date. The Debtors could not operate their businesses in the absence of continuous Utility Services. Thus, any interruption in such services would disrupt the Debtors’ day-to-day operations and be detrimental to their businesses.

7. For certain of the Utility Services, the Debtors pay the Utility Companies directly. In other cases, subject to the terms of the Debtors’ non-residential real property lease (the “Lease”) for its headquarters property, the Debtors pay a fixed percentage of the actual cost incurred by the property landlord (the “Landlord”) in providing the Utility Services. The relief requested herein is with respect to all Utility Companies supplying Utility Services to the Debtors, including those that indirectly supply services through the Landlord.

8. In general, the Debtors have established a good payment history with the Utility Companies, making payments on a regular and timely basis. Historically, the Debtors have paid on average approximately \$4,200 per month on account of the Utility Services. The Utility Companies do not hold any deposits from the Debtors. To the best of the Debtors’ knowledge,

⁴ The Debtors have endeavored to identify all of their Utility Companies on **Exhibit C** hereto. However, inadvertent omissions may have occurred, and the omission from **Exhibit C** hereto of any entity providing Utility Services to the Debtors shall not be construed as an admission, waiver, acknowledgement, or consent that section 366 of the Bankruptcy Code does not apply to such entity. In addition, the Debtors reserve the right to assert that any of the entities now or hereafter included on the Utility Service List is not a “utility” within the meaning of section 366(a) of the Bankruptcy Code.

there are generally no material defaults or arrearages of any significance with respect to undisputed invoices for the Utility Services, other than payment interruptions that may be caused by the commencement of the Chapter 11 Cases.

B. Proposed Adequate Assurance

9. The Debtors intend to pay undisputed post-petition charges for the Utility Services when due in the ordinary course of business. Nonetheless, to provide adequate assurance of payment for future services to the Utility Companies under section 366 of the Bankruptcy Code (the “Adequate Assurance”), the Debtors propose to deposit a sum of \$2,100 (the “Utility Deposit”), which represents approximately fifty percent (50%) of the Debtors’ estimated monthly cost of the Utility Services subsequent to the Petition Date, into a segregated account (the “Utility Deposit Account”) within twenty (20) days of the Petition Date, to be maintained during the pendency of the Chapter 11 Cases in the manner provided for herein and in the Proposed Orders.

C. Proposed Adequate Assurance Procedures

10. The Debtors submit that the Utility Deposit constitutes sufficient adequate assurance to the Utility Companies. However, the Debtors propose to establish assurance procedures, pursuant to which a Utility Company may request additional adequate assurance of payment (the “Assurance Procedures”). If any Utility Company believes additional assurance is required, it may request such additional assurance pursuant to the Assurance Procedures. The Assurance Procedures are as follows:

- a. Any Utility Company desiring assurance of future payment for utility service beyond the Adequate Assurance must serve a request (an “Additional Assurance Request”) so that it is received by the Debtors and their proposed counsel at the following addresses: (i) Recombinetics, Inc., 3388 Mike Collins Drive, Eagan, MN 51121 (Attn: Rocco Morelli) and (ii) proposed counsel to the Debtors, Faegre Drinker Biddle & Reath LLP, 1800 Century Park East, Suite 1500, Los Angeles, CA 90067 Attn: Maria J. Cho (maria.cho@faegredrinker.com) and 222 Delaware Ave., Suite 1410, Wilmington, DE 19801, Attn: Sarah Silveira (sarah.silveira@faegredrinker.com).
- b. Any Additional Assurance Request must: (i) be made in writing; (ii) specify the amount and nature of assurance of payment that would be satisfactory to the Utility Company; (iii) set forth the location(s) for which Utility Services are provided and the relevant account number(s); (iv) describe any deposits, prepayments, or other security currently held by the requesting Utility Company; and (v) explain why the requesting Utility Company believes the Adequate Assurance is not sufficient adequate assurance of future payment.
- c. Upon the Debtors’ receipt of an Additional Assurance Request at the addresses set forth above, the Debtors shall promptly negotiate with such Utility Provider to resolve such Utility Provider’s Additional Assurance Request.
- d. The Debtors, in their discretion, may resolve any Additional Assurance Request by mutual agreement with the requesting Utility Company and without further order of the Court, and may, in connection with any such resolution, in their discretion, provide the requesting Utility Company with additional assurance of future payment in a form satisfactory to the Utility Company, including, but not limited to, cash deposits, prepayments, and/or other forms of security, if the Debtors believe such additional assurance is reasonable. Without the need for any notice to, or action, order, or approval of, the Court, the Debtors may reduce the amount of the Utility Deposit by any amount allocated to a particular Utility Company to the extent consistent with any alternative adequate assurance arrangements mutually agreed to by the Debtors and the affected Utility Company.

- e. If the Debtors determine that an Additional Assurance Request is not reasonable or are unable to reach an alternative resolution, the Debtors will request a hearing before the Court upon reasonable notice to determine the adequacy of assurances of payment made to the requesting Utility Company (the “Determination Hearing”), pursuant to section 366(c)(3)(A) of the Bankruptcy Code.
- f. Pending the resolution of the Additional Assurance Request at a Determination Hearing, the Utility Company making such request shall be restrained from discontinuing, altering, or refusing service to the Debtors on account of unpaid charges for pre-petition services, the commencement of the Chapter 11 Cases, or any objections to the Adequate Assurance, or requiring the Debtors to furnish any additional deposit or other security for the continued provision of services.
- g. The Adequate Assurance shall be deemed adequate assurance of payment for any Utility Company that fails to make an Additional Assurance Request.
- h. Upon the termination of Utility Services with a Utility Company and written notice to the affected Utility Company, the Debtors may, in their discretion and without further order of the Court, reduce the Adequate Assurance Deposit by an amount not exceeding, for each of the Utility Services being discontinued, the lesser of (i) the estimated 50% of the monthly utility expense for such Utility Services and (ii) the amount of the Adequate Assurance Deposit then attributable to the applicable Utility Company, provided that for any Utility Company for which the Adequate Assurance Deposit is reduced, the Debtors shall have paid such Utility Company in full for any outstanding post-petition Utility Services before reducing the Adequate Assurance Deposit, and either (a) the Utility Company consents or (by) the Debtors have provided the affected Utility Company with seven (7) days’ prior written notice and receive no response to such notice.

D. Subsequent Modification of the Utility Companies List

11. It is possible that, despite the Debtors’ efforts, certain Utility Companies have not yet been identified by the Debtors or included on the Utility Service List (each, an “Additional”

Utility Company,” and collectively, the “Additional Utility Companies”). Thus, promptly upon the discovery of an Additional Utility Company, the Debtors will increase the Utility Deposit by an amount equal to approximately 50% of the Debtors’ estimated monthly utility expense for each Additional Utility Company subsequent to the Petition Date. In addition, the Debtors request that the Court provide that the Additional Utility Companies are subject to the terms of the Proposed Orders (including the Assurance Procedures) once entered by the Court.

RELIEF REQUESTED

12. By this Motion, the Debtors request that the Court enter the Proposed Orders: (i) prohibiting the Debtors’ Utility Companies from altering, refusing, or discontinuing utility services on account of pre-petition invoices; (ii) determining that the Debtors have provided each of the Utility Companies with Adequate Assurance based on the Debtors’ establishment of the Utility Deposit Account holding the Utility Deposit; (iii) establishing the Assurance Procedures; and (iv) granting related relief.

BASIS FOR RELIEF

13. The termination or cessation (even if only temporary) of any of the Utility Services will result in disruption to the Debtors’ businesses, as well as a potential loss of revenue and profits. Any interruption of the Utility Services would diminish or impair the Debtors’ efforts to preserve and maximize the value of their estates and to successfully prosecute the Chapter 11 Cases. It is therefore critical that the Utility Services continue uninterrupted.

A. Section 366 of the Bankruptcy Code Grants the Court the Discretion to Determine the Adequacy of the Debtors' Proposed Adequate Assurance

14. Section 366 of the Bankruptcy Code provides that, in a chapter 11 case, during the initial thirty (30) days after the commencement of the case, utilities may not alter, refuse, or discontinue service to, or discriminate against, a debtor solely on the basis of the commencement of its case or the existence of pre-petition debts owed by the debtor.⁵ In a chapter 11 case, following the thirty-day period under section 366(c) of the Bankruptcy Code, utilities may discontinue service to the debtor if the debtor does not provide adequate assurance of future payment of its post-petition obligations in a form that is satisfactory to the utility, subject to the Court's ability to modify the amount of adequate assurance.

15. Congress enacted section 366 of the Bankruptcy Code to protect a debtor from immediate termination of utility services after filing for bankruptcy, while at the same time providing the utility companies with adequate assurance of payment for post-petition utility

⁵ There is an apparent discrepancy between subsections (b) and (c) of section 366 of the Bankruptcy Code because these two subsections set forth different time periods during which a utility is prohibited from altering, refusing, or discontinuing utility service. Specifically, section 366(b) of the Bankruptcy Code allows a utility to alter, refuse, or discontinue service "if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment," while section 366(c)(2) of the Bankruptcy Code allows a utility in "a case filed under chapter 11 . . . [to] alter, refuse or discontinue service" to a chapter 11 debtor "if during the 30-day period beginning on the date of the filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service. . . ." (emphasis added).

Under the statutory construction canon *lex specialis derogat legi generali* ("specific language controls over general"), the language of section 366(c)(2) controls here because the Debtors are chapter 11 Debtors. See 3 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 366.03 (16th ed.) ("It is unclear how the 30-day period [in section 366(c)(2) of the Bankruptcy Code] meshes with the normal 20-day period in section 366(b). The better view is that, because section 366(c) is more specifically applicable to chapter 11 cases, the 30-day period, rather than the 20-day period in section 366(b), should apply.").

services. *See* H.R. Rep. No. 95-595, at 350 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6306. Section 366 defines “assurance of payment” to mean several forms of security, including, cash deposits, letters of credit, and prepayment of utility services. 11 U.S.C. § 366(c)(1)(A). Section 366(c)(1)(B) explicitly excludes, however, offering administrative expense priority as adequate assurance of payment.

16. While section 366(c) of the Bankruptcy Code sets forth what constitutes adequate assurance of payment, the bankruptcy court nonetheless retains discretion to determine what, if any, adequate assurance is necessary to satisfy the requirement under section 366 that assurance of payment must only be adequate. *See In re Adelphia Bus. Sols., Inc.*, 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002) (“The bankruptcy courts are in agreement that section 366(b) vests in the bankruptcy court the exclusive responsibility for determining the appropriate security which a debtor must provide to his utilities to preclude termination of service for non-payment of pre-petition utility bills.”) (*citing In re Begley*, 41 B.R. 402, 405-06 (E.D. Pa. 1984), *aff’d*, 760 F.2d 46 (3d Cir. 1985)). Accordingly, a court is not required to give the utility companies an “absolute guarantee of payment,” or require that the adequate assurance take the form of a deposit, bond, letter of credit, or similar security. *In re Caldor, Inc.—N.Y.*, 199 B.R. 1, 3 (S.D.N.Y. 1996), *aff’d sub nom. Va. Elec. & Power Co. v. Caldor, Inc.—N.Y.*, 117 F.3d 646 (2d Cir. 1997).

17. Rather, in considering the facts and circumstances of each case, the Court must ensure only that the utility is not subject to an unreasonable risk of non-payment for post-petition services. *See In re Adelphia Bus. Sols., Inc.*, 280 B.R. at 80; *Mass. Elec. Co. v. Keydata Corp.*

(*In re Keydata Corp.*), 12 B.R. 156, 158 (B.A.P. 1st Cir. 1981). The Court, therefore, must strike a balance between satisfying the utility company's need for adequate assurance and ensuring that the debtor gives no more than what is adequate, as the debtor has a conflicting need to conserve financial resources. *See In re Magnesium Corp. of Am.*, 278 B.R. 698, 714 (Bankr. S.D.N.Y. 2002) (holding that to require the debtor to allocate valuable liquidity to provide further "adequate assurance" to satisfy a utility's obligations before their amount has been fixed would prejudice the entirety of the debtor's unsecured creditor body for the benefit of a single one).

18. In determining whether a utility is subject to an unreasonable risk of non-payment, the Court may consider whether the utility would seek the same additional security from a non-bankruptcy customer. *See In re Caldor, Inc.—N.Y.*, 199 B.R. at 3 (finding that the utility companies were not seeking additional security for an adequate assurance of future payment, but solely because their monopoly position permitted them to capitalize on the debtors' bankruptcy filing); *Whittaker v. Phila. Elec. Co. (In re Whittaker)*, 84 B.R. 934, 941-42 (Bankr. E.D. Pa. 1988), *aff'd*, 92 B.R. 110 (E.D. Pa. 1988), *aff'd*, 882 F.2d 791 (3d Cir. 1989). The Court may not consider, however, the absence of security before the petition date, the debtor's history of timely payments, or the availability of an administrative expense priority. 11 U.S.C. § 366(c)(3)(B).

B. The Debtors' Proposed Adequate Assurance Is Sufficient

19. The Debtors submit that their proposed method of furnishing adequate assurance of payment for post-petition Utility Services is not prejudicial to the rights of any Utility

Company and is in the best interest of the Debtors' estates and creditors. Because uninterrupted Utility Services are vital to the Debtors' businesses and, consequently, to the success of the Chapter 11 Cases, the relief requested herein is necessary and in the best interests of the Debtors' estates and creditors. Such relief ensures that the Debtors' business operations will not experience any unexpected or inopportune interruption during the pendency of the Chapter 11 Cases and provides the Utility Companies and the Debtors with an orderly, fair procedure for determining "adequate assurance" of payment. Given that the Court has the discretion to determine the assurance necessary to satisfy the Utility Companies' needs, the Debtors submit that the Proposed Adequate Assurance is more than adequate to ensure that the Debtors will meet their post-petition utility obligations.

20. Because the Debtors' receipt of uninterrupted Utility Services is vital to the Debtors' continued business operations and, consequently, to the success of the Chapter 11 Cases, the relief requested herein is necessary and in the best interests of the Debtors, their estates, and creditors. Such relief ensures that the Debtors' business operations will not be disrupted and provides Utility Companies and the Debtors with an orderly and fair procedure for determining "adequate assurance."

21. Based upon the foregoing, the Debtors submit that the relief requested herein should be granted.

SATISFACTION OF BANKRUPTCY RULE 6003

22. Pursuant to Bankruptcy Rule 6003(b), any motion seeking to use property of the estate pursuant to section 363 of the Bankruptcy Code or to satisfy prepetition claims within twenty-one days of the Petition Date requires the Debtors to demonstrate that such relief “is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003(b). As set forth throughout this Motion, any disruption of the Utility Services would substantially diminish or impair the Debtors’ efforts in the Chapter 11 Cases to preserve and maximize the value of their estates.

23. For this reason and those set forth above, the Debtors respectfully submit that Bankruptcy Rule 6003(b) has been satisfied and the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

WAIVER OF STAY UNDER BANKRUPTCY RULES 4001(a)(3) AND 6004(h)

24. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). Further, Bankruptcy Rule 4001(a)(3) provides that “[a]n order granting a motion for relief from the automatic stay. . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 4001(a)(3). As set forth throughout this Motion, any interruption of the Utility Services would substantially diminish or impair the Debtors’ efforts to successfully prosecute the Chapter 11 Cases.

25. For this reason and those set forth above, the Debtors submit that ample cause exists to justify a waiver of the fourteen-day stay imposed by Bankruptcy Rules 4001(a)(3) and 6004(h) to the extent applicable to the Proposed Orders.

RESERVATION OF RIGHTS

26. Nothing in the Proposed Orders or this Motion (i) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates; (ii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates; or (iii) shall be construed as a promise to pay a claim.

NOTICE

27. The Debtors will provide notice of this Motion to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Office of the United States Attorney for the District of Delaware; (iii) the Subchapter V Trustee appointed in these Chapter 11 Cases, (iv) the Internal Revenue Service; (v) the Debtors' twenty (20) largest unsecured creditors (excluding insiders); (vi) counsel to the Prepetition and DIP Lender; (vii) the Utility Companies; (viii) the Landlord; and (ix) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Rule 9013-1(m) of the Local Rules. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

CONCLUSION

WHEREFORE, the Debtors respectfully request entry of the Proposed Orders, granting the relief requested herein and such other and further relief as is just and proper.

Dated: November 11, 2024
Wilmington, Delaware

FAEGRE DRINKER BIDDLE & REATH LLP

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*Proposed Counsel to the Debtors and
Debtors in Possession*

EXHIBIT A

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Recombinetics, Inc., *et al.*,

Debtors.¹

Chapter 11 (Subchapter V)

Case No. 24-12593 (___)

(Jointly Administered)

Ref. D.I. __

**INTERIM ORDER (I) PROHIBITING UTILITY COMPANIES FROM
ALTERING, REFUSING, OR DISCONTINUING UTILITY SERVICES,
(II) DEEMING UTILITY COMPANIES ADEQUATELY ASSURED OF
FUTURE PAYMENT, (III) ESTABLISHING PROCEDURES FOR
DETERMINING ADDITIONAL ADEQUATE ASSURANCE OF
PAYMENT, AND (IV) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for the entry of interim and final orders, pursuant to sections 105(a) and 366 of the Bankruptcy Code and Bankruptcy Rule 6003 and 6004, (i) prohibiting the Debtors’ utility service providers from altering, refusing, or discontinuing utility services on account of pre-petition invoices; (ii) deeming the Utility Companies adequately assured of future payment; (iii) establishing Assurance Procedures for determining additional adequate assurance of future payment and authorizing the Debtors to

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Recombinetics, Inc. (1470), Acceligen, Inc. (N/A), Regenevida, Inc. (N/A), Surrogen, Inc. (N/A), and Therillume, Inc. (4995). The mailing address for each of the Debtors is 3388 Mike Collins Drive, Eagan, Minnesota 55121.

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

provide additional adequate assurance of future payment to the Utility Companies; and (iv) granting related relief and upon consideration of the Motion and all pleadings related thereto, including the First Day Declaration; and notice of the Motion having been given in accordance with the Local Rules; and the Court having jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 1334 and 157 and the Amended Standing Order; and this being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Motion being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the relief requested in the Motion and provided for herein being in the best interest of the Debtors, their estates, and their creditors; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. A final hearing on the relief sought in the Motion shall be conducted on _____, 2024, at _____ (ET) (the “Final Hearing”). Any party-in-interest objecting to the relief sought at the Final Hearing or the Proposed Final Order shall file and serve a written objection, which objection shall be served upon proposed counsel for the Debtors, in each case no later than _____, 2024, at 4:00 p.m. (ET). If no objections to the entry of the Proposed Final Order are timely filed, this Court may enter the Proposed Final Order without further notice or a hearing. The Debtors shall file a notice of the Final Hearing within two business days after entry of this Interim Order.

3. Subject to the Assurance Procedures set forth below, no Utility Company may (i) alter, refuse, terminate, or discontinue Utility Services to, or discriminate against, the Debtors on the basis of the commencement of the Chapter 11 Cases or on account of outstanding pre-petition invoices; or (ii) require additional assurance of payment, other than the Utility Deposit, to secure future payment for utility services.

4. The Debtors shall deposit, as adequate assurance for the Utility Companies, \$2,100 in the aggregate (the “Utility Deposit”) into a segregated account (the “Utility Deposit Account”) within twenty (20) days of the Petition Date to be maintained during the pendency of the Chapter 11 Cases as provided for herein. The Utility Deposit Account may be either interest-bearing or non-interest-bearing in the Debtors’ discretion and the Debtors shall maintain the Utility Deposit at a bank that has executed a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware.

5. Subject to the Assurance Procedures set forth below, the Utility Deposit constitutes adequate assurance of future payment to the Utility Companies under section 366 of the Bankruptcy Code (the “Adequate Assurance”).

6. The following Assurance Procedures are approved in all respects:

- a. Any Utility Company desiring assurance of future payment for utility service beyond the Adequate Assurance must serve a request (an “Additional Assurance Request”) so that it is received by the Debtors and their proposed counsel at the following addresses: (i) Recombinetics, Inc., 3388 Mike Collins Drive, Eagan, MN 51121 (Attn: Rocco Morelli) and (ii) proposed counsel to the Debtors, Faegre Drinker Biddle & Reath LLP, 1800 Century Park East, Suite 1500, Los Angeles, CA 90067 Attn:

Maria J. Cho (maria.cho@faegredrinker.com) and 222 Delaware Ave., Suite 1410, Wilmington, DE 19801, Attn: Sarah Silveira (sarah.silveira@faegredrinker.com).

- b. Any Additional Assurance Request must: (i) be made in writing; (ii) specify the amount and nature of assurance of payment that would be satisfactory to the Utility Company; (iii) set forth the location(s) for which Utility Services are provided and the relevant account number(s); (iv) describe any deposits, prepayments, or other security currently held by the requesting Utility Company; and (v) explain why the requesting Utility Company believes the Adequate Assurance is not sufficient adequate assurance of future payment.
- c. Upon the Debtors' receipt of an Additional Assurance Request at the addresses set forth above, the Debtors shall promptly negotiate with such Utility Provider to resolve such Utility Provider's Additional Assurance Request.
- d. The Debtors, in their discretion, may resolve any Additional Assurance Request by mutual agreement with the requesting Utility Company and without further order of the Court, and may, in connection with any such resolution, in their discretion, provide the requesting Utility Company with additional assurance of future payment in a form satisfactory to the Utility Company, including, but not limited to, cash deposits, prepayments, and/or other forms of security, if the Debtors believe such additional assurance is reasonable. Without the need for any notice to, or action, order, or approval of, the Court, the Debtors may reduce the amount of the Utility Deposit by any amount allocated to a particular Utility Company to the extent consistent with any alternative adequate assurance arrangements mutually agreed to by the Debtors and the affected Utility Company.
- e. If the Debtors determine that an Additional Assurance Request is not reasonable or are unable to reach an alternative resolution, the Debtors will request a hearing before the Court upon reasonable notice to determine the adequacy of assurances of payment made to the requesting Utility Company (the "Determination Hearing"), pursuant to section 366(c)(3)(A) of the Bankruptcy Code.
- f. Pending the resolution of the Additional Assurance Request at a

Determination Hearing, the Utility Company making such request shall be restrained from discontinuing, altering, or refusing service to the Debtors on account of unpaid charges for pre-petition services, the commencement of the Chapter 11 Cases, or any objections to the Adequate Assurance, or requiring the Debtors to furnish any additional deposit or other security for the continued provision of services.

- g. The Adequate Assurance shall be deemed adequate assurance of payment for any Utility Company that fails to make an Additional Assurance Request.
- h. Upon the termination of Utility Services with a Utility Company and written notice to the affected Utility Company, the Debtors may, in their discretion and without further order of the Court, reduce the Adequate Assurance Deposit by an amount not exceeding, for each of the Utility Services being discontinued, the lesser of (i) the estimated 50% of the monthly utility expense for such Utility Services and (ii) the amount of the Adequate Assurance Deposit then attributable to the applicable Utility Company, provided that for any Utility Company for which the Adequate Assurance Deposit is reduced, the Debtors shall have paid such Utility Company in full for any outstanding post-petition Utility Services before reducing the Adequate Assurance Deposit, and either (a) the Utility Company consents or (by) the Debtors have provided the affected Utility Company with seven (7) days' prior written notice and receive no response to such notice.

7. The Debtors are authorized, as necessary, to provide a copy of this Interim Order, and any final order approving the relief requested in the Motion (any such order, the "Final Order"), to any Utility Company not listed on the Utility Service List (each, an "Additional Utility Company," and collectively, the "Additional Utility Companies") as such Utility Companies are identified. Promptly upon providing a copy of this Interim Order and the Final Order to an Additional Utility Company, the Debtors shall increase the Utility Deposit by an amount equal to approximately 50% of the Debtors' estimated monthly utility expense for such

Additional Utility Company subsequent to the Petition Date. The Additional Utility Companies shall be subject to the terms of this Interim Order and the Final Order, including the Assurance Procedures.

8. Each Utility Company shall be deemed to have adequate assurance of payment under section 366 of the Bankruptcy Code unless and until: (i) the Debtors, in their discretion, agree to an alternative assurance of payment with the Utility Company or (ii) this Court enters an order, after a Determination Hearing, requiring that additional adequate assurance of payment be provided to the Utility Company.

9. Upon the effective date of a chapter 11 plan in the Chapter 11 Cases or the closing of a sale of substantially all of the Debtors' assets, the Debtors may close the Utility Deposit Account without the need for any notice to, or action, order or approval of, this Court.

10. Any payment made by the Debtors pursuant to the authority granted herein shall be in accordance with the terms and conditions of the DIP Financing, including the DIP Budget, and DIP Order and any other or subsequent orders approving debtor-in-possession financing or use of cash collateral by this Court in these Chapter 11 Cases.

11. Nothing in this Interim Order (i) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates; (ii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates; (iii) shall impair, prejudice,

waive, or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action against any Utility Company; or (iv) shall be construed as a promise to pay a claim.

12. The relief granted herein is applicable to all Utility Companies providing Utility Services to the Debtors, including any Utility Company paid directly by a Landlord for Utility Services for the benefit of the Debtors.

13. Any Landlord that pays directly for Utility Services for the benefit of the Debtors pursuant to a nonresidential real property lease must continue paying for such Utility Services in the ordinary course of business and may not cease, reduce, delay, or otherwise interfere with the payment or delivery of such Utility Services, regardless of any nonpayment, deferral, or waiver of rent, or any defaults with respect to the applicable lease; provided that a Landlord may cease payment on account of Utility Services following the effective date of the rejection of the applicable lease pursuant to section 365 of the Bankruptcy Code. The Debtors shall serve a copy of this Interim Order on all Landlords affected hereby.

14. Nothing in this Interim Order is intended or shall be deemed to constitute a finding that any entity is or is not a Utility Company hereunder or under section 366 of the Bankruptcy Code, whether such entity is listed on the Utility Service List or is served with a copy of this Interim Order, the Motion, or the Proposed Final Order.

15. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted herein.

16. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.
17. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order shall be effective and enforceable immediately upon its entry.
18. Notice of the Motion as provided therein shall be deemed good and sufficient and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.
19. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Interim Order.

EXHIBIT B

Proposed Final Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Recombinetics, Inc., *et al.*,

Debtors.¹

Chapter 11 (Subchapter V)

Case No. 24-12593 (____)

(Jointly Administered)

Ref. D.I. ____ & ____

**FINAL ORDER, PURSUANT TO SECTIONS 105(a) AND 366 OF
THE BANKRUPTCY CODE, (I) PROHIBITING UTILITY COMPANIES
FROM ALTERING, REFUSING, OR DISCONTINUING UTILITY SERVICES,
(II) DEEMING UTILITY COMPANIES ADEQUATELY ASSURED OF FUTURE
PAYMENT, AND (III) ESTABLISHING PROCEDURES FOR DETERMINING
ADDITIONAL ADEQUATE ASSURANCE OF PAYMENT**

Upon consideration of the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for the entry of interim and final orders, pursuant to sections 105(a) and 366 of the Bankruptcy Code and Bankruptcy Rule 6003 and 6004, (i) prohibiting the Debtors’ utility service providers from altering, refusing, or discontinuing utility services on account of pre-petition invoices; (ii) deeming the Utility Companies adequately assured of future payment; (iii) establishing Assurance Procedures for determining additional adequate assurance of future payment and authorizing the Debtors to

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Recombinetics, Inc. (1470), Acceligen, Inc. (N/A), Regenevida, Inc. (N/A), Surrogen, Inc. (N/A), and Therillume, Inc. (4995). The mailing address for each of the Debtors is 3388 Mike Collins Drive, Eagan, Minnesota 55121.

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

provide additional adequate assurance of future payment to the Utility Companies; and (iv) granting related relief and upon consideration of the Motion and all pleadings related thereto, including the First Day Declaration; and notice of the Motion having been given in accordance with the Local Rules; and the Court having jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 1334 and 157 and the Amended Standing Order; and this being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Motion being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the relief requested in the Motion and provided for herein being in the best interest of the Debtors, their estates, and their creditors; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to pay on a timely basis, in accordance with their prepetition practices, all undisputed invoices for Utility Services rendered by the Utility Companies after the Petition Date.
3. Subject to the Assurance Procedures set forth below, no Utility Company may (i) alter, refuse, terminate, or discontinue Utility Services to, or discriminate against, the Debtors on the basis of the commencement of the Chapter 11 Cases or on account of outstanding prepetition invoices, or (ii) require additional assurance of payment, other than the Utility Deposit to secure future payment for utility services.

4. The Debtors shall maintain a deposit, as adequate assurance for the Utility Companies, in the amount of \$2,100 in the aggregate (the “Utility Deposit”) in a segregated account (the “Utility Deposit Account”) during the pendency of the Chapter 11 Cases as provided for herein. The Utility Deposit Account may be either interest-bearing or non-interest-bearing in the Debtors’ discretion and the Debtors shall maintain the Utility Deposit at a bank that has executed a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware.

5. Subject to the Assurance Procedures set forth below, the Utility Deposit constitutes adequate assurance of future payment to the Utility Companies under section 366 of the Bankruptcy Code (the “Adequate Assurance”).

6. The following Assurance Procedures are approved in all respects:

- a. Any Utility Company desiring assurance of future payment for utility service beyond the Adequate Assurance must serve a request (an “Additional Assurance Request”) so that it is received by the Debtors and their proposed counsel at the following addresses: (i) Recombinetics, Inc., 3388 Mike Collins Drive, Eagan, MN 51121 (Attn: Rocco Morelli) and (ii) proposed counsel to the Debtors, Faegre Drinker Biddle & Reath LLP, 1800 Century Park East, Suite 1500, Los Angeles, CA 90067 Attn: Maria J. Cho (maria.cho@faegredrinker.com) and 222 Delaware Ave., Suite 1410, Wilmington, DE 19801, Attn: Sarah Silveira (sarah.silveira@faegredrinker.com).
- b. Any Additional Assurance Request must: (i) be made in writing; (ii) specify the amount and nature of assurance of payment that would be satisfactory to the Utility Company; (iii) set forth the location(s) for which Utility Services are provided and the relevant account number(s); (iv) describe any deposits, prepayments, or other security currently held by the requesting Utility Company; and (v) explain why the requesting

Utility Company believes the Adequate Assurance is not sufficient adequate assurance of future payment.

- c. Upon the Debtors' receipt of an Additional Assurance Request at the addresses set forth above, the Debtors shall promptly negotiate with such Utility Provider to resolve such Utility Provider's Additional Assurance Request.
- d. The Debtors, in their discretion, may resolve any Additional Assurance Request by mutual agreement with the requesting Utility Company and without further order of the Court, and may, in connection with any such resolution, in their discretion, provide the requesting Utility Company with additional assurance of future payment in a form satisfactory to the Utility Company, including, but not limited to, cash deposits, prepayments, and/or other forms of security, if the Debtors believe such additional assurance is reasonable. Without the need for any notice to, or action, order, or approval of, the Court, the Debtors may reduce the amount of the Utility Deposit by any amount allocated to a particular Utility Company to the extent consistent with any alternative adequate assurance arrangements mutually agreed to by the Debtors and the affected Utility Company.
- e. If the Debtors determine that an Additional Assurance Request is not reasonable or are unable to reach an alternative resolution, the Debtors will request a hearing before the Court upon reasonable notice to determine the adequacy of assurances of payment made to the requesting Utility Company (the "Determination Hearing"), pursuant to section 366(c)(3)(A) of the Bankruptcy Code.
- f. Pending the resolution of the Additional Assurance Request at a Determination Hearing, the Utility Company making such request shall be restrained from discontinuing, altering, or refusing service to the Debtors on account of unpaid charges for pre-petition services, the commencement of the Chapter 11 Cases, or any objections to the Adequate Assurance, or requiring the Debtors to furnish any additional deposit or other security for the continued provision of services.
- g. The Adequate Assurance shall be deemed adequate assurance of payment for any Utility Company that fails to make an Additional Assurance Request.

- h. Upon the termination of Utility Services with a Utility Company and written notice to the affected Utility Company, the Debtors may, in their discretion and without further order of the Court, reduce the Adequate Assurance Deposit by an amount not exceeding, for each of the Utility Services being discontinued, the lesser of (i) the estimated 50% of the monthly utility expense for such Utility Services and (ii) the amount of the Adequate Assurance Deposit then attributable to the applicable Utility Company, provided that for any Utility Company for which the Adequate Assurance Deposit is reduced, the Debtors shall have paid such Utility Company in full for any outstanding post-petition Utility Services before reducing the Adequate Assurance Deposit, and either (a) the Utility Company consents or (by) the Debtors have provided the affected Utility Company with seven (7) days' prior written notice and receive no response to such notice.

7. The Debtors are authorized, as necessary, to provide a copy of this Final Order to any Utility Company not listed on the Utility Service List (each, an “Additional Utility Company,” and collectively, the “Additional Utility Companies”) as such Utility Companies are identified. Promptly upon providing a copy of this Final Order to an Additional Utility Company, the Debtors shall increase the Utility Deposit by an amount equal to approximately 50% of the Debtors' estimated monthly utility expense for such Additional Utility Company subsequent to the Petition Date. The Additional Utility Companies shall be subject to the terms of this Final Order, including the Assurance Procedures.

8. Each Utility Company shall be deemed to have adequate assurance of payment under section 366 of the Bankruptcy Code unless and until: (i) the Debtors, in their discretion, agrees to an alternative assurance of payment with the Utility Company or (ii) this Court enters

an order, after a Determination Hearing, requiring that additional adequate assurance of payment be provided to the Utility Company.

9. Upon the effective date of a chapter 11 plan in the Chapter 11 Cases or the closing of sale of substantially all of the Debtors' assets, the Debtors may close the Utility Deposit Account without the need for any notice to, or action, order or approval of, this Court.

10. Nothing in this Final Order (i) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates; (ii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates; (iii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action against any Utility Company, or (iv) shall be construed as a promise to pay a claim.

11. The relief granted herein is applicable to all Utility Companies providing Utility Services to the Debtors, including any Utility Company paid directly by a Landlord for Utility Services for the benefit of the Debtors.

12. Any Landlord that pays directly for Utility Services for the benefit of the Debtors pursuant to a nonresidential real property lease must continue paying for such Utility Services in the ordinary course of business and may not cease, reduce, delay, or otherwise interfere with the payment or delivery of such Utility Services, regardless of any nonpayment, deferral, or waiver

of rent, or any defaults with respect to the applicable lease; provided that a Landlord may cease payment on account of Utility Services following the effective date of the rejection of the applicable lease pursuant to section 365 of the Bankruptcy Code. The Debtors shall serve a copy of this Interim Order on all Landlords affected hereby and their rights to object to this relief on a final basis are fully preserved.

13. Nothing in this Final Order is intended or shall be deemed to constitute a finding that any entity is or is not a Utility Company hereunder or under section 366 of the Bankruptcy Code, whether such entity is listed on the Utility Service List or is served with a copy of the interim order on the Motion previously entered by this Court, this Final Order, or the Motion.

14. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted herein.

15. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be effective and enforceable immediately upon its entry.

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

17. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Final Order.

EXHIBIT C**Utility Service List**

Name of Provider	Address	Utility Service	Utility Account Number	Adequate Assurance Amount
Dakota Electric Association	4300 220th Street West Farmington, MN 55024-9583	Electricity	200003574878 200004429775	\$1,400
McLeod Cooperative Power	3515 11th Street East Glencoe, MN 55336-4503	Electricity	926800	\$550
Minnesota Energy Resources	PO Box 6040 Carol Stream, IL 60197-6040	Natural Gas	0622573261-00002 0622573261-00003	\$150