

**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)

Bid Procedures Objection Deadline: TBD

Bid Procedures Hearing: TBD

DEBTORS' MOTION FOR ENTRY OF (A) AN ORDER (I) APPROVING BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS; (II) AUTHORIZING THE DEBTORS TO ENTER INTO THE STALKING HORSE APA AND TO PROVIDE THE STALKING HORSE BIDDER BID PROTECTIONS THEREUNDER; (III) SCHEDULING AN AUCTION FOR AND HEARING TO APPROVE THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS; (IV) APPROVING NOTICE OF THE RESPECTIVE DATE, TIME, AND PLACE FOR AN AUCTION AND FOR A HEARING ON APPROVAL OF SALE; (V) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (VI) APPROVING THE FORM AND MANNER OF NOTICE THEREOF; AND (VII) GRANTING RELATED RELIEF; AND (B) AN ORDER AUTHORIZING AND APPROVING (I) THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, RIGHTS, ENCUMBRANCES, AND OTHER INTERESTS; AND (II) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (III) 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 (i) an order, substantially in the form attached hereto as **Exhibit A** (the “Bidding Procedures Order”), (a) approving bidding procedures (the “Bidding Procedures”) for the sale (the “Sale”) of substantially all of the Debtors’ assets (the “Assets”) and the form and manner of notices in connection with the Bidding

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. (N/A). The mailing address for each of the Debtors is 3388 Collins Drive, Eagan, Minnesota 55121.

Procedures; (b) subject to final Court approval at the Sale Hearing (defined below), authorizing and approving the Debtors' entry into a stalking horse asset purchase agreement (the "Stalking Horse APA"), subject to higher or otherwise better offers submitted in accordance with the Bidding Procedures, and granting certain Bid Protections (defined below) to the Stalking Horse Bidder; (c) setting the deadline to conduct an auction (the "Auction") and scheduling a hearing to consider approval of the Sale (the "Sale Hearing"), including treatment of executory contracts and unexpired leases; (d) approving notice of the Auction and Sale Hearing and related notices; (e) approving procedures for the assumption and assignment of the Debtors' executory contracts and unexpired leases as part of the Sale (the "Assignment Procedures"); and (f) granting related relief; and (ii) an order (the "Stalking Horse Sale Order") (a) authorizing and approving the sale of the Assets free and clear of liens, claims, rights, encumbrances, and other interests; (b) authorizing and approving the assumption and assignment of certain executory contracts and unexpired leases; and (c) granting related relief. In 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 "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.² Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

² 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.

2. The statutory and legal predicates for the relief sought herein are sections 105, 363, 365, and 503 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”); Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and Local Rules 2002-1 and 6004-1.

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 sections 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. The Assets

6. As detailed in the First Day Declaration, the Debtors’ Business consists of gene editing in pigs, cattle, fish, and other livestock and human-focused gene therapies and related

services. The Debtors' platform uses a market-leading range of tools to replace, remove, or insert DNA, selecting the best tool for each application.

7. The Debtors' Assets include, among other things, intellectual property, inventory, property and equipment, cash and cash equivalents. The Debtors' intellectual property includes a patent portfolio consisting of 47 issued patents and more than 30 pending patent applications in the areas of biomedicine, gene editing, and livestock.

8. As further stated below, the Debtors believe that the Assets are valuable and that their value can be preserved through a sale pursuant to section 363 of the Bankruptcy Code.

B. The Debtors' Restructuring and Sale Efforts to Date

9. As described in the First Day Declaration, from February 2022 to August 2024, the Debtors conducted a marketing effort to explore the potential sale of Debtor Acceligen, Inc.'s business. With the assistance of Perella Weinberg Partners,³ the Debtors prepared a list of approximately 120 potential acquirers that were considered the most likely participants in a sale process. The Debtors provided certain information to these parties in order to gauge their interest prior to executing a non-disclosure agreement. Following this outreach, 12 parties entered into confidentiality agreements with the Debtors. Those parties requested additional information and received access to a virtual data room containing due-diligence materials and/or conducted meetings with the Debtors' management. Ultimately, the Debtors received letters of intent from two parties.

10. In or about September 2024, the Debtors received a proposal (the "Stalking Horse Bid") from Trans Ova Genetics ("TOG" or the "Stalking Horse Bidder"), a division of URUS Group, LP ("URUS"), to purchase substantially all of the Debtors' assets.

³ Perella Weinberg Partners is no longer engaged by the Debtors.

11. Following extensive, good faith and arm's-length negotiations between the Debtors and their advisors, on the one hand, and TOG and TOG's advisors, on the other hand, the Debtors determined that (i) the Stalking Horse Bid confers substantial value and benefit to the Debtors' estates, (ii) entry into the Stalking Horse APA, subject to higher and better offers, is the sound exercise of the Debtors' reasonable judgment, and (iii) filing this Motion with the Stalking Horse APA in hand, subject to the post-petition marketing process described herein, is in the Debtors' best interests to maximize the value of the Assets by setting an initial price "floor" in the sale process and moving that process forward in a timely manner given the Debtors' lack of liquidity.

C. The Stalking Horse APA and Stalking Horse Sale Order

12. On November 11, 2024, the Debtors and TOG executed the Stalking Horse APA which, subject to this Court's approval, outlines the terms by which TOG will be designated the Stalking Horse Bidder. Under the terms of the Stalking Horse APA, the Stalking Horse Bidder proposes to acquire the assets for (i) \$4,114,782, which is subject to payment by offset, on a dollar-for-dollar basis, against the outstanding Obligations under the DIP Financing Agreement (the "DIP Obligations"), *plus* cash in the amount of any Cure Costs (as defined in the Stalking Horse APA) which will be paid by the Stalking Horse Bidder in connection with assumption of the Purchased Contracts and an amount up to \$200,000, which shall be paid to the Debtors' investment banker, and (ii) the assumption of certain liabilities as more fully set forth in the Stalking Horse APA (collectively, the "Purchase Price").

13. The Stalking Horse APA includes various representations, warranties and covenants by and from the Debtors and the Stalking Horse Bidder. The Stalking Horse APA also includes provisions for the Termination Fee and Expense Reimbursement and other Bid Protections (as defined below), certain conditions to the closing of the contemplated Sale and customary termination

rights. The Stalking Horse Bid is additionally subject to, among other things, the transfer of the Assets free and clear of all liens, claims and encumbrances.

14. In accordance with Local Rule 6004-1(b)(iv), the below chart summarizes certain significant terms of the Stalking Horse APA and proposed Stalking Horse Sale Order. A copy of the Stalking Horse Sale Order is attached hereto as **Exhibit B**.

Material Terms of the Stalking Horse APA and Stalking Horse Sale Order⁴

Term / Rule	Description	Citation
Sale to Insider Local Rule 6004-1(b)(iv)(A)	The Stalking Horse Bidder is not an “insider”, as that term is defined in section 101(31) of the Bankruptcy Code.	N/A
Releases Local Rule 6004-1(b)(iv)(C)	None.	N/A
Agreements with Management Local Rule 6004-1(b)(iv)(B)	The Stalking Horse Bidder is not obligated to hire any Business Employee or any other employee of the Debtors but shall have the right to offer employment to any Business Employee. No later than ten (10) Business Days prior to the Closing Date, Stalking Horse Bidder shall offer employment on an at-will basis to be effective as of the Closing to each of the Business Employees that it designates in its discretion, subject to such Business Employees satisfying the Buyer’s standard screening procedures. The Debtors will cooperate with any reasonable requests by the Stalking Horse Bidder in order to facilitate the offers of employment and delivery of such offers.	Stalking Horse APA § 5.12.1

⁴ This summary is qualified in its entirety by the provisions of the Stalking Horse APA. To the extent that there is any inconsistency between the terms of the Stalking Horse APA and this summary, the terms of the Stalking Horse APA shall control. Capitalized terms used in this summary table but not otherwise defined in this Motion or the First Day Declaration have the meanings given to them in the Stalking Horse APA

Term / Rule	Description	Citation
Termination Fee and Expense Reimbursement Local Rule 6004-1(c)(i)(C)(2)	In the event that the Stalking Horse APA is terminated by the Stalking Horse Bidder or the Debtors, as applicable, (a) if an Alternative Transaction is entered into other than in connection with an Auction pursuant to the Bidding Procedures, (b) if there is an Auction, Stalking Horse Bidder is not declared the winning bidder at the Auction and Stalking Horse Bidder has not elected to serve as the Back-Up Bidder, and the Alternative Transaction or sale to the Winning Bidder at the Auction, as applicable, is consummated, then Debtors shall pay Stalking Horse Bidder by wire transfer of immediately available funds, to the account specified by Stalking Horse Bidder to Debtors in writing, the Termination Fee in the amount of \$150,000 and the aggregate amount of all reasonable and documented out-of-pocket expenses in an amount not to exceed \$300,000 on the date the Alternative Transaction or sale to the Winning Bidder at the Auction, as applicable, is consummated.	Stalking Horse APA § 8.3.1
Closing and Other Deadlines Local Rule 6004-1(b)(iv)(E)	The Stalking Horse APA contains customary conditions precedent to closing, including entry of the Stalking Horse Sale Order, any necessary governmental approvals, delivery of ancillary agreements required to accomplish the Sale, including the Intellectual Property Assignment Agreements, the Bill of Sale and the Assignment and Assumption Agreement, and no Material Adverse Effect has occurred prior to the Closing Date. The Closing will occur on the third (3rd) Business Day following the satisfaction of the closing conditions, or such other time and place as agreed in writing between the Debtor and Stalking Horse Bidder.	Stalking Horse APA §§ 2.4, 6.1, 6.2, 6.3
Good Faith Deposit Local Rule 6004-1(b)(iv)(F)	Deposits are only required by Qualified Bidders with respect to the cash portion of the purchase price provided for in a bid. Given the full credit bid provided by the Stalking Horse Bidder, the Stalking Horse Bidder shall not be required to submit a deposit on account of the Stalking Horse Bid.	Bidding Procedures § 7(m)

Term / Rule	Description	Citation
Interim Arrangements with Stalking Horse Bidder Local Rule 6004-1(b)(iv)(G)	There are no agreements for interim management or similar arrangements. However: - Under Section 4.1, during the Interim Period, Sellers shall, and shall cause their Subsidiaries to (a) afford Buyer and its Representatives reasonable access to the Business and the Purchased Assets, and (b) use commercially reasonable efforts to cause its employees and Representatives to cooperate with and aid Buyer and its Representatives in its investigation of the Business. - Under Section 4.2, in the Interim Period, the Debtors will, and will cause their Subsidiaries to, conduct the Business in the Ordinary Course in all material respects and shall use their reasonable best efforts to preserve intact its present business relations and contracts, subject in all respects to the Bankruptcy Exceptions.	Stalking Horse APA §§ 4.1, 4.2
Use of Proceeds Local Rule 6004-1(b)(iv)(H)	The Debtors do not propose to release any sale proceeds without further Court order.	N/A
Tax Exemption Local Rule 6004-1(b)(iv)(I)	The Stalking Horse APA does not seek to have the Sale declared exempt from taxes under section 1146(a) of the Bankruptcy Code.	Stalking Horse APA § 9.12
Record Retention Local Rule 6004-1(b)(iv)(J)	The Stalking Horse Bidder agrees to preserve all records in its possession from and after the Closing for a period of six (6) years following the Closing Date, and will provide reasonable access to the Debtors and their advisors at no charge during normal business hours.	Stalking Horse APA § 5.9
Sale of Avoidance Actions Local Rule 6004-1(b)(iv)(K)	Actual and/or potential claims and causes of action under sections 502(d) and 544 through 553 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code or any analogous state law (“<u>Avoidance Actions</u>”) against counterparties to Purchased Contracts are Purchased Assets under the Stalking Horse APA; all other Avoidance Actions are Excluded Assets under the Stalking Horse APA and shall not be included in the Purchased Assets.	Stalking Horse APA § 2.1.2(i)
Requested Findings as to Successor Liability Local Rule 6004-1(b)(iv)(L)	Under the Stalking Horse APA, the Stalking Horse Bidder is only assuming those liabilities identified in Section 2.1.1. The Debtors are seeking to sell the Assets free and clear of successor liability claims.	Stalking Horse APA § 2.1.1

Term / Rule	Description	Citation
Sale Free and Clear of Unexpired Leases Local Rule 6004-1(b)(iv)(M)	The Stalking Horse APA provides that the Assets will be sold free and clear of all Encumbrances of any and every kind, nature and description, other than Permitted Encumbrances.	Stalking Horse APA § 2.1
Credit Bid Local Rule 6004-1(b)(iv)(N)	The DIP Lender, in its role as Stalking Horse Bidder, is authorized to submit a credit bid for the purchase of all of the collateral on which such DIP Lender holds a valid, perfected, and unavoidable lien up to the amount of the outstanding balance under the DIP Obligations. No other party shall be permitted or allowed to credit bid.	Bidding Procedures § 8

OVERVIEW OF BIDDING PROCEDURES, NOTICE PROCEDURES, AND ASSIGNMENT AND ASSUMPTION PROCEDURES

A. Overview of the Bidding Procedures

15. The Bidding Procedures are intended to permit a fair and efficient competitive sale process, consistent with the timeline of the Chapter 11 Cases, and to promptly identify the bid or bids that constitute the highest or otherwise best offer for the Assets. The Bidding Procedures establish, among other things:⁵

- a. the requirements a Potential Bidder (as defined in the Bidding Procedures) must satisfy to be entitled to participate in the bidding process and become a Qualified Bidder (as defined below);
- b. the requirements for submitting bids and the method and criteria by which such bids become entitled to be a Qualified Bid (as defined below);
- c. the availability of, access to, and conduct during due diligence by Potential Bidders;
- d. the deadline by which bids must be submitted;
- e. the procedures for conducting the Auction;
- f. the criteria by which a Winning Bidder will be selected by the Debtors; and

⁵ The brief description of the Bidding Procedures provided for herein is for the convenience of the Court and parties in interest. The full copy of the Bidding Procedures should be reviewed in its entirety and will control in the event of any inconsistency or ambiguity in any descriptions of them herein. Capitalized terms used in this summary and not otherwise defined herein will have the meanings given to them in the Bidding Procedures.

- g. various other matters relating to the sale process generally, the Sale Hearing, return of any Deposits (as defined below), and designation of a Back-Up Bidder (as defined in the Bidding Procedures).

16. Importantly, the Bidding Procedures recognize the Debtors' fiduciary obligations to maximize value, and, as such, do not impair the Debtors' ability to consider all Qualified Bid proposals and preserve the Debtors' right to modify the Bidding Procedures as necessary or appropriate to maximize value for their estates in consultation with key parties set forth therein (the "Notice Parties").

B. Local Rule Disclosures

17. A summary of the following provisions set forth in the Bidding Procedures Order and the accompanying Bidding Procedures is set forth below, pursuant to Local Rule 6004-1(c):

Provisions Governing the Qualification of Bidders Bidding Procedures, Review of Bids; Designation of Qualified Bids	A "<u>Qualified Bidder</u>" is a Potential Bidder that has, among other things: (i) delivered a duly executed Purchase Agreement (as defined below); (ii) provided a bid that satisfies the Bid Requirements; (iii) provided a Deposit; (iv) provided a proposed Sale Order and redline against the Stalking Horse APA (v) provided written evidence demonstrating that the Potential Bidder has available cash, a commitment for financing, or evidence of ability to consummate the sale; and (vi) furnished Adequate Assurance Information.
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Provisions Governing Qualified Bids Bidding Procedures, Bid Requirements	A bid submitted by a Potential Bidder that is in writing and satisfies each of the following Bid Requirements, as determined by the Debtors in their reasonable business judgment, in consultation with the Notice Parties shall constitute a “<u>Qualified Bid.</u>” a. Purchase Agreement. A duly executed purchase agreement (the “<u>Purchase Agreement</u>”), and a redline to reflect changes to the Stalking Horse APA. b. Sale Order. A revised form of the Stalking Horse Sale Order and a redline to reflect changes to the Stalking Horse Sale Order. c. Disclosure of Identity. Each bid must fully disclose the identity of the Potential Bidder (and to the extent that the Potential Bidder is a newly formed acquisition entity or the like, the identity of the Potential Bidder’s parent company or sponsor), and provide the contact information of the specific person(s) whom the Debtors or their advisors should contact in the event that the Debtors have any questions or wish to discuss the bid submitted by the Potential Bidder. d. Corporate Authorization. Each bid must include evidence, in form and substance reasonably satisfactory to the Debtors and the Notice Parties, of authorization and approval from the Potential Bidder’s board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Proposed Agreement. e. Debtors’ Property to be Acquired. Each Bid must state that the applicable Potential Bidder offers to (i) purchase, in cash, any or all of the Assets on terms and conditions substantially similar to the Stalking Horse APA, which terms and conditions the Debtors, in consultation with the Notice Parties, reasonably determine are at least as favorable to the estates than those set forth in the Stalking Horse APA; and (ii) take assignment of any or all Purchased Contracts under the Stalking Horse APA, with details of the Potential Bidder’s proposal for the treatment of related cure amounts and the provision of adequate assurance of future performance to the counterparties to such Purchased Contracts. f. Assumed Liabilities. Each Bid must specify the liabilities proposed to be paid or assumed. g. Minimum Bid. Each Bid must offer to pay a price equal to or greater than \$4,964,782, which amount shall consist of cash as follows: (i) the Stalking Horse Purchase Price,
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	(ii) the Bid Protections, and (iii) \$200,000 or more as a cash premium over the Stalking Horse Bid (together, the “<u>Minimum Overbid</u>”). h. Irrevocable Offer. Each bid must include a signed writing stating that the Potential Bidder’s offer is irrevocable until the selection of the Winning Bidder; <u>provided, however</u>, that if such bidder is selected as the Winning Bidder or the Back-Up Bidder, its offer shall remain irrevocable until the closing of the Sale to the Winning Bidder or the Back-Up Bidder. i. No Contingencies or Due Diligence. Each bid must not contain any due diligence or contingencies of any kind including, without limitation, contingencies related to financial, due diligence, or internal or shareholder approvals in connection with the submission of a Potential Bid, and there is no condition precedent to the Potential Bidder’s ability to enter into a definitive sale agreement. j. Closing Date. Each bid must provide that the Potential Bidder intends to close the Sale on or before January 2, 2025. k. Deposit. Each bid must be accompanied by a good faith deposit in the form of a wire transfer, certified check, or such other form acceptable to the Debtors, payable to the order of the Debtors in an amount equal to 10% of the cash portion of the purchase price provided for in the bid (“<u>Deposit</u>”). l. Financial Capacity and Adequate Assurance. Each bid must contain such financial and other information to allow the Debtors to make a reasonable determination as to the Potential Bidder’s financial and other capabilities to close the transactions contemplated by the Proposed APA, including, without limitation, such financial and other information supporting the Potential Bidder’s ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code, including the Potential Bidder’s financial wherewithal and willingness to perform under any Purchased Contracts (“<u>Adequate Assurance Information</u>”). m. Transition Services. Each bid must state or otherwise estimate the types of transition services, if any, the Potential Bidder would require of and/or provide to the Debtors, including an estimate of the time any such transition services would be required of and/or provided
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	to the Debtors, if the Potential Bidder's bid were selected as the Winning Bid for the applicable Assets. n. No Fees. Potential Bidders, other than the Stalking Horse Bidder shall not be allowed any break-up, termination, or similar fee. Moreover, all Potential Bidders and the Stalking Horse Bidder (excluding any Bid Protections approved by the Court), by participating in the Bidding Process, will be deemed to have waived any right to seek a claim for substantial contribution pursuant to section 503 of the Bankruptcy Code, or the payment of any broker fees or costs, unless specifically agreed to by the Debtors, upon consultation with the Notice Parties. o. Consent to Jurisdiction. Each Potential Bidder must submit to the jurisdiction of the Court and waive any right to a jury trial in connection with any disputes relating to Debtors' qualification of bids, the Auction, the development and enforcement of these Bidding Procedures, the Sale documents, and the closing of the Sale, as applicable. p. Acknowledgements. Each bid must included acknowledgements in writing that (A) the Potential Bidder (i) has had an opportunity to conduct any and all required due diligence regarding the Assets prior to making its offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid; and (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Assets or the completeness of any information provided in connection therewith or with the Auction, except as expressly stated in the Purchase Agreement; (B) that the Potential Bidder (i) has not engaged in any collusion with respect to any Potential Bid, specifying that it did not agree with any other party, including, but not limited to, any other Interested Parties or interested third parties, to control price or exert undue influence over the process; and (ii) agrees not to engage in any such collusion or undue influence with respect to any Potential Bids, the Auction, or the Sale process.; and (C) in the event of the Potential Bidder's breach of, or failure to perform under, the Proposed APA, the Potential Bidder shall forfeit its Deposit to the Debtors, and the Debtors shall be entitled to pursue all available legal and equitable remedies, including, without limitation, additional damages and/or specific performance.
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| | <p>q. Regulatory Approvals. Each bid must set forth any regulatory and third-party approvals required for the Potential Bidder to close the transactions contemplated by the Proposed APA, and the time period within which the Potential Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than five (5) days following execution and delivery of such Potential Bidder's Purchase Agreement, those actions the bidder will take to ensure receipt of such approval(s) as promptly as possible); <u>provided</u> that a Potential Bidder agrees that its legal counsel will coordinate in good faith with the Debtors' counsel to discuss and explain Potential Bidder's regulatory analysis, strategy, and timeline for securing all such approvals as soon as reasonably practicable and in no event later than the time period contemplated in the Purchase Agreement; <u>provided further</u> that the offer contains a covenant to cooperate with the Debtors to provide pertinent factual information regarding the bidder's operations reasonably required to analyze issues arising with respect to any applicable antitrust laws and other applicable regulatory requirements.</p> <p>r. Back-Up Bidder. Each bid must include a statement that the Potential Bidder agrees to serve as the Back-Up Bidder (as defined below) if the Potential Bidder's bid is the Back-Up Bid (as defined below), in accordance with the terms of the Purchase Agreement as submitted or modified at the Auction.</p> <p>s. Bid Deadline. Each bid must be transmitted by email (in PDF and Word) on or before <u>December 11, 2024 at 5:00 p.m. (ET)</u> to the Debtors' proposed counsel, Faegre Drinker Biddle & Reath LLP, 222 Delaware Ave., Ste. 1410, Wilmington, DE 19801, Attn: Patrick A. Jackson (patrick.jackson@faegredrinker.com), Ian J. Bambrick (ian.bambrick@faegredrinker.com), and Sarah E. Silveira (sarah.silveira@faegredrinker.com).</p> |
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Bid Protections Bidding Procedures, Stalking Horse Bidder Bid Protections	The Stalking Horse Bidder will be entitled to a break-up fee of \$150,000, in the event the Debtors accept or approve, or the Court approves or orders, any alternative sale or restructuring involving some or all of the Debtors' assets ("<u>Termination Fee</u>"). The Stalking Horse Bidder will also be entitled to an expense reimbursement for its out-of-pocket costs and expenses up to \$300,000 (including, without limitation, the fees and expenses of counsel) incurred in connection with the Stalking Horse APA and the Auction (the "<u>Expense Reimbursement</u>," and together with the Termination Fee, the "<u>Bid Protections</u>"). No other bidder or any other party shall be entitled to any termination or "break-up" fee, expense reimbursement, or any other bid protections in connection with the submission of a bid for the Assets, or for otherwise participating in the Auction or the sale process
Minimum Overbid and Incremental Subsequent Bids Bidding Procedures, Bid Requirements, Auction	Each Bid must offer to pay a price equal to or greater than \$4,964,782 which amount shall consist of the sum of (i) the Stalking Horse Purchase Price, (ii) the Bid Protections, and (iii) \$200,000 or more as a cash premium over the Stalking Horse Bid (i.e. the Minimum Overbid). At the Auction, bidding will begin with the Baseline Bid and continue in bidding increments providing a value to the Debtors' estates of at least \$100,000 in additional cash, or such other amount determined by the Debtors, in consultation with the Notice Parties, above the prior bid or collection of bids (each, an "<u>Overbid</u>").

Modifications of Bidding Qualifications or Auction Procedures Bidding Procedures, Auction, Reservation of Rights	Except as otherwise set forth herein, the Debtors reserve the right in the exercise of their fiduciary duties (in consultation with the Notice Parties), to: (a) determine which bidders are Qualified Bidders; (b) determine which bids are Qualified Bids; (c) determine which Qualified Bid is the highest and best proposal and which is the next highest and best proposal; (d) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of these Bidding Procedures or the requirements of the Bankruptcy Code or (iii) contrary to the best interests of the Debtors and their estates; (e) impose additional terms and conditions with respect to all potential bidders other than the Stalking Horse Bidder; (f) modify these Bidding Procedures and/or implement additional procedural rules that the Debtors determine will better promote the goals of the bidding process; and (g) continue or cancel the Auction and/or Sale Hearing in open court without further notice or by filing a notice on the docket; <i>provided, however</i>, that (i) any changes to the dates and deadlines set forth herein shall comply with any milestones contained in the Debtors' DIP Financing Agreement approved by the Bankruptcy Court in these cases, (ii) the Debtors may not modify the terms of the Bid Protections set forth in Paragraph 3 of the Bidding Procedures (and any related provisions of the Bidding Procedures Order) or the "Stalking Horse Bidding" provisions in Paragraph 8 of the Bidding Procedures (and any related provisions of the Bidding Procedures Order), without the consent of the Stalking Horse Bidder, and (iii) the potential modifications and/or procedural rules will not impair or be likely to impair the ability of the DIP Lender to be repaid in full in cash on the Maturity Date if not selected as the Winning Bidder.
Closing with Alternative Backup-Bidders Bidding Procedures, Back-Up Bidder	Notwithstanding any of the foregoing, in the event that a Winning Bidder fails to close a Sale on or before January 2, 2025, and a Back-Up Bidder has been previously identified, the Debtors may designate the Back-Up Bid as the Winning Bid, and the Debtors shall file a notice so indicating ("<u>Back-Up Bid Notice</u>"). Three (3) business days following the filing of any Back-Up Bid Notice, the Back-Up Bid shall be deemed the Winning Bid, the Back-Up Bidder will be deemed to be the Winning Bidder, and the Debtors shall be authorized, but not directed, to close the Sale to the Back-Up Bidder subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any other parties

C. Assumption and Assignment Procedures

18. To facilitate the Sale, the Debtors seek authority to assume and assign to the Stalking Horse Bidder or other Winning Bidder certain executory contracts and unexpired leases (the “Contracts”), as selected by such Stalking Horse Bidder or Winning Bidder (the “Assumed Contracts”) in accordance with the Assignment Procedures. In relation thereto, the Debtors request approval of the notice of the potential assumption and assignment of Assumed Contracts (the “Notice of Potential Assumption & Assignment”). The Assignment Procedures are detailed in the Bidding Procedures Order and include the following key provisions:

- a. The identification of Contracts that could potentially be assumed or assumed and assigned and the proposed calculation of the cure amounts that the Debtors analysis indicates must be paid to cure all defaults outstanding under the Contracts as of such date (the “Cure Costs”). The Debtors intend to include this information in the Notice of Potential Assumption & Assignment.
- b. Cure Cost/Assignment Objection Deadline, as defined in the Bidding Procedures Order, for counterparties to the Contracts (each a “Non-Debtor Counterparty”) to object to the Debtors’ ability to assume and/or assign the contract and proposed Cure Cost, excluding adequate assurance of future performance of the applicable Debtor or assignee.
- c. Failure to timely object to the proposed assumption, assignment (if applicable), and Cure Costs will result in the Non-Debtor Counterparty being deemed to consent to the proposed assumption or assumption and assignment and Cure Costs.

D. Notice Procedures for the Sale, Auction, and Sale Hearing

19. The Debtors request approval of the notice of the Auction and Sale and hearing thereon (the “Notice of Auction & Sale Hearing”). Within two (2) business days of entry of the Bidding Procedures Order, the Debtors will serve the Notice of Auction & Sale Hearing by email, where available, and by first-class mail upon:

- a. holders of the thirty (30) largest unsecured claims on a consolidated basis against the Debtors, or, if one has been appointed, counsel to the official committee of unsecured creditors;

- b. all persons known or reasonably believed to have asserted an interest in the Assets;
- c. the Non-Debtor Counterparties (as defined below) to the Contracts;
- d. the Attorneys General in the State(s) where the Assets are located;
- e. all federal, state, and local taxing authorities in the State(s) where the Assets are located;
- f. all parties that have asserted liens against the Assets;
- g. all parties included on the Debtors' consolidated creditor matrix and all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002;
- h. counsel to the DIP Lender and Prepetition Lender, Morgan, Lewis & Bockius LLP, 101 Park Ave., New York, NY 10178-0060, Attn: Sameer Mohan (sameer.mohan@morganlewis.com), Greer Longer (greer.longer@morganlewis.com), and Jennifer Feldsher (Jennifer.feldsher@morganlewis.com); and
- i. the Subchapter V Trustee appointed in these Chapter 11 Cases;
- j. the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Rosa Sierra-Fox (Rosa.Sierra-Fox@usdoj.gov).

20. The Debtors shall also post the Notice of Auction & Sale Hearing and the Bidding Procedures Order on the website of the Debtors' claims and noticing agent, <https://bankruptcy-claims.com/RCI>.

21. Within twelve (12) hours of the conclusion of the Auction, the Debtors propose to file a notice on the Court's docket identifying the Winning Bidder and any Back-Up Bidder (the "Notice of Winning Bid").

RELIEF REQUESTED

22. By this Motion, the Debtors seek entry of the Bidding Procedures Order, substantially in the form attached hereto as **Exhibit A**:

- a. authorizing and approving the Bidding Procedures in connection with the receipt and analysis of competing bids for the Assets, substantially in the form attached to the Bidding Procedures Order as **Exhibit 1**;
- b. authorizing the Debtors entry into the Stalking Horse APA, attached to the Bidding Procedures Order as **Exhibit 2**, subject to higher or otherwise better offers submitted in accordance with the Bidding Procedures, and granting certain Bid Protections to the Stalking Horse Bidder;
- c. authorizing and approving the Assignment Procedures for the assumption and assignment of the Assumed Contracts (defined below), as applicable, in connection with the Sale;
- d. approving the form and manner of the Notice of Potential Assumption & Assignment, substantially in the form attached to the Bidding Procedures Order as **Exhibit 3**;
- e. approving the form and manner of the Notice of Auction & Sale Hearing, substantially in the form attached to the Bidding Procedures Order as **Exhibit 4**;
- f. approving the form and manner of the Notice of Winning Bidder, substantially in the form attached to the Bidding Procedures Order as **Exhibit 5**; and
- g. establishing the following dates and deadlines, subject to modification as needed, relating to competitive bidding and approval of the Sale:
 - Deadline to file Cure Cost/Assignment Objections: Fourteen (14) days from the filing of the Assumption and Assignment Notice, at 4:00 p.m. (ET);
 - Initial Sale Objection Deadline: Fourteen (14) days from the filing of the Assumption and Assignment Notice, at 4:00 p.m. (ET);
 - Bid Deadline: **December 11, 2024, at 5:00 p.m. (ET)** (the “Bid Deadline”);
 - Auction: **December 13, 2024, at 10:00 a.m. (ET)**, if more than one competing Qualified Bid is received;
 - Deadline to file the Notice of Winning Bidder: Within 12 hours following conclusion of the Auction; and
 - Supplemental Sale Objection Deadline: **December 18, 2024, at 12:00 noon (ET)**;
 - Sale Hearing: **December 20, 2024, at a time to be determined.**

23. Additionally, by this Motion, the Debtors seek entry of the Stalking Horse Sale Order authorizing (a) the sale of the Assets to the Stalking Horse Bidder, or other Winning Bidder

or Back-Up Bidder, as applicable, free and clear of all claims, liens, liabilities, rights, interests, and encumbrances (except certain permitted encumbrances as determined by the Debtors); (b) the Debtors to assume and assign Assumed Contracts; and (c) any and all related relief requested herein.

BASIS FOR RELIEF REQUESTED

I. THE BIDDING PROCEDURES ARE APPROPRIATE AND IN THE BEST INTERESTS OF THE DEBTORS, THEIR ESTATES, AND CREDITORS

A. The Bidding Procedures are Reasonable, Appropriate, and Will Maximize Value

24. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004) (noting debtor in possession “had a fiduciary duty to protect and maximize the estate’s assets”); *Official Comm. of Unsecured Creditors of Cybergenics, Corp v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003) (same); *Four B. Corp. v. Food Barn Stores, Inc. (In re Barn Stores, Inc.)*, 107 F.3d 558, 564–65 (8th Cir. 1997) (observing in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand”).

25. To that end, courts uniformly recognize that procedures to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and, therefore, are appropriate in the context of bankruptcy transactions. *See In re O’Brien Envtl. Energy, Inc.*, 181 F.3d 527, 537 (3d Cir. 1999); *see also Official Comm. of Subordinated Bondholders v. Integrated Res. Inc. (In re Integrated Res. Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (stating bid procedures “encourage bidding and . . . maximize the value of the debtor’s assets”).

26. The Bidding Procedures will provide an orderly and uniform mechanism by which interested buyers and investors can submit offers for the Assets and will ensure a competitive and fair bidding process. In addition, the Bidding Procedures will promote active bidding from

seriously interested parties and will confirm the best and highest offer reasonably available for such assets. Pursuant to the terms of the Bidding Procedures, if the Debtors receive one or more Qualified Bids, in addition to the Stalking Horse Bid, the Debtors will conduct an Auction in a controlled, fair, and open manner that will encourage participation by financially capable bidders that demonstrate the ability to close a transaction. In the Debtors' opinion, the Bidding Procedures will encourage bidding, are consistent with other procedures routinely approved by courts in this and other districts, and are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings. *See In re High Ridge Bands Co.*, No. 19-12689 (BLS) (Bankr. D. Del. Feb. 7, 2020); *In re O'Brien Envtl. Energy, Inc.*, 181 F.3d at 537; *see also In re Dura Auto. Sys., Inc.*, No. 06-11202 (KJC) (Bankr. D. Del. July 24, 2007); *In re New Century TRS Holdings, Inc.*, No. 07-10416 (BLS) (Bankr. D. Del. Apr. 20, 2007).

B. The Court Should Approve the Stalking Horse Bid Protections

27. As indicated above, the Debtors have agreed to the terms of the Stalking Horse APA, which contemplates the potential sale of the Assets to the Stalking Horse Bidder. To compensate the Stalking Horse Bidder whose bid will be subject to higher or better offers, the Debtors seek approval of the Bid Protections in accordance with the terms of the Stalking Horse APA.

28. The Debtors and the Stalking Horse Bidder believe that the amount of the Bid Protections is reasonable given the benefits to the Debtors' estates of having a "stalking horse" bidder set a valuation floor by virtue of the definitive asset purchase agreement with the Stalking Horse Bidder and the risk to the Stalking Horse Bidder that a third-party offer may ultimately be accepted. Approval of the Bid Protections as described in the Bidding Procedures is necessary to preserve and enhance the value of the Debtors' estates and is a required condition to induce the Stalking Horse Bidder to enter into the transactions encompassed by the Stalking Horse APA, which in turn will enable the Debtors to obtain the highest and best possible price for the Assets.

The Debtors further believe that the Bid Protections are fair and reasonable under all the circumstances.

29. The Bid Protections are reasonably calculated to encourage a buyer to submit a final bid within the range of reasonably anticipated values. The Bid Protections will encourage competitive bidding and will potentially lead to further competition and the establishment of a baseline against which higher or otherwise better offers can be measured.

30. The Third Circuit Court of Appeals has established standards for determining the appropriateness of bidding incentives in the bankruptcy context. In *O'Brien*, 181 F.3d 527 (3d Cir. 1999), the court held that even though bidding incentives are measured against a business judgment standard in nonbankruptcy transactions, the administrative expense provisions of Bankruptcy Code section 503(b) govern in the bankruptcy context. Accordingly, to be approved, bidding incentives must provide some benefit to the Debtors' estates. *See id.* at 533. The *O'Brien* court identified at least two instances in which bidding incentives may provide benefit to an estate. *First*, benefit may be found if "assurance of a Break-Up fee promoted more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." *Id.* at 537. *Second*, where the availability of bidding incentives induces a bidder to research the value of a debtor's assets and submit a bid that serves as a minimum or floor bid on which other bidders can rely, "the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth." *Id.*

31. Whether evaluated under the "business judgment rule" or the Third Circuit's "administrative expense" standard, the Bid Protections are appropriate. The Stalking Horse Bidder required the Debtors to agree to the Bid Protections as a precondition to entering into the Stalking Horse APA. The Debtors' agreement to provide the Bid Protections, following good faith, arm's-

length negotiations between the Debtors and the Stalking Horse Bidder, was a critical inducement for the Stalking Horse Bidder to make its bid, which otherwise it would not have made. The Bid Protections are fair and reasonable in amount and are reasonably intended to compensate for the risk to the Stalking Horse Bidder of being used as a stalking-horse bidder and ultimately losing the transaction to another bidder.

32. In addition, the Stalking Horse APA provides a substantial benefit to the estate by setting a minimum bid on which other bidders can rely, thereby “increasing the likelihood that the price at which the [Assets will be] sold will reflect [their] true worth.” *O’Brien*, 181 F.3d at 537. The Bid Protections, together with the Bidding Procedures, are fair and reasonable and intended to encourage competitive bidding. The Bid Protections will permit the Debtors to insist that competing bids for the Assets, made in accordance with the Bidding Procedures, be materially higher or otherwise better than the Stalking Horse APA, which is a clear benefit to the Debtors’ estates.

33. The Debtors submit that the Bid Protections are also within the spectrum of break-up fees and expense reimbursements that have been approved by bankruptcy courts in other chapter 11 cases in this district. *See, e.g., In re BHCosmetics Holdings, LLC*, No. 22-10050 (CS) (Bankr. D. Del. Jan. 28, 2022) (approving break- up fee equal to 4% of the cash consideration of the stalking horse bid); *In re Gorham Paper and Tissue, LLC*, No. 20-12814 (KBO) (Bankr. D. Del. Nov. 19, 2020) (approving break-up fee in an amount equal to approximately 3.4% of cash purchase price);

In re Valeritas Holdings, Inc., No. 20-10290 (LSS) (Bankr. D. Del. Mar. 6, 2020) (approving 3% break-up fee and \$1 million expense reimbursement).⁶

C. The Court Should Authorize the Credit Bidding Contemplated by the Stalking Horse APA

34. A secured creditor is allowed to “credit bid” the amount of its allowed claim in a sale under section 363 of the Bankruptcy Code. Section 363(k) of the Bankruptcy Code provides, in relevant part, that, unless the court for cause orders otherwise, the holder of an allowed claim secured by property that is the subject of the sale “may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.” 11 U.S.C. § 363(k). Even if a secured creditor is undersecured, as determined in accordance with section 506(a) of the Bankruptcy Code, section 363(k) allows such creditor to bid the full face value of its claim for its collateral and does not limit the credit bid to the claim’s secured portion. See *Cohen v. KB Mezzanine Fund II, LP (In re SubMicron Sys. Corp.)*, 432 F.3d 448, 459 (3d Cir. 2006) (“It is well settled among district and bankruptcy courts that creditors can bid the full face value of their secured claims under § 363(k).”).

35. Pursuant to the Stalking Horse APA, the DIP Lender and the Prepetition Lender, in its role as Stalking Horse Bidder, is entitled to credit bid its claim for its collateral pursuant to section 363(k) of the Bankruptcy Code. Because the DIP Lender and the Prepetition Lender hold claims that are secured by certain of the Assets, such lenders, in their role as Stalking Horse Bidder, should be permitted to credit bid up to the full face amount of their secured claims, in order to

⁶ The \$150,000 Termination Fee here is approximately 3.47% of the Purchase Price (exclusive of any Cure Costs), and the Expense Reimbursement is \$300,000. While the latter represents a higher percentage of the Purchase Price than in many cases in this District, the Debtors submit this is primarily a function of the relatively lower transaction value here—i.e., there is a baseline amount of work that is necessary for a buyer in a transaction of any size, so the costs associated with smaller deals will tend to be higher as a proportion of total deal value than in other, larger deals.

purchase such assets and to have such credit bid be deemed to have the same value as the equivalent amount of cash.

D. The Notice Procedures for the Sale, Bidding Procedures, Auction, and Sale Hearing Are Reasonable and Appropriate

36. Pursuant to Bankruptcy Rules 2002(a) and (c), the Debtors are required to notify creditors of the Sale, including a disclosure of the time and place of any auction, the terms and conditions of the sale, and the deadline for filing any objections. The Debtors submit that the notice procedures described above fully comply with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice of the Sale, Bidding Procedures, Auction, and Sale Hearing to the Debtors' creditors and all other parties in interest that are entitled to notice, as well as those parties that have expressed a bona fide interest in acquiring the Assets.

37. Accordingly, the Debtors respectfully request that the Court approve the notice procedures set forth in this Motion, including the form and manner of service and publication of the Notice of Auction & Sale Hearing, and that no other or further notice of the Sale, Bidding Procedures, Auction, or Sale Hearing is necessary or required.

E. The Assignment Procedures Are Reasonable and Appropriate

38. As part of this Motion, the Debtors also seek authority under sections 105(a) and 365 of the Bankruptcy Code to assume the Contracts and assign such Contracts to the Stalking Horse Bidder or other Winning Bidder. The Bidding Procedures Order specifies the process by which the Debtors will serve the Notice of Potential Assumption & Assignment and the procedures and deadlines for Non-Debtor Counterparties to file Cure Cost/Assignment Objections and/or raise Supplemental Sale Objections.

39. The Assignment Procedures ensure that each Non-Debtor Counterparty will have sufficient notice of such potential assumption and assignment, and an opportunity to contest the

Cure Cost, if any, for its Contract, as well as the ability of the Stalking Horse Bidder or relevant Winning Bidder to provide adequate assurance of future performance with respect to such Contract.

40. Accordingly, the Debtors submit that the Assignment Procedures are fair and reasonable, and request that the Court approve such procedures.

II. APPROVAL OF THE SALE IS APPROPRIATE AND IN THE BEST INTERESTS OF THE DEBTORS' ESTATES

A. The Sale Is Authorized by Section 363 of the Bankruptcy Code as a Sound Exercise of the Debtors' Business Judgment

41. Section 363 of the Bankruptcy Code provides that a debtor, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate[.]" 11 U.S.C. § 363(b). Although section 363 does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of the estate, courts routinely authorize sales of a debtor's property if such sale is based upon the sound business judgment of the debtor. *See Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 175–76 (D. Del. 1991); *In re Trans World Airlines, Inc.*, No. 01-00056 (PJW), 2001 WL 1820326, at *10 (Bankr. D. Del. Apr. 2, 2001).

42. Courts typically consider the following factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was given to interested parties; (c) whether the sale will produce a fair and reasonable price for the property; and (d) whether the parties have acted in good faith. *See In re Decora Indus., Inc.*, No. 00-4459 (JJF), 2002 WL 32332749, at *2 (D. Del. May 20, 2002) (citing *In re Delaware & Hudson Ry. Co.*, 124 B.R. at 176); *In re United Healthcare Sys. Inc.*, No. 97-1159, 1997 WL 176574, at *4 & n.2 (D.N.J. Mar. 26, 1997).

43. A sound business purpose for the sale of property of the Debtors' estate outside the ordinary course of business may be found where such a sale is necessary to preserve the value of the property for the estate, its creditors, or interest holders. *See, e.g., In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (3d Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983); *see also In re Food Barn Stores, Inc.*, 107 F.3d 558, 564–65 (8th Cir. 1997) (stating that the paramount goal in any proposed sale of property of the estate is to maximize value).

44. Furthermore, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). There is a presumption that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.” *In re Integrated Res., Inc.*, 147 B.R. at 656 (quoting *Smith v. Van Gorkcom*, 488 A.2d 858, 872 (Del. 1985)). Thus, if a debtor’s actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b)(1) of the Bankruptcy Code. Indeed, when applying the business judgment standard, courts show great deference to a debtor’s business decisions. *See Pitt v. First Wellington Canyon Assocs. (In re First Wellington Canyon Assocs.)*, No. 89 C 593, 1989 WL 106838, at *3 (N.D. Ill. Sept. 8, 1989) (“Under this test, the debtor’s business judgment . . . must be accorded deference unless shown that the bankrupt’s decision was taken in bad faith or in gross abuse of the bankrupt’s retained discretion.”).

45. Pursuant to the Bidding Procedures, the Debtors, in consultation with their advisors and the Notice Parties, will reserve the right to disregard and disqualify any bid that does not meet

the Bid Requirements, including any bid that does not exceed the Minimum Overbid or the acceptance of which would otherwise not be in the best interests of the estates or the Auction. In addition, the value of the Assets will be tested through the Auction and sale process provided for in the Bidding Procedures. Consequently, the fairness and reasonableness of the consideration for the Sale of the Assets to be paid by the Winning Bidder ultimately will be demonstrated by adequate “market exposure” and an open and fair auction and sale process—the best means for establishing whether a fair and reasonable price is being paid. The Winning Bid will constitute the highest or best offer(s) and may provide a greater recovery for the Debtors’ estates than is likely to be provided by any other available alternative. As a result, the Debtors’ determination to sell the Assets through an auction and sale process, as provided for in the Bidding Procedures, is a valid and sound exercise of the Debtors’ business judgment.

46. Accordingly, the Debtors respectfully request that the ultimate Sale be approved at the appropriate time.

B. The Sale, Free and Clear of All Encumbrances, Is Authorized by Section 363(f) of the Bankruptcy Code

47. In the interest of attracting the highest and best bids, the Debtors submit that the Sale should be free and clear of all encumbrances in accordance with section 363(f) of the Bankruptcy Code, with any such encumbrances attaching to the net proceeds of the Sale, as and to the extent applicable.

48. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests, and encumbrances if:

- applicable non-bankruptcy law permits the sale of such property free and clear of such interests;
- such entity consents;

- such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;
- such interest is in bona fide dispute; or
- such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

See 11 U.S.C. § 363(f).

49. Section 363(f) is supplemented by section 105(a) of the Bankruptcy Code, which provides that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

50. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Assets “free and clear” of all encumbrances. *See In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) (“Section 363(f) is written in the disjunctive, not the conjunctive, and if any of the five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens.”); *see also Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same); *In re Dundee Equity Corp.*, No. 89-10233 (FGC), 1992 WL 53743, at *4 (Bankr. S.D.N.Y. Mar. 6, 1992) (same).

51. The Debtors submit that one or more of the conditions set forth in section 363(f) of the Bankruptcy Code will be satisfied with respect to the Sale. In particular, the Debtors believe that at least section 363(f)(2) will be satisfied because each of the parties holding liens on the Assets will consent, or absent any objection to the Sale, will be deemed to have consented to, the Sale. Any lienholder also will be adequately protected by having its liens, if any, attach to the proceeds of the Sale, in the same order of priority, with the same validity, force, and effect that such creditor had prior to such sale, subject to any claims and defenses that the Debtors and their estates may possess with respect thereto. For the avoidance of doubt, nothing in this Motion, the

Bidding Procedures, or the Bidding Procedures Order waives or modifies any parties' right to object to any Sale proposed in connection herewith, with all such rights being expressly preserved.

52. Accordingly, the Debtors respectfully request that the Assets be sold free and clear of any encumbrances pursuant to section 363(f) of the Bankruptcy Code.

C. The Winning Bidder Will be Entitled to the Full Protection of Section 363(m) of the Bankruptcy Code, and the Sale Does Not Violate Section 363(n) of the Bankruptcy Code

53. Section 363(m) of the Bankruptcy Code protects the sale of a debtor's property to a good faith purchaser. Specifically, section 363(m) provides:

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

11 U.S.C. § 363(m).

54. While the Bankruptcy Code does not define "good faith," the Third Circuit in *In re Abbotts Dairies of Pennsylvania, Inc.* held that the misconduct that would destroy a purchaser's good faith status at a judicial sale typically involves "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." 788 F.2d at 147 (citation omitted); *see also Kabro Assocs. of West Islip, L.L.C. v. Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 276 (2d Cir. 1997) ("Typically, the misconduct that would destroy a [buyer]'s good faith status at a judicial sale involves fraud, collusion between the [buyer] and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders.").

55. The Debtors submit, and the testimony presented at the Sale Hearing will demonstrate, that the terms and conditions of the Sale have been negotiated by the Debtors and the

Stalking Horse Bidder, or other Winning Bidder at arm's length and in good faith, with the assistance of the Debtors' advisors, and that the parties did not engage in any conduct that would cause or permit the Sale to be avoided under section 363(n) of the Bankruptcy Code.

56. Accordingly, the Debtors request that the Court make a finding at the Sale Hearing that the Stalking Horse Bidder, or other Winning Bidder, qualifies as a good faith purchaser and that such purchase will be entitled to the full protections of section 363(m) of the Bankruptcy Code.

III. ASSUMPTION AND ASSIGNMENT OF THE CONTRACTS IS AUTHORIZED BY SECTION 365 OF THE BANKRUPTCY CODE

A. The Debtors' Sound Business Judgment Supports the Assumption and Assignment of the Contracts

57. Sections 365(a) and (b) of the Bankruptcy Code authorize a debtor in possession to assume, subject to the court's approval, executory contracts or unexpired leases of the debtor. Under section 365(a) of the Bankruptcy Code, a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). Section 365(b)(1) of the Bankruptcy Code, in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor, providing that:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee

(A) cures or provides adequate assurance that the trustee will promptly cure, such default . . . ;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

58. The standard applied in the Third Circuit in determining whether an executory contract or unexpired lease should be assumed is the “business judgment” test, which requires a debtor to determine that the requested assumption or rejection would be beneficial to its estate. *See Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) (describing business judgment test as “traditional”).

59. Courts generally will not second-guess a debtor’s business judgment concerning the assumption of an executory contract. *See In re Decora Indus., Inc.*, No. 00-4459 (JJF), 2002 WL 32332749, at *8; *Official Comm. for Unsecured Creditors v. Aust (In re Network Access Sols., Corp.)*, 330 B.R. 67, 75 (Bankr. D. Del. 2005) (“The standard for approving the assumption of an executory contract is the business judgment rule”); *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006) (“The propriety of a decision to reject an executory contract is governed by the business judgment standard”).

60. To determine if the business judgment standard is met, the court is “required to examine whether a reasonable businessperson would make a similar decision under similar circumstances.” *In re AbitibiBowater Inc.*, 418 B.R. 815, 831 (Bankr. D. Del. 2009). “This is not a difficult standard to satisfy and requires only a showing that rejection will benefit the estate.” *Id.* (citations omitted). Specifically, a court should find that the assumption or rejection is elected on “an informed basis, in good faith, and with the honest belief that the assumption . . . [is] in the best interests of [the debtor] and the estate.” *Network Access Sols.*, 330 B.R. at 75. Under this standard, a court should approve a debtor’s business decision unless that decision is the product of bad faith or a gross abuse of discretion. *See In re Fed. Mogul Global, Inc.*, 293 B.R. 124, 126 (D. Del. 2003).

61. In the present case, the Debtors' assumption and assignment of the Contracts to the Stalking Horse Bidder, or other relevant Winning Bidder, will meet the business judgment standard and satisfy the requirements of section 365 of the Bankruptcy Code. The assumption and assignment will likely be necessary for the Stalking Horse Bidder or the Winning Bidder to conduct business going forward and, since the Stalking Horse Bidder would not (and it is anticipated that the Winning Bidder likewise would not) take the Assets without certain Contracts, the assumption and assignment of such agreements is essential to securing the highest or best offer.

62. Consequently, the Debtors submit that the Assignment Procedures are fair and reasonable, and respectfully request the Court to approve such procedures and authorize the Debtors to assume and assign the Contracts in the manner provided for herein.

B. Adequate Assurance of Future Performance Will be Demonstrated with Respect to the Contracts

63. A debtor in possession may assign an executory contract or an unexpired lease of the debtor if it assumes the agreement in accordance with section 365(a) of the Bankruptcy Code and provides adequate assurance of future performance by the assignee, whether or not there has been a default under the agreement. *See* 11 U.S.C. § 365(c)(2).

64. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." *EBG Midtown South Corp. v. McLaren/Hart Envtl. Eng'g Corp. (In re Sanshoe Worldwide Corp.)*, 139 B.R. 585, 592 (S.D.N.Y. 1992) (citations omitted), *aff'd*, 993 F.2d 300 (2d Cir. 1993); *In re Prime Motor Inns Inc.*, 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994); *In re Rachels Indus. Inc.*, 109 B.R. 797, 803 (Bankr. W.D. Tenn. 1990); *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988).

65. Significantly, among other things, adequate assurance of future performance may be provided by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *See, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (stating that adequate assurance of future performance is present when the prospective assignee of a lease from the debtor has financial resources and has expressed willingness to devote sufficient funding to the business in order to give it a strong likelihood of succeeding).

66. Pursuant to the Bidding Procedures, the Potential Bidders are required to provide to any Non-Debtor Counterparties to Assumed Contracts who request it such financial and other information providing adequate assurance of future performance under any executory contracts and unexpired leases to be assumed pursuant to section 365 of the Bankruptcy Code in connection with the Sale. Moreover, under the Assignment Procedures, the Non-Debtor Counterparties will have the opportunity to object to adequate assurance of future performance by the Stalking Horse Bidder or other relevant Winning Bidder.

67. Accordingly, the Debtors submit that the assumption and assignment of the Contracts as set forth herein should be approved pursuant to section 365 of the Bankruptcy Code.

WAIVER OF STAY UNDER BANKRUPTCY RULES 6004(h) AND 6006(d)

68. 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). Similarly, Bankruptcy Rule 6006(d) provides that “[a]n order authorizing the [debtor] to assign an executory contract or unexpired . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6006(d).

69. The Debtors submit that cause exists to justify a waiver of the fourteen (14) day stays under Bankruptcy Rules 6004(h) and 6006(d), as promptly closing the Sale is of critical importance. The Debtors wish to effectuate the Sale quickly, with the current proposed Closing Date being **January 2, 2025**. Closing the Sale quickly will ensure that the Debtors are able to minimize the administrative costs of the Chapter 11 Cases and, thereby, maximize the recovery available to interested parties. The Debtors therefore request that the Stalking Horse Sale Order be effective immediately upon entry by providing that the fourteen (14) day stays under Bankruptcy Rules 6004(h) and 6006(d) be waived.

NOTICE

70. The Debtors will provide notice of this Motion to: (i) the U.S. Trustee; (ii) the Debtors' 30 largest unsecured creditors (excluding insiders) on a consolidated basis; (iii) the Subchapter V Trustee appointed in these Chapter 11 Cases; (iv) counsel to the DIP Lender and Prepetition Lender; and (v) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

CONCLUSION

WHEREFORE, the Debtors request the entry of the Bidding Procedures Order and Stalking Horse Sale Order and granting such other and further relief as is just and proper.

Dated: November 11, 2024
Wilmington, Delaware

FAEGRE DRINKER BIDDLE & REATH LLP

/s/ Patrick A. Jackson

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*Proposed Counsel to the Debtors and
Debtors in Possession*

Exhibit A

Proposed Bidding Procedures Order

[To be filed, but will include Exhibits 1 and 2 herein]

Bidding Procedures Order Exhibit 1

Bidding Procedures

BIDDING PROCEDURES

On November 11, 2024, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”). The Debtors are maintaining their business and managing their property as debtors in possession pursuant to section 1184 of the Bankruptcy Code. The above-captioned chapter 11 cases (the “Chapter 11 Cases”) have been consolidated for procedural purposes under the lead case *In re Recombinetics, Inc.*, Case No. 24–12593 ([●]).

On November [●], 2024, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered an order [D.I. [●]] (the “Bidding Procedures Order”), granting certain relief requested in the related motion [D.I. [●]] (the “Bidding Procedures Motion”),¹ authorizing the Debtors to solicit bids in accordance with the bidding procedures set forth herein (collectively, the “Bidding Procedures”) to be employed by the Debtors in connection with a proposed sale (the “Sale”) by auction (the “Auction”) of substantially all of the Debtors’ assets (the “Assets”), free and clear of all liens (as defined in section 101(37) of the Bankruptcy Code), encumbrances, claims (as defined in section 101(5) of the Bankruptcy Code), charges, mortgages, deeds of trust, options, pledges, security interests or similar interests, title defects, hypothecations, easements, rights of way, rights of use, encroachments, judgments, rights of setoff, conditional sale or other title retention agreements and other similar impositions, imperfections or defects of title or restrictions on transfer or use other than any assumed liabilities or permitted liens referenced in a Winning Bid (as defined below).

As described in the Bidding Procedures Order, the Debtors have entered into that certain asset purchase agreement dated as of November 9, 2024 (the “Stalking Horse APA”) with TOG Technologies, LLC, a Delaware limited liability company (the “Stalking Horse Bidder”). The sale transaction pursuant to the Stalking Horse APA is subject to competitive bidding as set forth herein.

These Bidding Procedures set forth the process by which the Debtors are authorized to conduct the Sale by Auction of the Assets described more specifically below.

ANY PARTY INTERESTED IN BIDDING ON THE ASSETS SHOULD CONTACT:

Faegre Drinker Biddle & Reath LLP
222 Delaware Ave., Ste. 1410
Wilmington, DE 19801
Attn: Ian J. Bambrick (ian.bambrick@faegredrinker.com),
Patrick A. Jackson (patrick.jackson@faegredrinker.com), and
Sarah E. Silveira (sarah.silveira@faegredrinker.com)
+1 302 467 4200

Proposed Counsel for the Debtors and Debtors in Possession

¹ Capitalized terms used but not yet defined herein shall have the meaning ascribed to such terms in the Bidding Procedures Order or the Stalking Horse APA, as applicable.

Summary of Key Dates Established by Bidding Procedures

DATE	DEADLINE/EVENT
Petition Date November 11, 2024	Deadline to file and serve (i) Bidding Procedures Motion and (ii) Motion to Shorten Notice of Hearing on Bidding Procedures Motion
November [●], 2024, at noon (ET)	Deadline to object to Bidding Procedures Motion
November [●], 2024, at noon (ET)	Deadline to reply to objections to Bidding Procedures Motion
November [●], 2024 at [●] (ET)	Hearing on Bidding Procedures Motion
Not later than November 21, 2024	Entry of Bidding Procedures Order
Within two (2) business days of entry of the Bidding Procedures Order (November [●], 2024)	Deadline to file and serve (i) the Notice of Potential Assumption & Assignment and (ii) the Notice of Auction & Sale Hearing
Fourteen (14) days from the filing of the Assumption and Assignment Notice or Notice of Auction & Sale Hearing (December [●], 2024) at 4:00 p.m. (ET)	(I) Cure Cost and Assignment Objection Deadline and (II) Sale Objection Deadline
December 11, 2024, at 5:00 p.m. (ET)	Deadline for the submission of Qualified Bids (i.e., the Bid Deadline)
One (1) business day prior to the Auction (December 12, 2024) at 5:00 p.m. (ET)	Deadline for Debtors to designate Qualified Bid(s) and Baseline Bid(s)
December 13, 2024, at 10:00 a.m. (ET)	Auction (if applicable)
Twelve (12) hours following conclusion of the Auction	Deadline to file and serve notice of: (i) the Winning Bidder, (ii) the Winning Bidder's and Back-Up Bidder's Proposed APAs, (iii) changed-pages redlines of the Proposed APAs, (iv) the Winning Bidder's and Back-Up Bidder's Proposed Sale Orders, and (v) changed-pages redlines of the Proposed Sale Orders

DATE	DEADLINE/EVENT
December 18, 2024, at noon (ET)	Supplemental Sale Objection Deadline
December 19, 2024, at noon (ET)	Supplemental Reply Deadline
December 20, 2024, at [●] (ET)	Sale Hearing
On or before January 2, 2025	Deadline for Winning Bidder(s) to close the transaction contemplated by its Winning Bid

1. Assets to Be Sold

The Debtors seek to sell to the Stalking Horse Bidder—subject to the highest and best Qualified Bids (as defined below) of one or more Qualified Bidders other than the Stalking Horse Bidder, subject to Court approval substantially all of the tangible and intangible Assets of the Debtors, and the assumption of the specific liabilities of the Debtors, each as set forth in the Stalking Horse APA. The Assets include, among other things, the Debtors’ (a) intellectual property, (b) inventory, (c) accounts receivable, (d) equity in certain of the Debtors’ subsidiaries, and (e) other assets set forth in the Stalking Horse APA.

The sale of the Assets is on an “as is, where is” and “with all faults” basis and without representations, warranties or guarantees, express, implied or statutory, written or oral, of any kind, nature or description, by the Debtors, their affiliates or respective representatives, except and solely to the extent set forth in the Stalking Horse APA approved by the Court. Except as otherwise provided in the Stalking Horse APA, all of the Debtors’ right, title and interest in and to each Asset to be acquired shall be sold free and clear of all liens, claims, interests and encumbrances (other than permitted liens), with such liens, claims, interests and encumbrances to attach to any proceeds of the Sale.

Any general objections to the Sale (an “Initial Sale Objection”) shall (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state with specificity the grounds for such objection, and (d) be filed with the Court and served on the Notice Parties (as defined below) no later than December [9], 2024, at 4:00 p.m. (ET). For the avoidance of doubt, Initial Sale Objections do not include objections to the conduct at any Auction, the selection of a Winning Bid and/or Back-Up Bid, or the terms of any Sale to a Winning Bidder or Back-Up Bidder, which need not be filed until after the filing of a Notice of Winning Bid (each term as defined below).

The Stalking Horse APA, which includes, among other things, a description of the Assets, customary representations, warranties, and covenants by and from the Debtors and Stalking Horse Bidder, and Proposed Sale Order are posted in the Data Room (as defined below), and may also be obtained by Interested Parties (as defined below) upon request to the Debtors’ advisors in compliance with the requirements set forth below.

2. Participation Requirements

A person or entity (an “Interested Party”) that wishes to conduct diligence about the Debtors may request access to the Debtors’ confidential electronic data room concerning the Assets (the “Data Room”). To gain access to the Data Room, and thus be able to conduct due diligence on the Debtors and participate in the bidding process, an Interested Party must submit to the Debtors and their advisors:

- (a) a written disclosure of each entity that will be bidding or otherwise participating in connection with such bid (including each equity holder or other financial backer of the Interested Party, including if such Interested Party is an entity formed for the purpose of consummating the proposed transactions to be set forth in a Proposed APA (as defined below) contemplated by such Interested Party), and the complete terms of any such participation. Under no circumstances shall any undisclosed principals, equity holders, or financial backers be associated with any Qualified Bid. Each Interested Party must also include the contact information for the specific person(s) and counsel whom the Debtors or their advisors should contact regarding such Qualified Bid;
- (b) a statement and other factual support demonstrating to the Debtors’ satisfaction, in consultation with the Notice Parties, in the exercise of their reasonable business judgment that the Interested Party has a *bona fide* interest in purchasing the Assets;
- (c) preliminary proof by the Interested Party of its financial capacity to close the Interested Party’s proposed transaction(s) to be set forth in a Proposed APA, which may include financial statements of, or verified financial commitments obtained by, the Interested Party (or, if the Interested Party is an entity formed for the purpose of acquiring the desired Assets, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtors in consultation with their advisors and the Notice Parties; and
- (d) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtors to an Interested Party) in form and substance satisfactory to the Debtors (without limiting the foregoing, each confidentiality agreement executed by an Interested Party shall contain standard non-solicitation provisions) (each, a “Confidentiality Agreement”).

An Interested Party that delivers the documents and information described above or that the Debtors determine, subject to the limitations in these Bidding Procedures, in consultation with the Notice Parties, is able to consummate the Sale is deemed a “Potential Bidder”). As soon as practicable, the Debtors will provide such Potential Bidder access to the Data Room; *provided, however*, that such access may be terminated by the Debtors in their reasonable discretion at any time for any reason whatsoever, including that a Potential Bidder does not become a Qualified Bidder, these Bidding Procedures are terminated, the Potential Bidder breaches any obligations under its confidentiality agreement, or the Debtors become aware that information submitted by the Potential Bidder for requesting access to the Data Room is inaccurate or misleading. The Debtors may restrict or limit access of a Potential Bidder to the Data Room if the Debtors determine, based on their reasonable business judgment and in consultation with their advisor, that

certain information in the Data Room is sensitive, proprietary, or otherwise not appropriate for disclosure to such Potential Bidder.

Neither the Debtors nor any of their representatives shall furnish any information of any kind whatsoever relating to the Assets to any person or entity who (i) is not a Potential Bidder, (ii) does not comply with the participation requirements set forth herein, or (iii) in the case of competitively sensitive information, is a competitor of the Debtors in the reasonable business judgment of the Debtors in consultation with their advisors.

3. Stalking Horse Bidder Bid Protections

The Debtors have solicited a binding “stalking horse bid” for the Assets. As a result, the Debtors entered into the Stalking Horse APA with the Stalking Horse Bidder pursuant to which, among other things, the Stalking Horse Bidder has committed to (a) purchase, free and clear of all liens claims, encumbrances, and other interests, substantially all of the Debtors’ assets as set forth in the Stalking Horse APA, and (b) assume certain liabilities associated with the Debtors’ operations to the extent set forth in the Stalking Horse APA (the “Stalking Horse Bid”), for a purchase price (the “Stalking Horse Purchase Price”) consisting of (i) \$[4,114,782], which is subject to payment by offset, on a dollar-for-dollar basis, against the outstanding Obligations under the DIP Financing Agreement (the “DIP Obligations”), *plus* cash in the amount of any Cure Costs (as defined in the Stalking Horse APA) which will be paid by the Stalking Horse Bidder in connection with assumption of the Purchased Contracts and an amount up to \$200,000, which shall be paid to the Debtors’ investment banker, and (ii) the assumption of certain liabilities as more fully set forth in the Stalking Horse APA. The Stalking Horse Bid shall set the floor for all bids for the Assets at any Auction held pursuant to these Bidding Procedures.

Recognizing the Stalking Horse Bidder’s expenditure of time, energy and resources, and that the Stalking Horse Bid provides a floor bid with respect to the relevant Assets, the Debtors have agreed that the Stalking Horse Bidder will be entitled to a break-up fee of \$150,000, in the event the Debtors accept or approve, or the Court approves or orders, any alternative sale or restructuring involving the Debtors’ assets (“Termination Fee”). The Stalking Horse Bidder will also be entitled to an expense reimbursement for its out-of-pocket costs and expenses up to \$300,000 (including, without limitation, the fees and expenses of counsel) incurred in connection with the Stalking Horse APA and any Auction (the “Expense Reimbursement,” and together with the Termination Fee, the “Bid Protections”).

No other bidder or any other party shall be entitled to any termination or “break-up” fee, expense reimbursement, or any other bid protections in connection with the submission of a bid for the Assets, or for otherwise participating in the Auction or the sale process.

For all purposes under these Bidding Procedures, the Stalking Horse Bidder will be considered a Qualified Bidder (as defined below), and the Stalking Horse Bid shall be considered a Qualified Bid (as defined below) without regard to any of the requirements or conditions set forth herein and without any other or further action by the Stalking Horse Bidder.

4. Notice Parties.

The term “Notice Parties” as used in these Bidding Procedures shall mean: (i) the Debtors; (ii) proposed counsel to the Debtors, Faegre Drinker Biddle & Reath LLP, 222 Delaware Ave., Ste. 1410, Wilmington, DE 19801, Attn: Ian J. Bambrick (ian.bambrick@faegredrinker.com), Patrick A. Jackson (patrick.jackson@faegredrinker.com), and Sarah E. Silveira (sarah.silveira@faegredrinker.com); and (iii) counsel to the DIP Lender and Prepetition Lender, Morgan, Lewis & Bockius LLP, 101 Park Ave., New York, NY 10178-0060, Attn: Sameer Mohan (sameer.mohan@morganlewis.com), Greer Longer (greer.longer@morganlewis.com) and Jennifer Feldsher (jennifer.feldsher@morganlewis.com).

5. Bankruptcy Court Jurisdiction

Each Potential Bidder and any other Interested Party that seeks to become a Qualified Bidder, in accordance with Section 2 above, shall: (a) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating to the Bidding Procedures, the Sale, the Auction, and the construction and enforcement of the contemplated transaction documents of such parties; (b) bring any such action or proceeding, if at all, solely in the Court; and (c) be deemed to have consented to the Court entering a final order or judgment determining any such action or proceeding, and that such final order or judgment in any such action or proceeding (subject to any right of appeal, as may be applicable), shall be conclusive and may be enforced in other jurisdictions (including, without limitation, any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.

6. Due Diligence

The Debtors will provide, in consultation with the Notice Parties, a Potential Bidder with reasonable access to the Data Room and any other additional information that the Debtors believe to be reasonable and appropriate under the circumstances. The due diligence period shall extend through and include the Bid Deadline (as defined below). Additional due diligence will not be provided after the Bid Deadline. The Debtors reserve the right, in consultation with the Notice Parties, to withhold or limit access to any due diligence information that the Debtors determine is business-sensitive or otherwise not appropriate for disclosure to a Potential Bidder. Notwithstanding any prepetition limitations, including, without limitation, any non-disclosure, confidentiality, or similar provisions relating to any due diligence information, the Debtors and their estates shall be authorized, in consultation with the Notice Parties, to provide due diligence information to Potential Bidders, *provided* that such Potential Bidders have delivered an executed Confidentiality Agreement in form and substance acceptable to the Notice Parties. The Debtors and their estates and the Notice Parties are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Potential Bidders in connection with the Bidding Procedures and the Sale.

Each Interested Party other than the Stalking Horse Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding such Interested Party and its contemplated transaction. If the Debtors, after consultation with the Notice Parties, determine at any time in their reasonable discretion that an Interested Party is not reasonably likely to be a Qualified Bidder, then the Debtors’ obligation to provide due

diligence information to such Interested Party will terminate, and all information provided by the Debtors prior to such time shall be returned to the Debtors in accordance with the terms of the applicable Confidentiality Agreement.

7. **Bid Requirements**

Other than in the case of the Stalking Horse Bid, which shall be considered a Qualified Bid, a bid must be received from a Potential Bidder on or before the Bid Deadline and satisfy each of the following requirements:

- (a) be in writing and received by the Notice Parties prior to the Bid Deadline;
- (b) fully disclose the identity of the Potential Bidder (and to the extent that the Potential Bidder is a newly formed acquisition entity or the like, the identity of the Potential Bidder's parent company or sponsor), and provide the contact information of the specific person(s) whom the Debtors or their advisors should contact in the event that the Debtors have any questions or wish to discuss the bid submitted by the Potential Bidder;
- (c) state that the applicable Potential Bidder offers to (i) purchase, in cash, all of the Assets on terms and conditions substantially similar to the Stalking Horse APA, which terms and conditions the Debtors, in consultation with the Notice Parties, reasonably determine are at least as favorable to the estates than those set forth in the Stalking Horse APA; and (ii) take assignment of any or all Purchased Contracts under the Stalking Horse APA, with details of the Potential Bidder's proposal for the treatment of related cure amounts and the provision of adequate assurance of future performance to the counterparties to such Purchased Contracts;
- (d) include a signed writing stating that the Potential Bidder's offer is irrevocable until the selection of the Winning Bidder; *provided, however*, that if such bidder is selected as the Winning Bidder or the Back-Up Bidder, its offer shall remain irrevocable until the closing of the Sale to the Winning Bidder or the Back-Up Bidder;
- (e) not contain any due diligence or contingencies of any kind including, without limitation, contingencies related to financial, due diligence, or internal or shareholder approvals in connection with the submission of a Potential Bid, and there is no condition precedent to the Potential Bidder's ability to enter into a definitive sale agreement;
- (f) provide that the Potential Bidder intends to close the Sale on or before January 2, 2025;
- (g) include a duly authorized and executed copy of an asset purchase agreement, together with all exhibits and schedules thereto, together with a blackline copy to show any modifications to the Stalking Horse APA ("Proposed APA"), which includes the purchase price for the Assets, expressed in U.S. Dollars that is not less than \$[4,964,782], which amount shall consist of cash as follows: (i) the Stalking

Horse Purchase Price, (ii) the Bid Protections, and (iii) \$200,000 or more as a cash premium over the Stalking Horse Bid (together, the “Minimum Overbid”);

- (h) include a proposed sale order (“Proposed Sale Order”) based on the Stalking Horse proposed sale order, and a Potential Bid must also include a blackline copy of the Proposed Sale Order to show any proposed modifications to the Stalking Horse Sale Order;
- (i) specify the liabilities proposed to be paid or assumed by such Potential Bid;
- (j) state or otherwise estimate the types of transition services, if any, the Potential Bidder would require of and/or provide to the Debtors, including an estimate of the time any such transition services would be required of and/or provided to the Debtors, if the Potential Bidder’s bid were selected as the Winning Bid for the applicable Assets;
- (k) include an acknowledgement and representation that the Potential Bidder: (i) has had an opportunity to conduct any and all required due diligence regarding the Assets prior to making its offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid; (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Assets or the completeness of any information provided in connection therewith or with the Auction, except as expressly stated in the Proposed APA; and (iv) is not entitled to any expense reimbursement, break-up fee, or similar type of bid-protections or payments in connection with its bid;
- (l) include evidence, in form and substance reasonably satisfactory to the Debtors and the Notice Parties, of authorization and approval from the Potential Bidder’s board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Proposed APA;
- (m) be accompanied by a good faith deposit in the form of a wire transfer, certified check, or such other form acceptable to the Debtors, payable to the order of the Debtors in an amount equal to 10% of the cash portion of the purchase price provided for in the bid (“Deposit”);
- (n) acknowledge in writing (i) that it has not engaged in any collusion with respect to any Potential Bid, specifying that it did not agree with any other party, including, but not limited to, any other Interested Parties or interested third parties, to control price or exert undue influence over the process; and (ii) that it agrees not to engage in any such collusion or undue influence with respect to any Potential Bids, the Auction, or the Sale process;
- (o) state that the Potential Bidder consents to the jurisdiction of the Court;

- (p) contain such financial and other information to allow the Debtors to make a reasonable determination as to the Potential Bidder's financial and other capabilities to close the transactions contemplated by the Proposed APA, including, without limitation, such financial and other information supporting the Potential Bidder's ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code, including the Potential Bidder's financial wherewithal and willingness to perform under any Purchased Contracts ("Adequate Assurance Information");
- (q) set forth any regulatory and third-party approvals required for the Potential Bidder to close the transactions contemplated by the Proposed APA, and the time period within which the Potential Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than five (5) days following execution and delivery of such Potential Bidder's Proposed APA, those actions the bidder will take to ensure receipt of such approval(s) as promptly as possible); *provided* that a Potential Bidder agrees that its legal counsel will coordinate in good faith with the Debtors' counsel to discuss and explain Potential Bidder's regulatory analysis, strategy, and timeline for securing all such approvals as soon as reasonably practicable and in no event later than the time period contemplated in the Proposed APA; *provided further* that the offer contains a covenant to cooperate with the Debtors to provide pertinent factual information regarding the bidder's operations reasonably required to analyze issues arising with respect to any applicable antitrust laws and other applicable regulatory requirements;
- (r) provide a statement that the Potential Bidder agrees to serve as the Back-Up Bidder (as defined below) if the Potential Bidder's bid is the Back-Up Bid (as defined below), in accordance with the terms of the Proposed APA as submitted or modified at the Auction;
- (s) provide that in the event of the Potential Bidder's breach of, or failure to perform under, the Proposed APA, the Potential Bidder shall forfeit its Deposit to the Debtors, and the Debtors shall be entitled to pursue all available legal and equitable remedies, including, without limitation, additional damages and/or specific performance; and
- (t) contain such other information as may be reasonably requested by the Debtors, in consultation with the Notice Parties.

A bid from a Potential Bidder satisfying all of the above requirements, as reasonably determined by the Debtors, in consultation with the Notice Parties, shall constitute a "Qualified Bid," and any bidder that submits a Qualified Bid (including the Stalking Horse Bid) will be considered a "Qualified Bidder". The Debtors reserve the right to work with any Potential Bidder in advance of the Auction to cure any deficiencies in a bid that is not initially deemed a Qualified Bid. Each Qualified Bidder submitting a bid shall be deemed to: (a) acknowledge and represent that it is bound by all of the terms and conditions of the Bidding Procedures; and (b) have waived

the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the submission of its bid, the Bidding Procedures, or the Sale.

Without the written consent of the Debtors, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the Purchase Price or otherwise improve the terms of the Qualified Bid for the Debtors during the period that such Qualified Bid remains binding as specified herein; *provided, however*, that any Qualified Bid may be improved at the Auction as set forth in these Bidding Procedures.

8. Stalking Horse Bidding

Notwithstanding anything to the contrary set forth in these Bidding Procedures, the Stalking Horse Bidder shall be deemed to be a Qualified Bidder and shall not be required to provide any due diligence materials (or any other materials) or Deposit, or satisfy any other Qualified Bidder requirements as a condition to its participation at the Auction and may participate in the Auction.

The Stalking Horse Bidder shall have the right to designate any person or entity in its sole and absolute discretion that shall take title to the Assets or a portion of the Assets. Furthermore, the Stalking Horse Bidder or its designee will be entitled to include the maximum amount of the Bid Protections towards its bid in each round of bidding at any Auction. The DIP Lender will be entitled to credit bid the full amount of the DIP Obligations toward its bid in each round of bidding at any Auction. Other than the Stalking Horse Bidder, no party shall be allowed to credit bid or be entitled to any bid protections.

9. Bid Deadline

A Potential Bidder, other than the Stalking Horse Bidder, that desires to make a bid shall deliver an electronic copy of its bid in both PDF and MS-WORD format via email on or before **December 11, 2024 at 5:00 p.m. (ET)** (the “Bid Deadline”) to the Notice Parties. **Any party that does not submit a bid by the Bid Deadline will not be allowed to (x) submit any offer after the Bid Deadline or (y) participate in the Auction.**

10. Evaluation of Qualified Bids

The Debtors, in consultation with the Notice Parties, shall make a determination regarding whether a timely submitted bid from a Potential Bidder is a Qualified Bid.

A Qualified bid, other than the Stalking Horse Bid, will be valued by the Debtors, in consultation with the Notice Parties, based upon several factors including, without limitation, (1) the amount of the purchase price provided by such bid, (2) the nature of the consideration provided by such bid, (3) the risks and timing associated with consummating such bid, (4) any proposed revisions to the Stalking Horse APA and/or the Stalking Horse Sale Order, (5) whether any Qualified Bid contains a sufficient cash component to ensure that the Debtors’ estates are not rendered administratively insolvent, and (6) any other factors deemed relevant by the Debtors, in consultation with the Notice Parties.

Notwithstanding the foregoing, for a Qualified Bid (other than of the Stalking Horse Bid) to be determined to be higher or otherwise better than the value of the Stalking Horse Bid before

the commencement of competitive bidding, it must be equal to or higher than the Minimum Overbid.

No later than one (1) business day prior to the Auction, the Debtors shall: (i) notify all Potential Bidders whether their bids have been determined to be a Qualified Bid, and them, a Qualified Bidder and notify the Stalking Horse Bidder of all such determinations; and (ii) determine, in consultation with the Notice Parties, which of the Qualified Bids is the highest or otherwise best bid for purposes of constituting the opening bid(s) for the Assets at the Auction (such bid, the “Baseline Bid,” and the Qualifying Bidder submitting such Baseline Bid, a “Baseline Bidder”), and promptly notify the Stalking Horse Bidder and all Qualified Bidders of the Baseline Bid.

11. No Qualified Bids

If the Debtors do not receive any Qualified Bids other than the Stalking Horse Bid, the Debtors will not conduct the Auction for the Assets and will file with the Court within twenty-four hours after the Bid Deadline a notice indicating that the Auction for the Assets has been canceled. In such event, the Stalking Horse Bidder will be deemed the Winning Bidder, the Stalking Horse Bid will be the Winning Bid, and the Debtors will as expeditiously as possible seek final Court approval of the sale of the Assets to the Stalking Horse Bidder as contemplated by the Stalking Horse APA.

12. Auction

If the Debtors receive one or more Qualified Bids, the Debtors will conduct an auction in accordance with the bidding procedures (the “Auction”), which shall be recorded or transcribed, shall run in accordance with the following procedures (the “Auction Procedures”):

- (a) the Auction shall commence on **December 13, 2024, at 10:00 a.m. (ET)**, at the offices of proposed counsel for the Debtors, Faegre Drinker Biddle & Reath LLP, 222 Delaware Ave., Ste. 1410, Wilmington, DE 19801, or virtually via telephone or video conference pursuant to information to be timely provided by the Debtors to the Auction Participants (as defined below), for which the Debtors shall file notice of any change in the date, time, or location of the Auction;
- (b) only Qualified Bidders, including the Stalking Horse Bidder shall be entitled to make any subsequent bids at the Auction;
- (c) the Qualified Bidders shall appear at the Auction, or through a duly authorized representative;
- (d) only (i) the Debtors, (ii) the Qualified Bidders, (iii) the Notice Parties, (iv) any other creditor of the Debtors who desires to attend the Auction and provides no less than one (1) day’s advance written notice to the Debtors via email at Ian J. Bambrick (ian.bambrick@faegredrinker.com) and Patrick A. Jackson (patrick.jackson@faegredrinker.com), together with the advisors to each of the foregoing parties, may attend the Auction (collectively, the “Auction Participants”). In the event a Qualified Bidder elects not to attend the Auction, such Qualified

Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until the selection of the Winning Bidder and Back-Up Bidder at the conclusion of the Auction; *provided* that if such bidder is selected as the Winning Bidder or the Back-Up Bidder, its offer shall remain irrevocable until the closing of the Sale to the Winning Bidder or the Back-Up Bidder. Prior to the time scheduled for the commencement of the Auction (as provided in these Bidding Procedures), the Debtors shall notify all Qualified Bidders (including the Stalking Horse Bidder) which Qualified Bid has been determined to be the Baseline Bid;

- (e) the Debtors and their advisors shall direct and preside over the Auction, which shall be transcribed;
- (f) prior to the start of the Auction, each Qualified Bidder shall confirm that it has not engaged in any collusion, within the meaning of section 363(n) of the Bankruptcy Code, with respect to the Bidding Procedures, the Auction, or the Sale;
- (g) bidding at the Auction will begin with the Baseline Bid and continue in bidding increments (each, a "Subsequent Bid") providing a value to the Debtors' estates of at least \$100,000 in additional cash above the prior bid (each, an "Overbid"). After each round of bidding, the Debtors, after consultation with the Notice Parties, shall announce the bid (and the value of such bid) that they believe to be the highest or otherwise bid (each, the "Leading Bid");
- (h) any Overbid made from time to time by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (i) the Debtors accept a bid submitted by another Qualified Bidder during the Auction as an Overbid and (ii) such prior Overbid is not selected as the Back-Up Bid. To the extent not previously provided (which will be determined by the Debtors in consultation with the Notice Parties), a Qualified Bidder submitting an overbid must submit at the Debtors' request (in consultation with the Notice Parties), as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors in consultation with the Notice Parties) demonstrating such Qualified Bidder's ability to close the transaction at the purchase price contemplated by such Overbid;
- (i) a round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid from the previous round, which must include the Overbid;
- (j) except as specifically set forth herein, for the purpose of evaluating the value of the purchase price provided by each Subsequent Bid (including any Subsequent Bid by the Stalking Horse Bidder), the Debtors may give effect to any additional liabilities to be assumed by a Qualified Bidder, and any additional costs which may be imposed on (or avoided by) the Debtors as a result of such bid;
- (k) the Auction may include individual, off-the-record negotiations with any of the Qualified Bidders, but all bids shall be made on the record;

- (l) all material terms of the bid that is deemed to be the highest or otherwise best bid for each round of bidding shall be fully disclosed to the Qualified Bidders, and the Debtors shall use reasonable efforts to clarify any questions that the Qualified Bidders may have regarding the Debtors' announcement of the then-current highest or otherwise best bid;
- (m) Subject to paragraph 17 herein, the Debtors and their advisors, in consultation with the Notice Parties, may employ and announce at the Auction additional or amended procedural rules that are reasonable under the circumstances for conducting the Auction; *provided* that such potential additional modifications and/or procedural rules (i) are not materially inconsistent with the existing terms and conditions of the Bidding Procedures Order and these Bidding Procedures, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or any order of the Court entered in connection with the Chapter 11 Cases, (ii) do not purport to abrogate or modify the Stalking Horse APA or the Bid Protections, and (iii) are disclosed to the Qualified Bidders;
- (n) a "Winning Bid" shall: (i) if the Auction for the Assets is cancelled because only the Stalking Horse Bid is submitted on or before the Bid Deadline, be the Stalking Horse Bid; or (ii) if the Auction is conducted, be the Qualified Bid(s) that the Debtors determine at the conclusion of the Auction, in consultation with the Notice Parties, and subject to Court approval, is the highest or otherwise best for the Assets from among the Qualified Bids submitted at the Auction. In the case of (ii), in making this decision, the Debtors shall consider, in consultation with the Notice Parties, the amount of the purchase price, the assumption of liabilities, the transaction structure, and execution risk, including, without limitation, the likelihood of the bidder's ability to close a transaction and the timing thereof, the number, type, and nature of any changes to the Stalking Horse APA submitted with the Winning Bid, the total consideration to the Debtors' estates, and any other factors the Debtors may deem relevant. The bidder submitting the Winning Bid shall become the "Winning Bidder," and shall have such rights and responsibilities of the purchaser as set forth in such Winning Bid, with all modifications made at the Auction. The Debtors may, in their business judgment and in consultation with the Notice Parties, designate the Back-Up Bid (and the corresponding Back-Up Bidder) to purchase the Assets in the event that the applicable Winning Bidder does not close the Sale;
- (o) the Qualified Bidder(s) with the next highest or otherwise best Qualified Bid (a "Back-Up Bid"), as determined by the Debtors in consultation with the Notice Parties will be required to serve as a back-up bidder (each, a "Back-Up Bidder") and keep its bid open and irrevocable until the later to occur of (i) twenty (20) days after the Sale Hearing and (ii) closing on the Winning Bid with the Winning Bidder. The Stalking Horse Bidder shall not be required to serve as the Back-Up Bidder unless the Stalking Horse Bidder consents to serve as a Back-Up Bidder at the Auction;

- (p) within one (1) business day of the selection of any Winning Bid(s), the Debtors shall file a notice with the Court (“Notice of Winning Bid”) that sets forth: (i) the identity of the Winning Bidder(s) and any Back-Up Bidder; (ii) the amount of the Winning Bid and any Back-Up Bid; (iii) the Winning Bidder’s and Back-Up Bidder’s Proposed APAs, (iii) redlines of the Proposed APAs marked against the Stalking Horse APAs, (iv) the Winning Bidder’s and Back-Up Bidder’s Proposed Sale Orders and (v) redlines of the Proposed Sale Orders marked against the Stalking Horse Sale Order, and (vi) whether the Winning Bidder or the Back-Up Bidder have any connections to the Debtors other than those arising from their respective bids;
- (q) in the event a Winning Bid or Back-Up Bid requires the assumption and assignment of any Purchased Contracts, the Debtors shall follow the assumption and assignment procedures set forth in the Bidding Procedures Order;
- (r) within one (1) business day of the close of the Auction, any Winning Bidder and any Back-Up Bidder, except if the Winning Bidder or Back-Up Bidder is the Stalking Horse Bidder, shall supplement their respective Deposit, if necessary, such that the Deposit shall be equal to an amount that is ten (10%) percent of the cash portion of the purchase price set forth in the applicable Winning Bid and Back-Up Bid; and
- (s) prior to the Sale Hearing, any Winning Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Winning Bid was made.

EACH QUALIFIED BID THAT IS NOT A WINNING BID OR BACK-UP BID SHALL BE DEEMED WITHDRAWN AND TERMINATED AT THE CONCLUSION OF THE SALE HEARING.

13. Sale Hearing and Winning Bid Objections

The Debtors will seek entry of an order from the Court at a hearing (the “Sale Hearing”) to begin on **December [__], 2024 at [●] a.m. / p.m. (ET)** to approve and authorize the Sale to the Winning Bidder (the “Sale Order”) and approval of any Back-Up Bid. Subject to the terms of the Stalking Horse APA, the Bidding Procedures Order and these Bidding Procedures, the Debtors reserve the right to change the date and/or time of the Sale Hearing (or any other dates related to the Sale) to achieve the maximum value for the Purchased Assets without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by filing a notice, which may be a hearing agenda stating the adjournment, on the docket of the Chapter 11 Cases.

Any objection relating solely to the conduct of the Auction, the Auction results, the selection of the Winning Bid or any Back-Up Bid, or the terms of the Sale to a Winning Bidder or a Back-Up Bidder (each, a “Supplemental Sale Objection”), must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state with specificity the grounds for such objection, and (d) be filed with the Court and served on the Notice Parties on or before December 18, 2024 at noon (ET).

Any party who fails to file and serve a timely Initial Sale Objection or Supplemental Sale Objection shall be forever barred from asserting, at the Sale Hearing or thereafter, any Initial Sale Objection or Supplemental Sale Objection, including any such objection to the Bidding Procedures or to the consummation or performance of the sale of the Assets, including the transfer of Assets to the Winning Bidder free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code, and shall be deemed to consent to such sale for purposes of section 363(f) of the Bankruptcy Code.

14. Back-Up Bidder

Notwithstanding any of the foregoing, in the event that a Winning Bidder fails to close a Sale on or before January 2, 2025, and a Back-Up Bidder has been previously identified, the Debtors may designate the Back-Up Bid as the Winning Bid, and the Debtors shall file a notice so indicating (“Back-Up Bid Notice”). Three (3) business days following the filing of any Back-Up Bid Notice, the Back-Up Bid shall be deemed the Winning Bid, the Back-Up Bidder will be deemed to be the Winning Bidder, and the Debtors shall be authorized, but not directed, to close the Sale to the Back-Up Bidder subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any other parties.

15. Return of Deposits

The Deposits of all Qualified Bidders shall be deemed held in escrow by the Debtors and shall not become property of the Debtors’ estates absent further order of the Court.

All Deposits not used as part of the consummation of a Sale or not retained by the Debtors as part of damages shall be returned to each Qualified Bidder not selected as the Winning Bidder no later than five (5) business days following the closing of the Sale. The Deposit of the Winning Bidder shall be applied to the purchase price for the Sale. If the Winning Bidder (or, if the Sale is to be closed with a Back-Up Bidder, then such Back-Up Bidder) fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the Proposed APA, the Debtors and their estates shall be entitled to retain the Deposit of the Winning Bidder (or Back-Up Bidder, as applicable) as part of the damages resulting to the Debtors and their estates for such breach or failure to perform. For the avoidance of doubt, the Debtors’ retention of a Deposit shall not constitute a waiver of any of the Debtors’ legal or equitable rights relating to a Winning Bidder’s (or Back-Up Bidder’s, as applicable) breach or failure to perform, and all such rights and remedies are preserved.

16. Consultation Rights

Any consultation rights provided to the Notice Parties by these Bidding Procedures shall not limit the Debtors’ discretion in any way and shall not include the right to veto any decision made by the Debtors in the exercise of their business judgment. Any failure to specifically identify consultation rights in any section of these Bidding Procedures shall not limit or otherwise impair the rights of the Notice Parties to consult with the Debtors. In the event that the Notice Parties disagree with matters for which the Debtors are required to consult with the Notice Parties, then the Notice Party shall have the right to seek relief from the Court on an expedited basis to resolve the dispute.

For the avoidance of doubt, so long as a Notice Party (or an affiliate thereof) is the Stalking Horse Bidder, such Notice Party shall not have any consultation rights with respect to satisfaction of the Bid Requirements, evaluation of Qualified Bids, or the Auction, if any.

17. Reservation of Rights

Without prejudice to the rights of the Stalking Horse Bidder under the Stalking Horse APA, and except as otherwise provided in these Bidding Procedures, the Bidding Procedures Order or the Stalking Horse Sale Order, the Debtors further reserve the right in the exercise of their fiduciary duties (in consultation with the Notice Parties), to: (a) determine which bidders are Qualified Bidders; (b) determine which bids are Qualified Bids; (c) determine which Qualified Bid is the highest and best proposal and which is the next highest and best proposal; (d) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of these Bidding Procedures or the requirements of the Bankruptcy Code or (iii) contrary to the best interests of the Debtors and their estates; (e) impose additional terms and conditions with respect to all potential bidders other than the Stalking Horse Bidder; (f) modify these Bidding Procedures and/or implement additional procedural rules that the Debtors determine will better promote the goals of the bidding process; and (g) continue or cancel the Auction and/or Sale Hearing in open court without further notice or by filing a notice on the docket; *provided, however*, that (i) any changes to the dates and deadlines set forth herein shall comply with any milestones contained in the Debtors' DIP Financing Agreement approved by the Bankruptcy Court in these cases, (ii) the Debtors may not modify the terms of the "Stalking Horse Bidder Bid Protections" set forth in Paragraph 3 hereof (and any related provisions of the Bidding Procedures Order) or the "Stalking Horse Bidding" provisions in Paragraph 8 (and any related provisions of the Bidding Procedures Order), without the consent of the Stalking Horse Bidder, and (iii) the potential modifications and/or procedural rules will not impair or be likely to impair the ability of the DIP Lender to be repaid in full in cash on the Maturity Date if not selected as the Winning Bidder.

Bidding Procedures Order Exhibit 2

Stalking Horse APA

EXECUTION VERSION

ASSET PURCHASE AGREEMENT

by and between

THE SELLERS IDENTIFIED HEREIN

and

TOG TECHNOLOGIES, LLC,

BUYER

Dated as of November 11, 2024

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EXHIBITS

Exhibit A	Form of Assignment and Assumption Agreement
Exhibit B	Form of Bidding Procedures
Exhibit C	Form of Bill of Sale
Exhibit D	Form of Intellectual Property Assignment Agreement
Exhibit E	Form of Lease Assignment

This **ASSET PURCHASE AGREEMENT** (this “**Agreement**”) is made and executed as of November 8, 2024 (the “**Execution Date**”), by and between Recombinetics, Inc., a Delaware corporation (“**RCI**”), Acceligen, Inc., a Minnesota corporation (“**Acceligen**”), Regenevida, Inc., a Minnesota corporation (“**Regenevida**”), Surrogen, Inc., a Minnesota corporation (“**Surrogen**”), and Therillume, Inc., a Delaware corporation (“**Therillume**” and together with RCI, Acceligen, Regenevida, Surrogen, each a “**Seller**” and collectively, “**Sellers**”), on the one hand, and TOG Technologies, LLC, a Delaware limited liability company (“**Buyer**”), on the other hand. Sellers and Buyer may be referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

WHEREAS, Sellers are engaged in the Business;

WHEREAS, Sellers presently intend to commence voluntary proceedings (the “**Chapter 11 Cases**”) for relief under chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended, the “**Bankruptcy Code**”), in the Bankruptcy Court (as defined below), during which Sellers would continue to manage their properties and operate the Business as debtors in possession (Sellers in such capacity are referred to herein as the “**Debtors**”);

WHEREAS, the Parties entered into a debtor-in-possession credit facility, pursuant to which Buyer agreed to provide a secured super-priority debtor-in-possession loan facility to the Debtors pursuant to the DIP Financing Order (as defined below) and the DIP Loan Documents (as defined below) (such credit facility, the “**DIP Facility**”);

WHEREAS, Sellers desire to sell, transfer and assign to Buyer, and Buyer desires to purchase, acquire and assume from Sellers, pursuant to sections 105, 363, and 365 of the Bankruptcy Code, all of Sellers’ right, title and interest in, to and under the Purchased Assets (as defined below) subject only to the Assumed Liabilities and Permitted Encumbrances (both as defined below), upon the terms and conditions hereinafter set forth;

WHEREAS, the Purchased Assets are assets of Sellers which are to be sold pursuant to the Sale Order and this Agreement, free and clear of all Liabilities and Encumbrances except Assumed Liabilities and Permitted Encumbrances, which Sale Order will include the authorization for the assumption and assignment of certain executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code, all in the manner and on the terms and subject to the conditions set forth herein and in accordance with other applicable provisions of the Bankruptcy Code; and

WHEREAS, the board of directors of each Seller has determined that it is advisable and in the best interests of such Seller, its creditors, and its other stakeholders to consummate the Transactions provided for herein pursuant to the Sale Order and have approved this Agreement, subject to higher and better offers as contemplated by the Bidding Procedures Order.

NOW, THEREFORE, in consideration of the mutual benefits to be derived from this Agreement, the representations, warranties, conditions, agreements and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Certain Defined Terms. As used herein, the following terms shall have the following meanings:

“**Acceligen Brazil**” means Acceligen do Brasil Biotecnologia e Pesquisa Científica Ltda., a *sociedade empresária limitada* formed under the laws of Brazil.

“**Accounts Receivable**” means all amounts (whether current or non-current) that constitute, as of the Closing, accounts receivable, notes receivable, chattel paper, negotiable instruments, and other indebtedness due and owed by any Third Party to a Seller.

“**Action**” means any Claim, suit, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, Litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, quasi-administrative, administrative, regulatory or otherwise, whether at Law or in equity.

“**Affiliate**” means, with respect to a Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such first Person, and a Person shall be deemed to be controlled by another Person if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly. For purposes of this definition, “control” and, with correlative meanings, the terms “controlled by” and “under common control with” mean, when used with respect to any specified Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by Contract or otherwise.

“**Agreement**” has the meaning set forth in the preamble hereto, and includes all schedules and exhibits hereto, and all instruments supplementing, amending, modifying, restating or otherwise confirming this Agreement.

“**Allocable Consideration**” has the meaning set forth in Section 2.3.3.

“**Allocation Schedule**” has the meaning set forth in Section 2.3.3.

“**Alternative Transaction**” means the sale, transfer, other disposition, directly or indirectly, including through an asset sale, share sale, merger, amalgamation, reorganization, foreclosure or other transaction, including a plan of reorganization approved by the Bankruptcy Court, or resulting from the Auction, or any other transaction involving any material portion of the Purchased Assets or the Business, in a single transaction or a series of transactions, with one or more Persons other than Buyer (other than sales of Products in the Ordinary Course).

“**Ancillary Agreements**” means the Bill of Sale, the Assignment and Assumption Agreement, the Intellectual Property Assignment Agreement, the DIP Loan Documents, the Lease Assignment, and any other agreements, certificates and other instruments delivered, given or contemplated pursuant to this Agreement.

“**Appointee**” has the meaning set forth in Section 8.1.6.

“**Apportioned Obligations**” has the meaning set forth in Section 5.4.2(b).

“**Assignment and Assumption Agreement**” means the Assignment and Assumption Agreement in substantially the form attached hereto as Exhibit A.

“**Assumed Liabilities**” has the meaning set forth in Section 2.2.1.

“**Auction**” means the auction contemplated to be run in the sales process in connection with the Business pursuant to the Bidding Procedures Order.

“**Avoidance Actions**” shall mean those actual and/or potential claims and causes of action under sections 502(d) and 544 through 553 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code or any analogous state law; *provided, however*, that such Avoidance Actions shall not include any Avoidance Actions or Claims that could be asserted against counterparties to any Purchased Contracts (“**Counterparty Avoidance Claims**”); *provided further* that, upon the assignment and assumption of the Purchased Contracts, all Counterparty Avoidance Claims arising from or related to such Purchased Contracts shall be, and shall be deemed, Purchased Assets.

“**Bankruptcy Code**” has the meaning set forth in the recitals.

“**Bankruptcy Court**” means the United States Bankruptcy Court for the District of Delaware and any other court before which the Chapter 11 Cases are pending.

“**Bankruptcy Court Orders**” has the meaning set forth in Section 5.8.1(a).

“**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure and any local rules of the Bankruptcy Court, as applicable.

“**Bidding Procedures**” means bidding procedures in substantially the form attached hereto as Exhibit B.

“**Bidding Procedures Motion**” has the meaning set forth in Section 5.8.1.

“**Bidding Procedures Order**” has the meaning set forth in Section 5.8.1(a). For the avoidance of doubt, the “Bidding Procedures Order” shall be an Order of the Bankruptcy Court in form and substance acceptable to Buyer, approving, *inter alia*, the Bidding Procedures, designating Buyer as the stalking horse bidder, approving the Bidding Protections, and authorizing Sellers to enter into this Agreement and the Ancillary Agreements.

“**Bidding Protections**” means, collectively, the Termination Fee and the Expense Reimbursement.

“**Bill of Sale**” means the Bill of Sale in substantially the form attached hereto as Exhibit C.

“**Business**” means the business and operations of Sellers as of the Execution Date.

“Business Day” means any day other than Saturday, Sunday or a day on which banking institutions in Minneapolis, Minnesota and Madison, Wisconsin are permitted or obligated by Law to remain closed.

“Business Employee” means each individual set forth on Schedule 5.12.1 (and, in the event any such individual’s employment terminates prior to the Closing, any individual hired on substantially comparable terms to replace such employee).

“Buyer” has the meaning set forth in the preamble hereto.

“Chapter 11 Cases” has the meaning set forth in the recitals.

“Claims” mean, collectively, all rights, claims (as that term is defined in section 101(5) of the Bankruptcy Code) and causes of action, whether class, individual or otherwise in nature, under contract or in law or in equity, known or unknown, contingent or matured, liquidated or unliquidated and all rights and remedies with respect thereto.

“Closing” has the meaning set forth in Section 2.4.

“Closing Date” has the meaning set forth in Section 2.4.

“Closing Payment” has the meaning set forth in Section 2.3.1(b).

“Code” means the U.S. Internal Revenue Code of 1986, as amended.

“Commercialization” or **“Commercialize”** means any and all activities directed to the offering for sale and sale of the Products, including activities directed to storing, marketing, promoting, detailing, Manufacturing, distributing, importing, exporting, selling and offering to sell such Products. When used as a verb, “to Commercialize” and “Commercializing” means to engage in Commercialization and “Commercialized” has a corresponding meaning.

“Confidentiality Agreement” means that certain *Mutual Nondisclosure Agreement*, dated as of January 15, 2021, between Acceligen and URUS Group, LP, as subsequently amended.

“Continuing Employees” has the meaning set forth in Section 5.12.1.

“Contract” means any legally binding written or oral contract, agreement, obligation, lease, sublease, license, sublicense, regulatory license, undertaking, engagement, sales order, purchase order, instrument or other legally binding commitment.

“Copyrights” has the meaning set forth in the definition of “Intellectual Property”.

“Counterparty Avoidance Claims” has the meaning set forth in the definition of “Avoidance Actions”.

“Cure Costs” shall mean the Liabilities and obligations that must be paid or otherwise satisfied to cure all of Debtors’ defaults under the Purchased Contracts necessary for the assignment to Buyer pursuant to section 365 of the Bankruptcy Code, as provided herein and in

the Sale Order or any other Order of the Bankruptcy Court (as agreed by the applicable counterparties, Debtors and Buyer).

“D&O Policies” means the Debtors’ directors and officers liability insurance policies and all rights and benefits of any nature with respect thereto, including all insurance recoveries thereunder and rights to assert Claims with respect to such insurance recoveries.

“Debtors” has the meaning set forth in the recitals hereto.

“DIP Facility” has the meaning set forth in the recitals.

“DIP Financing Order” means as of any date of determination (i) the Interim Order (a) Authorizing the Debtors to Obtain Postpetition Financing, Granting Senior Postpetition Security Interests and According Superpriority Administrative Expense Status Pursuant to sections 364(c) and 364(d) of the Bankruptcy Code, (b) Authorizing the Use of Cash Collateral, (c) Granting Adequate Protection, (d) Modifying the Automatic Stay, and (e) Granting Related Relief that is anticipated to be entered by the Bankruptcy Court on or about November [8], 2024 (the **“Interim Order”**) or (ii) the Final Order (as defined in the Interim Order), whichever such Order is then in effect.

“DIP Indebtedness” means all “DIP Obligations” as defined in the DIP Financing Order.

“DIP Loan Documents” shall have the meaning given such term in the DIP Financing Order, and for the avoidance of doubt shall include all guarantees, all other security agreements, pledge agreements, notes, guarantees, mortgages, certificates, Uniform Commercial Code financing statements and all other related agreements, instruments and other documents, in each case relating to the DIP Indebtedness, and executed and/or delivered in connection therewith by the Sellers.

“Disputed Contract” has the meaning set forth in Section 5.8.8.

“Employee Equipment” mean all mobile phones and laptop computers owned by any Seller or its Subsidiaries, as applicable, and used by any Continuing Employee as of immediately prior to the Closing in connection with the Business.

“Employee Sessions” has the meaning set forth in Section 5.12.2.

“Employment Matters” has the meaning set forth in Section 5.12.2.

“Encumbrance” means any mortgage, lien (statutory or otherwise), Claim, license, sublicense, pledge, security interest, charge, hypothecation, restriction, claim of ownership, lease, sublease, option, right of use or possession, preference, encroachment, restrictive covenant, right of first offer or refusal, title defect or other encumbrance or similar restriction of any kind.

“Enforceability Exceptions” has the meaning set forth in Section 3.1.2.

“Equity Securities” means, (i) if a Person is a corporation, shares of capital stock of such corporation and, if a Person is a form of entity other than a corporation, ownership interests in such

form of entity, whether membership interests or partnership interests, or (ii) other securities directly or indirectly convertible into, or exercisable or exchangeable for, any securities described in clause (i) above.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Excluded Assets” has the meaning set forth in Section 2.1.2.

“Excluded Contracts” has the meaning set forth in Section 2.1.2(f).

“Excluded Items” means any and all (a) books, documents, records, files and other items prepared in connection with or relating to the negotiation and consummation of the Transactions or otherwise prepared in connection with the divestiture of the Purchased Assets or the Business, including all (i) bids received from Third Parties (and related analyses) relating to the Business, (ii) strategic, financial or Tax analyses relating to the divestiture of each of the Purchased Assets, the Assumed Liabilities and the Business, (iii) analyses regarding the competitive landscape (e.g., consultant reports regarding the market and likely future developments) of the Products or the Business, (iv) presentations or minutes relating to any of the meetings of Debtors’ board of directors or committees thereof, including materials relating to strategic alternatives, including the Transactions and (v) presentations or other materials relating to discussion with Sellers’ lenders or key constituents or counterparties; and (b) all personnel records (including all human resources and other records), whether or not held by any Seller or any of its Subsidiaries, as applicable, and whether or not relating to employees (other than the Continuing Employees) of such Seller or any of its Subsidiaries, as applicable.

“Excluded Liabilities” has the meaning set forth in Section 2.2.2.

“Execution Date” has the meaning set forth in the preamble hereto.

“Expense Reimbursement” shall mean the aggregate amount of all reasonable and documented out-of-pocket expenses (including all fees and expenses of counsel, accountants, investment banks, advisors, and consultants to Buyer or its Affiliates) incurred by Buyer or its Affiliates prior to any termination of this Agreement in accordance with Article 8 relating to or in connection with (a) the purchase of the Purchased Assets, including the Transactions and any auctions for the Debtors’ assets, and all Actions relating thereto; (b) the negotiation, preparation, execution or performance of agreements relating to the purchase of the Purchased Assets, including this Agreement and any Ancillary Agreements other than the DIP Loan Documents; and (c) business, financial, legal, accounting, Tax, and other due diligence relating to the Purchased Assets, up to the amount approved in the Bidding Procedures Order.

“Exploit” means the exercise of any and all rights, including to Manufacture, make, have made, import, export, use, have used, sell, offer for sale, have sold, license, develop, Commercialize, register, hold or keep (whether for disposal or otherwise), transport, treat, store, distribute, promote, market, sell or otherwise dispose of.

“FDA” means the United States Food and Drug Administration and any successor agency thereto.

“Final Order” shall mean an Order or judgment of the Bankruptcy Court entered by the clerk of the Bankruptcy Court or such other court on the docket in the Chapter 11 Cases or the docket of such other court, which has not been modified, amended, reversed, vacated or stayed and as to which (a) the time to appeal, petition for certiorari, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for certiorari or motion for new trial, reargument or rehearing shall then be pending or (b) if an appeal, writ of certiorari new trial, reargument or rehearing thereof has been sought, such order or judgment of the applicable Bankruptcy Court, or other court of competent jurisdiction shall have been affirmed by the highest court to which such Order was appealed, or certiorari shall have been denied, or a new trial, reargument or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for a new trial, reargument or rehearing shall have expired, as a result of which such order shall have become final in accordance with Rule 8002 of the Federal Rules of Bankruptcy Procedure or a similar rule of such other court of competent jurisdiction; *provided* that with respect to the Bankruptcy Court, the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order, shall not cause such order not to be a Final Order.

“Finished Goods Inventory” means all Products (including samples) in finished form packaged and ready to be shipped to customers or other parties by any Seller and its Subsidiaries or designees thereof, as applicable.

“Fraud” means fraud as determined in accordance with the common Law of Delaware with respect to (b) any Seller, the making the representations and warranties made by Sellers and set forth in Section 3.1 and (b) in the case of Buyer, the making the representations and warranties made by Buyer and set forth in Section 3.2.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States, consistently applied, as established by the Financial Accounting Standards Board (FASB) or other authoritative body, and as applied in the preparation of financial statements.

“Governmental Authority” means (i) any governmental or public department, central bank, court, minister, governor-in-council, cabinet, commission, tribunal, board, bureau, agency, commissioner or instrumentality or other regulatory or administrative authority, whether international, multinational, national, federal, provincial, state, municipal, local, or other; (ii) any subdivision or authority of any of the above; (iii) any stock exchange; and (iv) any quasi-governmental or private body exercising any regulatory, expropriation or Taxing Authority under or for the account of any of the above, which, for the avoidance of doubt, includes the FDA, any corresponding foreign agency and any other federal, state, provincial, local or foreign Governmental Authority with jurisdiction over the Business.

“Indirect Taxes” means value added, sales, consumption, goods and services Taxes or other similar Taxes required by applicable Law to be disclosed as a separate item on the relevant invoice.

“Intellectual Property” means all intellectual property rights and other proprietary rights, interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing, however arising, pursuant to the Laws of any jurisdiction throughout the world, whether registered or unregistered, including any and all (a) Patents; (b) inventions and discoveries, whether patentable or unpatentable, whether or not memorialized in an invention disclosure, and whether or not reduced to practice, including articles of manufacture, compositions of matter, machines, methods, and processes and all improvements thereto; (c) copyrights and other equivalent rights in works of authorship, moral rights (or other similar rights), copyright registrations and applications for copyright registration (**“Copyrights”**); (d) designs, design registrations, design registration applications; (e) names, trade names, business names, corporate names, domain names, social media accounts, website names and world wide web addresses, common law trademarks, trademark registrations, trademark applications, unregistered trademarks, service marks, trade dress and logos, slogans, and other similar designations of source or origin (**“Trademarks”**); (f) rights in computer programs (whether in source code, object code, or other form), algorithms, databases, compilations and data, technology supporting the foregoing, and all documentation, including user manuals and training materials, related to any of the foregoing; (g) trade secrets and all other confidential information, know-how, inventions, proprietary processes, formulae, models, and methodologies (**“Trade Secrets”**); (h) registrations and applications for any of the foregoing; (i) any goodwill associated with any of the foregoing; (j) royalties, fees, income, payments and other proceeds now or hereafter due or payable with respect to any and all of the foregoing; and (k) all rights to enforce any and all rights related to the foregoing, whether accruing before, on or after the date hereof, including all rights to and Claims for all remedies, including damages, restitution and injunctive relief for infringement, dilution, misappropriation, violation, misuse, breach or default, with the right but no obligation to sue for such legal and equitable relief, and to receive, collect, or otherwise recover, any such remedies.

“Intellectual Property Assignment Agreement” means the Intellectual Property Assignment Agreement, in substantially the form attached as Exhibit D.

“Intellectual Property Contracts” has the meaning set forth in Section 3.1.9(b).

“Interim Period” means the period between the close of business on the Execution Date and the earlier of (x) Closing and (y) the termination of this Agreement.

“Inventory” means all inventory, Finished Goods Inventory, raw materials, work in progress, packaging, supplies, parts and other inventories of Sellers.

“IRS” means the Internal Revenue Service or any successor Governmental Authority.

“Law” means any (i) applicable national, supranational, domestic or foreign, federal, state, provincial or local statute, law (including the common law), treaty, statute, code, constitution, ordinance, Order, decree, rule, administrative interpretation, regulation, or by-law, and (ii) any other policy, guideline, notice, protocol or requirement having the force of law of any Governmental Authority, in each case as in effect from time to time.

“Lease Assignment” means the Lease Assignment and Assumption Agreement, in substantially the form attached as Exhibit E.

“Liability” means any debt, loss, liability, obligation, commitment, claim, damage, demand, fine, judgment or penalty, whether absolute or contingent, accrued or unaccrued, asserted or unasserted, known or unknown, fixed or contingent, matured or unmatured, determined or determinable or otherwise, including (i) accounts payable, royalties payable and other reserves and (ii) accrued bonuses and commissions, accrued vacation and any other form of leave, termination payment obligations, employee expenses obligations, in each case whether arising under any Law, Order, Contract or otherwise, and regardless of whether such debt, loss, liability, obligation, commitment, Claim, damage, demand, fine, judgment or penalty is required to be reflected on a balance sheet in accordance with GAAP.

“Litigation” means any claim, action, arbitration, mediation, hearing, proceeding, suit (whether civil, criminal, administrative, or investigative or appellate proceeding), warning letter, or notice of violation.

“Look-Back Date” means the date that is three (3) years prior to the Execution Date.

“Manufacture” and **“Manufacturing”** means all activities related to the production, manufacture, processing, filling, finishing, packaging, labeling, shipping and holding of the Products, or any intermediate, quality assurance and quality control testing thereof prior to the distribution of the Products.

“Material Adverse Effect” means any event, result, effect, occurrence, state of facts, circumstance, development, condition or change, that, individually or in the aggregate, is or could reasonably be expected to be, individually or in the aggregate, material and adverse to (a) business, results of operations, assets, liabilities or financial condition of the Business or the Purchased Assets and the Assumed Liabilities, taken as a whole, or (b) Sellers’ ability to consummate the Transactions; *provided, however*, that none of the following, and no event, fact, condition, occurrence, change, development, circumstance or effect to the extent resulting from the following, shall be deemed (individually or in combination) to constitute, or shall be taken into account in determining whether there has been, a “Material Adverse Effect”: (i) general political or economic conditions or conditions affecting the capital or financial markets generally, including the worsening of any existing conditions or changes affecting the availability or cost of financing; (ii) conditions generally affecting any industry or industry sector in which Sellers and their Subsidiaries operate or compete or any conditions generally affecting the animal agriculture or dairy industry; (iii) any change in accounting requirements, applicable Laws or the enforcement, implementation or interpretation thereof; (iv) any hostility, act of war, sabotage, terrorism or military actions, or any escalation of any of the foregoing; (v) any hurricane, flood, tornado, earthquake, pandemic; (vi) this Agreement, the Transactions or the Chapter 11 Cases, including the public announcement thereof or the impact of such announcement or pendency on the relationship of Sellers and their Subsidiaries with any supplier, distributor, customer, partner or similar relationship or any loss of employees resulting therefrom; (vii) the failure of Sellers and their Subsidiaries to achieve any financial projections, predictions, forecasts or estimates of revenues for any period (*provided* that the underlying causes of such failure shall not be excluded unless otherwise excluded pursuant to this definition); (viii) any act or omission of Sellers or any their Subsidiaries required by the terms of this Agreement; (ix) (A) the commencement or pendency of the Chapter 11 Cases, or (B) any objections in the Bankruptcy Court to (1) this Agreement, any Ancillary Agreement or the Transactions, (2) the Bidding Procedures Order or

(3) the assumption or rejection of any Purchased Contract otherwise in compliance with this Agreement; and (x) any act or omission by any Seller or any of their Subsidiaries required to be taken pursuant to the terms of the DIP Financing Order; *provided* that the underlying factors contributing to any such change shall not be excluded unless such underlying factors would otherwise be excluded from the definition of Material Adverse Effect); except, in the case of clauses (i) through (v), to the extent that any such event, result, effect, occurrence, fact, circumstance, development, condition or change has a disproportionate effect on the Purchased Assets and Assumed Liabilities, taken as a whole, relative to other Persons operating businesses similar to the Business.

“Material Contract” has the meaning set forth in Section 3.1.13(a).

“Non-Party Affiliates” has the meaning set forth in Section 9.10.

“Notice” has the meaning set forth in Section 9.2.1.

“Open Source Software” means software or other material that is distributed as “free software”, “open source software” or under similar licensing or distribution terms (including any license approved by the Open Source Initiative and listed at opensource.org/licenses).

“Order” means any judicial, arbitral, administrative, ministerial, departmental or regulatory writ, judgment, edict, decree, injunction, ruling, order, decision, award or other binding obligation, pronouncement, determination or similar action taken by, or applied by, any Governmental Authority (in each case, whether temporary, preliminary or permanent).

“Ordinary Course” means, with respect to an action taken by a Person, that such action is (i) substantially consistent with the past practices of the Person and (ii) taken in the ordinary course of the normal day-to-day operations of the Person.

“Outside Date” means January 2, 2025.

“Owned Intellectual Property” means all Intellectual Property owned or purported to be owned (whether exclusively, non-exclusively, solely, jointly with another Person, or otherwise) by any Seller.

“Party(ies)” has the meaning set forth in the preamble hereto.

“Patents” means all issued patents and patent applications, applications for reissues, or invention disclosures in any country or supranational jurisdiction, and any substitutions, divisions, continuations, continuations-in-part, reissues, renewals, confirmations, re-examinations, extensions, supplementary protection certificates and the like, and any provisional applications, of any such patents or patent applications.

“Payee” has the meaning set forth in Section 5.4.1(a).

“Payer” has the meaning set forth in Section 5.4.1(a).

“Payments” has the meaning set forth in Section 5.4.1(a).

“Permit” means with respect to any Person, any permit, clearance, license, grant, authorization, franchise, consent, registration, certificate, franchise, certification, variance, exemption, Order or approval or similar authorization of any Governmental Authority having jurisdiction over the Person.

“Permitted Encumbrance” means any (a) Encumbrance for utilities and Taxes not yet due or delinquent or for those Taxes being contested in good faith by appropriate proceedings and reflected by reserves in accordance with GAAP; (b) Encumbrance incurred or deposit made to a Governmental Authority in connection with any Purchased Permit and listed on Schedule 2.1.1(d); and (c) any right, title or interest of a licensor or licensee under a license that is a Purchased Contract.

“Person” means any individual, partnership, limited partnership, limited liability partnership, limited liability company, unlimited liability company, joint stock company, joint venture, syndicate, sole proprietorship, corporation, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, or any other legal entity, including a Governmental Authority, and pronouns have a similarly extended meaning.

“Plan” means each “employee benefit plan” within the meaning of Section 3(3) of ERISA and all other stock purchase, stock option, restricted stock, severance, retention, employment, consulting, change-of-control, collective bargaining, bonus, incentive, deferred compensation, retirement, medical, dental, vision, vacation, cafeteria plan, life insurance, and other benefit plan, program or arrangement, written or unwritten, whether or not subject to ERISA, in each case, which is maintained, sponsored or contributed to by any Seller or any of their Subsidiaries, or for which any Seller or any of their Subsidiaries has or may have any Liability, contingent or otherwise.

“Post-Closing Tax Period” has the meaning set forth in Section 5.4.2(b).

“Pre-Closing Tax Period” has the meaning set forth in Section 5.4.2(b).

“Privileged Communications” means any records, information, ledgers, files, invoices, documents, work papers, work product, drafts, presentations, analysis, correspondence, summaries, or similar items that, in whole or part, constitutes privileged communications between Sellers and Sellers’ counsel or other professional advisors.

“Products” means Sellers’ and their Subsidiaries’ products as of the Closing.

“Public Statement” has the meaning set forth in Section 5.3.

“Purchase Price” has the meaning set forth in Section 2.3.1(b).

“Purchased Assets” has the meaning set forth in Section 2.1.1.

“Purchased Contracts” has the meaning set forth in Section 2.1.1(a).

“Purchased Intellectual Property” means the Intellectual Property licensed to Sellers under the Purchased Contracts, and all other Owned Intellectual Property.

“Purchased Permits” has the meaning set forth in Section 2.1.1(d).

“Purchased Product Records” means all books and records (including records of call center activity) primarily relating to the Business to the extent owned, maintained and in the possession or control of any Seller or any of their Subsidiaries and reasonably necessary or used to monitor the collection or payment with respect to the Products, maintain the Purchased Intellectual Property or Regulatory Approvals, prosecute and/or Manufacture, develop and Exploit the Products throughout the world (to the extent any Seller or any of their Subsidiaries has the right to do so), but excluding, in all cases, the Excluded Items and any Intellectual Property included therein.]

“Purchased Regulatory Approvals” means the Regulatory Approvals set forth on Schedule 2.1.1(l); *provided, however*, that “Purchased Regulatory Approvals” shall not include Permits other than Purchased Permits.

“Real Property Leases” has the meaning set forth in Section 2.1.1(j).

“Regulatory Approvals” means all approvals (including pricing and reimbursement approvals required for marketing authorization), clearances, Product and/or establishment licenses, registrations or authorizations of any Regulatory Authorities required to Exploit the Products in any jurisdiction.

“Regulatory Authority” means any Governmental Authority with authority over the Research, development, registration, Manufacture, making, having made, use and Commercialization of any Product.

“Regulatory Filings” means, individually or collectively, all applications, filings, submissions, licenses, registrations, clearances, Permits, notifications, and authorizations (including marketing and labeling authorizations) or waivers with respect to the testing, Research, development, registration, Manufacture, making, having made, use and Commercialization of the Products made to or received from any Regulatory Authority in a given country, and all correspondence related to any of the foregoing.

“Representatives” means a Party’s officers, directors, employees, agents, attorneys, accountants, consultants, advisors, financing sources and other representatives.

“Research” means all activities related to the research, identification, screening and testing of a Product.

“Restricted Funds” means cash and investments of the Sellers that are designated as restricted on Sellers’ balance sheets as of the Closing Date.

“Sale Hearing” means the hearing conducted by the Bankruptcy Court to approve the Transactions contemplated by this Agreement.

“Sale Order” means an Order of the Bankruptcy Court in form and substance acceptable to Sellers and Buyer, (a) authorizing and approving, pursuant to sections 105, 363, and 365 of the Bankruptcy Code, *inter alia*, (i) the sale of the Purchased Assets to Buyer on the terms and

conditions set forth herein, free and clear of all Liabilities and Encumbrances other than Permitted Encumbrances and Assumed Liabilities, (ii) the assumption and assignment of the Purchased Contracts to Buyer; and (b) finding that the Buyer is a good faith purchaser and subject to the protections of section 363(m) of the Bankruptcy Code.

“**Seller**” and “**Sellers**” have the meanings set forth in the preamble hereto.

“**Sellers’ Knowledge**” means the actual or constructive knowledge of Rocco Morelli, Sabreena Larson, Daniel Carlson, William Haupt, and Tad Sonstegard, without personal Liability on the part of any of them.

“**Subsidiary**” means any entity of which at least a majority of the securities or ownership interests having by their terms voting power to elect a majority of the board of directors or other Persons performing similar functions is directly or indirectly owned or controlled by such party or by one or more of its respective Subsidiaries. With respect to Sellers, the term “Subsidiary” includes Acceligen Brazil.

“**Tax Return**” means any return, declaration, report, election, notice, filing, claim for refund, information return or statement relating to Taxes, including any schedule or attachment thereto, filed or maintained, or required to be filed or maintained, in connection with the calculation, determination, assessment or collection of any Tax and includes any amended returns required as a result of examination adjustments made by the IRS or other Taxing Authority.

“**Taxes**” means all taxes of any kind, and all charges, fees, customs, levies, duties, excises, premiums, imposts, required deposits or other assessments, including all federal, state, local or foreign net income, capital gains, gross income, gross receipt, property, abandoned property, escheat, franchise, sales, use, excise, withholding, payroll, employment, social security, workers’ compensation, unemployment, occupation, capital stock, transfer, gains, windfall profits, net worth, asset, transaction and other taxes, and any interest, penalties, fines or additions to tax with respect thereto, imposed upon any Person by any Taxing Authority or other Governmental Authority under applicable Law.

“**Taxing Authority**” means any Governmental Authority or any quasi-governmental body exercising Tax regulatory authority.

“**Termination Fee**” means an amount equal to \$150,000.

“**Third Party**” means any Person other than Sellers, Buyer and their respective Affiliates and permitted successors and assigns.

“**Trade Secrets**” has the meaning set forth in the definition of “Intellectual Property”.

“**Trademark**” has the meaning set forth in the definition of “Intellectual Property”.

“**Transactions**” means the transactions contemplated by this Agreement and the Ancillary Agreements.

“**Transfer Taxes**” has the meaning set forth in Section 5.4.2(a).

“**Union**” has the meaning set forth in Section 3.1.11(b).

1.2 Construction. Except where the context otherwise requires, wherever used, the singular includes the plural, the plural the singular, the use of any gender shall be applicable to all genders and the word “or” is used in the inclusive sense (and/or). The captions of this Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained in this Agreement. The terms “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation” and do not limit the generality of any description preceding such term. The language of this Agreement shall be deemed to be the language mutually chosen by the Parties and no rule of strict construction shall be applied against either Party. Unless otherwise specified or where the context otherwise requires, (a) references in this Agreement to any Article, Section, Schedule or Exhibit are references to such Article, Section, Schedule or Exhibit of this Agreement, as may be amended or supplemented prior to Closing; (b) references in any Section to any clause are references to such clause of such Section; (c) “hereof,” “hereto,” “hereby,” “herein” and “hereunder” and words of similar import when used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement; (d) references to a Person are also to its successors and permitted assigns; (e) references to a Law include any amendment or modification to such Law and any rules or regulations issued thereunder, in each case, as in effect at the relevant time of reference thereto; (f) references to any agreement, instrument or other document in this Agreement refer to such agreement, instrument or other document as originally executed or, if subsequently amended, replaced or supplemented from time to time, as so amended, replaced or supplemented and in effect at the relevant time of reference thereto; (g) “extent” in the phrase “to the extent” means the degree to which a subject or other thing extends, and such phrase does not mean simply “if”; (h) all references to “made available” means, when used with respect to any document or other item of information, that such document or other item of information was provided directly or was made available to Buyer in the “virtual data room” prepared by Seller to which Buyer has been provided access; and (i) references to monetary amounts are denominated in United States Dollars and all references to “\$” shall be deemed to refer to United States dollars. The Parties have participated jointly in the negotiation and drafting of this Agreement and in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party (or any Affiliate thereof) by virtue of the authorship of any of the provisions of this Agreement.

ARTICLE 2 SALE AND PURCHASE OF ASSETS; LIABILITIES

2.1 Sale of Purchased Assets.

2.1.1 Purchase and Sale of Purchased Assets. Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, subject to the terms and conditions of this Agreement and the Ancillary Agreements, at and effective as of the Closing, Sellers shall sell, transfer, convey, assign and deliver to Buyer, and Buyer shall purchase and accept from Sellers, all rights, title and interests of Sellers in and to all of the assets, properties, interests, rights and claims of Sellers, other than the Excluded Assets, including the following (collectively, the “**Purchased Assets**”), in each case

free and clear of any Liabilities or Encumbrances (other than Assumed Liabilities and Permitted Encumbrances):

(a) all rights and interests of Sellers under any Contracts, including the Contracts set forth on Schedule 2.1.1(a), other than the Excluded Contracts (the “**Purchased Contracts**”);

(b) the Purchased Product Records;

(c) the Purchased Intellectual Property and any goodwill therein;

(d) all Permits that are listed on Schedule 2.1.1(d), to the extent assignable or transferable (the “**Purchased Permits**”);

(e) all Inventory owned by and in the possession or custody of Sellers;

(f) all raw materials, work-in-process, components, packaging material or similar items used in the production or distribution of the Products and in the possession or custody of Sellers;

(g) all advertising, marketing, sales and promotional materials relating to the Products;

(h) all URLs, websites, website content, fax numbers and telephone numbers;

(i) all pre-paid expenses and security deposits;

(j) all real property leases, subleases, licenses and other agreements to occupy real property of any Seller or any of their Subsidiaries (the “**Real Property Leases**”);

(k) all Purchased Regulatory Approvals;

(l) copies of Sellers’ personnel records with respect to the Continuing Employees;

(m) all Employee Equipment;

(n) all Accounts Receivable;

(o) all insurance policies (other than the D&O Policies), to the extent transferable, including all insurance recoveries thereunder and all rights to assert Claims thereunder for periods following the Closing;

(p) all confidentiality, joint defense or similar agreements with prospective purchasers of the Products or the Business;

(q) the Equity Securities of Acceligen Brazil (and, for the avoidance of doubt, thereby indirectly all of the assets, rights, Contracts and Liabilities of Acceligen Brazil); and

(r) all Restricted Funds.

2.1.2 Excluded Assets. Notwithstanding the foregoing, the Purchased Assets shall not include Sellers' right, title and interest in, to and under any of the following (collectively, the "**Excluded Assets**"), which shall be retained by Sellers following the Closing:

(a) all Equity Securities of Sellers and their Subsidiaries other than Acceligen Brazil;

(b) all refunds, claims for refunds or rights to receive refunds from any Taxing Authority with respect to any and all Taxes paid or to be paid by Sellers or their Subsidiaries other than Acceligen Brazil (including any and all Taxes paid or to be paid by any such Subsidiary on behalf of a Seller);

(c) (i) any legal or beneficial interest in the capital stock and other Equity Securities of Sellers, their Subsidiaries other than Acceligen Brazil, or any other Person, and (ii) the corporate or other entity charter, qualifications to conduct business as a foreign corporation or other form of business entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, Tax Returns and other Tax records, seals, minute books, stock transfer books, and similar organizational documents of Sellers and their Subsidiaries other than Acceligen Brazil;

(d) the bank accounts of Sellers;

(e) all Excluded Items;

(f) all Contracts set forth on Schedule 2.1.2(f) (the "**Excluded Contracts**");

(g) all rights of Seller under this Agreement and the Ancillary Agreements;

(h) the D&O Policies;

(i) all Avoidance Actions and all Claims against current and former directors and officers of Seller and such Subsidiaries (other than Counterparty Avoidance Claims);

(j) cash and cash equivalents other than the Restricted Funds;

(k) any intercompany Accounts Receivable owed between or among the Debtors;

(l) the sponsorship and assets of all Plans and all right, title and interest in any asset thereof or relating thereto;

(m) the assets, properties and rights specifically set forth on Schedule 2.1.2(m), together with any additions to such schedule that Buyer shall deliver to Sellers not later than three (3) days prior to the Auction (subject to Section 2.1.2(q));

(n) deposits held by Sellers in connection with any Excluded Contracts, and any deposits made by Sellers in connection with the Chapter 11 Cases;

(o) royalties, fees, income, payments, and other proceeds with respect to Intellectual Property that accrued prior to the Closing Date and any security, claim, remedy or other right related to any of the foregoing;

(p) books and records that constitute Privileged Communications; and

(q) any Purchased Assets that are designated as Excluded Assets by Buyer, in Buyer's sole discretion, at any time prior to the Closing; *provided, however*, that designating any Purchased Assets as Excluded Assets shall not affect the Purchase Price.

2.1.3 Retention of Rights. Notwithstanding anything to the contrary in this Agreement or any Ancillary Agreement, Seller retains, on behalf of itself and its Affiliates, licensees, sublicensees, licensors and distributors, (x) a limited, non-exclusive right to use (subject to any existing limitations or obligations) and the right of reference in, to and under the Purchased Assets, in each case, as may be necessary to exercise its or its Affiliates' respective rights or perform its or its Affiliates' respective obligations under this Agreement or any Ancillary Agreement and (y) copies of all or any part of all documentation that Seller delivers to Buyer pursuant to this Agreement as may be necessary or useful to exercise its or its Affiliates' respective rights or perform its or its Affiliates' respective obligations under this Agreement or any Ancillary Agreement, for archival purposes, for purposes of administration of the Chapter 11 Cases, and for purposes of complying with Law.

2.2 Liabilities.

2.2.1 Assumed Liabilities. Upon the terms and subject to the conditions of this Agreement, at the Closing, Seller shall (or shall cause its applicable Subsidiaries to) assign to Buyer and Buyer shall assume from Seller or its applicable Subsidiaries and agree to pay and discharge when due, solely the following Liabilities of Seller and its Subsidiaries and solely to the extent related to periods after the Closing (collectively, the "**Assumed Liabilities**"):

(a) all Liabilities arising under the Purchased Contracts arising after the Closing Date, so long as such Liabilities after the Closing Date are not related to or arising from any pre-Closing breach or default of any Seller or any of their Subsidiaries;

(b) all Cure Costs required to be paid pursuant to section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Purchased Contracts as finally determined by the Bankruptcy Court;

(c) all Liabilities arising from the ownership of the Purchased Assets or the conduct or operation of the Business arising after the Closing Date;

(d) all Liabilities relating to the ownership of the Equity Securities of Acceligen Brazil (and, for the avoidance of doubt, thereby indirectly, the Liabilities of the Acceligen Brazil whether arising prior to or after the Closing Date);

(e) all Liabilities for Taxes relating to the Purchased Assets or operation of the Business for all taxable periods (or portions thereof) beginning on or after the Closing Date (*provided* that, with respect to Acceligen Brazil, for the avoidance of doubt, all Liabilities for Taxes for all periods shall be Assumed Liabilities);

(f) all Liabilities for Transfer Taxes in connection with this Agreement;
and

(g) all Liabilities in respect of the Continuing Employees arising out of conditions, events or circumstances first occurring after the Closing pursuant to Section 5.12 hereof.

2.2.2 Excluded Liabilities. Notwithstanding anything to the contrary in this Agreement or any Ancillary Agreement, neither Buyer nor any of its Affiliates shall assume, nor shall they be or become responsible for, any Liabilities of Seller or any of its Subsidiaries, other than Liabilities expressly included in the definition of “Assumed Liabilities” (the “**Excluded Liabilities**”). For greater certainty, the Excluded Liabilities shall remain the obligation and responsibility solely of Seller and its Subsidiaries (not including Acceligen Brazil), and all Liabilities arising from the ownership or use of the Purchased Assets or the conduct or operation of the Business as of or prior to Closing shall be Excluded Liabilities unless expressly included as an Assumed Liability.

2.3 Consideration.

2.3.1 Purchase Price. Upon the terms and subject to the conditions of this Agreement, in consideration of the conveyances contemplated under Section 2.1, Buyer shall:

(a) at the Closing, assume the Assumed Liabilities; and

(b) at the Closing, pay to Seller an amount (the “**Purchase Price**”) comprised of all DIP Indebtedness, which shall be paid by offset on a dollar-for-dollar basis, *plus* an amount, in cash, equal to the Cure Costs set forth in the schedule delivered pursuant to Section 2.3.2 and an amount up to \$200,000, which shall be paid to the Debtors’ investment banker on account of its transaction fee (such cash amount, the “**Closing Payment**”).

2.3.2 Cure Costs. Within three (3) Business Days following the Cure Cost and Assignment Objection Deadline set forth in the Bidding Procedures, Sellers shall deliver to Buyer a schedule setting forth Sellers’ good faith estimate of all Cure Costs (together with reasonable supporting documentation) associated with each Purchased Contract.

2.3.3 Allocation of Purchase Price. Sellers and Buyer agree that the Purchase Price and the Assumed Liabilities, as well as any other items constituting the amount realized for Tax purposes (the “**Allocable Consideration**”), will be allocated among the Purchased Assets in a manner consistent with section 1060 of the Code and any Treasury Regulations promulgated

thereunder. Buyer will, no later than sixty (60) days following the Closing Date, prepare and deliver to Sellers a schedule setting forth the allocation of the Allocable Consideration in accordance with the preceding sentence (the “**Allocation Schedule**”). Buyer and Sellers will endeavor for a period of not less than thirty (30) days to resolve any disputes related to the Allocation Schedule. Neither Buyer nor Sellers will take any position that is contrary to or inconsistent with the Allocation Schedule for any Tax purpose, including with respect to any Tax Return (including amended Tax Returns) except as may be required pursuant to a “determination” under section 1313(a) of the Code (or any similar provision of state, local or foreign Law); *provided, however*, that the Allocation Schedule shall not be binding on Sellers for purposes of any plan filed in connection with the Chapter 11 Cases and shall not, and shall not be interpreted to, have any effect on any distributions to Sellers’ creditors. In the event that the Allocation Schedule is disputed by any Governmental Authority, the party receiving notice of such dispute will promptly notify the other party and the parties will consult in good faith as to how to resolve such dispute in a manner consistent with the agreed-upon Allocation Schedule. Notwithstanding any provision of this Section 2.3.3 to the contrary, if Buyer and Sellers are not able to agree to the Allocation Schedule, each party shall be allowed to use that party’s own formulation with respect to the allocation of the Purchase Price and the Assumed Liabilities.

2.4 Closing. Pursuant to the terms and subject to the conditions of this Agreement, the closing of the Transactions (the “**Closing**”) shall take place via the electronic exchange of closing deliverables by the Parties (including by means of facsimile, email or other transmission) on the third (3rd) Business Day following satisfaction of all conditions (other than those that by their terms are to be satisfied or taken at the Closing) set forth in Article 6 (or, to the extent permitted by applicable Law, waived by the Party entitled to the benefits thereof), or such other time and place as the Parties may mutually agree to in writing (such date of the Closing being hereinafter referred to as the “**Closing Date**”).

2.5 No Offset. Except as expressly set forth herein, Buyer’s obligations under this Article 2 shall not be subject to offset or reduction.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of Sellers. Each Seller represents and warrants to Buyer, with respect to itself, as follows, it being acknowledged and agreed that the representations and warranties set forth in this Section 3.1 shall not survive the Closing.

3.1.1 Organization; Good Standing; Qualification. Each Seller is a corporation duly organized, validly existing and will be in good standing under the Laws of the state of Delaware or Minnesota, as applicable. Each Seller is duly qualified to carry on business in each jurisdiction in which the nature or character of the properties and assets owned, leased or operated by it, including for greater certainty, the Purchased Assets, or the nature of its business or activities, including for greater certainty, the operation of the Business, makes such qualification necessary, except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect. Each Seller has delivered to Buyer accurate and complete copies of its Organizational Documents.

3.1.2 Authority and Enforceability. Each Seller has the requisite power, authority and capacity to enter into this Agreement and the Ancillary Agreements to which it is or will be a party and, subject to entry of the Bidding Procedures Order or the Sale Order, as applicable, to perform its obligations hereunder or thereunder and to complete the Transactions. The execution and delivery of this Agreement and each Ancillary Agreement to which it is or will be a party, the performance of the obligations hereunder or thereunder, and the consummation of the Transactions have been, or will be at or prior to Closing, duly authorized by all necessary action on the part of each Seller. This Agreement and each of the Ancillary Agreements to which each Seller is or will be a party, have been, or will be at or prior to Closing, duly executed and delivered by such Seller, and, subject to the Bankruptcy Court's entry of the Sale Order, constitute or will constitute a legal, valid and binding obligation of such Seller, enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, and other similar Laws relating to limitations of actions or affecting the enforcement of creditors' rights generally (the "**Enforceability Exceptions**").

3.1.3 Authorizations and Consents. Except for entry of the Bidding Procedures Order and the Sale Order and, as applicable, the expiration or waiver of the Bankruptcy Court of the applicable fourteen (14) day period set forth in Rule 6004(h) of the Bankruptcy Rules, no material Order, Permit, license, consent, approval, waiver, notification or filing, in each case, with a Governmental Authority or any other Third Party, is required on the part of Sellers or any of their Subsidiaries for the execution and delivery by Sellers of this Agreement, the performance by Sellers of their obligations hereunder or thereunder and the consummation of the Transactions, including, for greater certainty, the transfer of the Purchased Assets.

3.1.4 No Broker. No Seller nor any of their Subsidiaries has used any broker or finder in connection with the Transactions, and other than as provided in Section 2.3.1(b) no broker, finder or investment banker is entitled to any fee, commission or similar payment from Seller or any of its Subsidiaries in connection with the Transactions.

3.1.5 Capitalization. Schedule 3.1.5(a) sets forth the authorized Equity Securities of Seller and each of its Subsidiaries and a complete and correct list of the issued and outstanding Equity Securities of Seller and each of its Subsidiaries. Except as set forth on Schedule 3.1.5(b), no Seller nor any of their Subsidiaries owns or otherwise holds, directly or indirectly, any Equity Security in any Person (other than in the case of Acceligen, Acceligen Brazil).

3.1.6 Actions; Orders.

(a) Schedule 3.1.6(a) sets forth a list of all Actions pending against or, to Sellers' Knowledge, threatened, relating to any of the Purchased Assets, the Assumed Liabilities or the Business.

(b) There is no Order to which Seller or any of its Subsidiaries is subject or that is pending or, to Sellers' Knowledge, threatened, relating to any of the Purchased Assets, the Assumed Liabilities or the Business as of the Execution Date.

3.1.7 No Violation. Subject to the entry of the Bidding Procedures Order and the Sale Order, the execution and delivery by each Seller of this Agreement and each Ancillary

Agreement to which it is or will be a party, the performance by such Seller of its obligations hereunder or thereunder and the consummation of the Transactions do not and will not: (i) result in a violation of any Law applicable to such Seller, its Subsidiaries, or the Business; (ii) result in a breach of, or conflict with, the constituent documents of such Seller or any of its Subsidiaries; (iii) result in a breach of or result in the loss of any rights or the imposition of obligations under, any Purchased Contract or Purchased Permit; or (iv) result in the creation of any Encumbrance (other than any Permitted Encumbrance) upon the Purchased Assets other than Encumbrances created solely as a result of the acquisition by Buyer of the Purchased Assets and assumption of the Assumed Liabilities, except in the cases of clauses (i) and (iii), as would not have a Material Adverse Effect.

3.1.8 Title to Purchased Assets. To Sellers' Knowledge, no Person other than Sellers has title to, a leasehold interest in or a license to use the Purchased Assets (other than Intellectual Property that is licensed to Sellers pursuant to a Purchased Contract). Subject to entry of the Sale Order, at Closing, Buyer will be vested with good and marketable title to, valid leasehold interests in or a license to use, as applicable, all of the Purchased Assets, which Purchased Assets shall be conveyed free and clear of all Liabilities and Encumbrances, except for Assumed Liabilities and Permitted Encumbrances. To Sellers' Knowledge, no other Person (other than Sellers and their Subsidiaries) owns any assets that are material to operate the Business except for personal property leased by any Seller or their Subsidiaries, Intellectual Property and computer software and programs licensed to any Seller or their Subsidiaries, Products sold pursuant to distribution or similar contracts with any Seller or their Subsidiaries, and the Excluded Assets.

3.1.9 Intellectual Property.

(a) To Sellers' Knowledge, Schedule 3.1.9(a) sets forth a correct and complete list of all Purchased Intellectual Property which is (i) Owned Intellectual Property and registered or the subject of an application for registration, including issued Patents, registered Trademarks, Copyrights, domain names and social media accounts, and all applications therefor, and (ii) material unregistered Intellectual Property, including Trade Secrets, Trademarks and proprietary software that is Owned Intellectual Property. To Sellers' Knowledge, (x) all Owned Intellectual Property is subsisting, valid, and enforceable, and (y) Sellers or their Subsidiaries own all right, title and interest in and to, free and clear of all Encumbrances (other than Permitted Encumbrances), all Owned Intellectual Property.

(b) To Sellers' Knowledge, Schedule 3.1.9(b) sets forth, as of the date of this Agreement, all of the Contracts of the Sellers and their Subsidiaries related to Intellectual Property (the "**Intellectual Property Contracts**"). To Sellers' Knowledge, (i) other than with respect to any Cure Costs associated with any Intellectual Property Contract, no Seller nor any of their Subsidiaries is in default under any Intellectual Property Contract, and (ii) as of the date of this Agreement, none of the other parties to any Intellectual Property Contracts is in default thereunder.

(c) To Sellers' Knowledge, except as set forth on Schedule 3.1.9(c), no Claims or Actions are pending in any court, arbitration or by or before any Governmental Authority or, threatened in writing, (i) of infringement, dilution, misappropriation or other violation of the Intellectual Property of any Person against Seller or its Subsidiaries in respect of the conduct of

the Business as presently conducted or as contemplated to be conducted, or (ii) challenging the ownership, validity, enforceability or use of any Owned Intellectual Property or other Purchased Intellectual Property (except for non-final office actions), nor is there any basis for any such claim.

(d) To Sellers' Knowledge, neither the Owned Intellectual Property, the Products, nor the operation of the Business infringes, dilutes, misappropriates, or otherwise violates and has not infringed, diluted, misappropriated or otherwise violated, any Intellectual Property owned by any Third Party.

(e) To Sellers' Knowledge, no Person is infringing, diluting, misappropriating or otherwise violating any Purchased Intellectual Property, and no such Claims have been asserted or threatened against any Person by Sellers, any of their Subsidiaries, or any other Person. Except as set forth on Schedule 3.1.9(e), there are no Claims pending or threatened by Sellers or any of their Subsidiaries against any Person, nor have Sellers or any of their Subsidiaries sent any written notice to any Person, regarding any actual or potential infringement, dilution, misappropriation or other unauthorized use of any Owned Intellectual Property.

(f) To Sellers' Knowledge, (i) Sellers and their Subsidiaries have taken reasonable commercial measures to maintain the secrecy of the Owned Intellectual Property that Sellers consider to be Trade Secrets, and (ii) no past or present employee or contractor of any Seller or any of their Subsidiaries owns or retains any ownership or authorized use rights in any Owned Intellectual Property.

(g) To Sellers' Knowledge, neither Sellers nor any of their Subsidiaries have distributed any Open Source Software with any Purchased Intellectual Property or Products in a manner that would obligate Sellers or any of their Subsidiaries to disclose or distribute any source code software or otherwise make available any such software on a royalty-free basis.

3.1.10 No Material Disposals. Except as set forth in Schedule 3.1.10, since the Look-Back Date, neither Sellers nor any of their Subsidiaries has sold or otherwise disposed of any assets that are material to the Business, other than for sales of the Products in the Ordinary Course.

3.1.11 Employee and Benefit Matters.

(a) Schedule 3.1.13(a) sets forth a complete and correct list of the following information with respect to each such Business Employee as of the date hereof: (i) name, (ii) job title, (iii) base salary and wage rate, (iv) date of hire, (v) status as a full-time or part-time employee, (vi) exempt or non-exempt status under applicable wage and hour Laws, (vii) current year bonus, commission and other incentive-based compensation opportunity and actual bonus, commission, and other incentive-based compensation paid for the prior performance year, (viii) accrued vacation and paid time off, (ix) principal work location, (x) leave status (if applicable), (xi) Union-represented status, (xii) whether such individual is working with Seller or its Subsidiaries pursuant to any work permit, work visa, or similar authorization, and (xiii) whether such Business Employee is subject to an employment contract.

(b) Neither Sellers nor any of their Subsidiaries are, and have never been, a Party to, bound by, or negotiating any collective bargaining agreement or other Contract

with a union, works council or labor organization (collectively, “**Union**”) in respect of the Business; there are no labor agreements, collective bargaining agreements or any other labor-related agreements or arrangements that pertain to any Business Employees; and there is not, and has never been, any Union representing or purporting to represent any Business Employees, nor to Sellers’ Knowledge, are there any activities or proceedings of any labor union to organize any Business Employees.

3.1.12 Compliance with Laws.

(a) Except as set forth in Schedule 3.1.12(a), the Business is currently being, and since the Look-Back Date has been, conducted in compliance, in all material respects, with all applicable Laws, including all applicable export, re-export, import, sanctions, anti-bribery and anti-corruption laws and regulations. To Sellers’ Knowledge, no Seller nor any of their Subsidiaries has received any notice, and is not aware of, of any actual or alleged material non-compliance or violation of any Laws in connection with the ownership of the Purchased Assets or the operation of the Business.

(b) No Seller, their Subsidiaries, nor any employee, agent, or Affiliate of Sellers or their Subsidiaries has, to Sellers’ Knowledge, (i) made an untrue statement of material fact or fraudulent statement to any Governmental Authority, or in any records or documentation prepared or maintained to comply with the applicable Laws, with respect to the Business or any Product; (ii) failed to disclose a material fact required to be disclosed to any Governmental Authority; or (iii) has ever been investigated by any Governmental Authority.

(c) To Sellers’ Knowledge, (i) Schedule 3.1.12(c) sets forth a list of all Permits and Regulatory Approvals maintained by Sellers and their Subsidiaries in connection with the ownership of the Purchased Assets and the operation of the Business, (ii) all such Permits and Regulatory Approvals are in full force and effect, (iii) no violation, suspension, withdrawal, revocation, or cancellation of any of the Permits is pending or threatened, and (iv) Sellers and their Subsidiaries are, and have been, in compliance in all material respects with the terms of all Permits. To Sellers’ Knowledge, Sellers and their Subsidiaries are and have been since the Look-Back Date in possession of all Permits and Regulatory Approvals required for the ownership of the Purchased Assets or the operation of the Business.

3.1.13 Material Contracts.

(a) To Sellers’ Knowledge, Schedule 3.1.15 contains a true, accurate and complete list of each Contract (other than purchase orders and statements of work), in effect on the date of this Agreement and to which Seller or any of its Subsidiaries is a party or by which any of their respective assets or properties are bound, which are material to the operation of the Business or reasonably necessary for the continued operation of the Business following the Closing (each such Contract, together with the Intellectual Property Contracts, a “**Material Contract**”), including but not limited to:

- (i) any Real Property Lease;
- (ii) any Contract creating, incurring, assuming, guaranteeing or evidencing indebtedness;

(iii) other than any non-disclosure or confidentiality agreement entered into by Seller or any of its Subsidiaries in the ordinary course of business, any Contract limiting, restricting or prohibiting Seller or any of its Subsidiaries from engaging in any line of business in any geographical area, including any Contracts containing non-competition or non-solicitation clauses;

(iv) any (A) joint venture, strategic alliance, partnership, franchise, development, distribution, sales agent or supply agreement or (B) other Contract that involves a sharing of revenues, profits, losses, costs or liabilities by Seller or any of its Subsidiaries with any other Person;

(v) any Contract granting to any Person a right of first refusal, right of first offer or similar preferential right to purchase any Equity Interests or assets of Seller or any of its Subsidiaries;

(vi) any Contract, including any mortgage, pledge or security agreement or similar arrangement, constituting or otherwise imposing a Lien upon the assets or properties of Seller or any of its Subsidiaries;

(vii) any Contract with any Affiliate of any Seller or any of their Subsidiaries;

(viii) any Contract with a Governmental Authority;

(ix) any Contract that requires Seller or any of its Subsidiaries to purchase its total requirements of any product or service from a Third Party or to provide a Third Party's total requirements of any product or service to such Third Party;

(x) any Contract providing for Seller or any of its Subsidiaries to be the exclusive provider of any product or service to any Third Party or providing for any Third Party to be the exclusive provider of any product or service to Seller or any of its Subsidiaries;

(xi) any Contract that contains "most favored nation" provisions;

and

(xii) any Contract that contains minimum order or purchase requirements or similar provisions or requirements.

(b) To Sellers' Knowledge, as of the date hereof, each Material Contract is in full force and effect and is a valid and binding obligation of any Seller or their Subsidiaries and the other parties thereto, in accordance with its terms and conditions, in each case except (x) as such enforceability may be limited by the Enforceability Exceptions and (y) as set forth on Schedule 3.1.13(b), (i) neither Sellers nor any of their Subsidiaries are in material breach or default of their obligations under any Purchased Contract, (ii) to Sellers' Knowledge, no condition exists that with notice or lapse of time or both would constitute a material default by Sellers or their Subsidiaries under any such Purchased Contract, and (iii) to Sellers' Knowledge, no other party to any such Purchased Contract is in breach or default thereunder

3.1.14 Real Property. No Seller nor any Subsidiary owns any real property.

3.1.15 Taxes. To Sellers' Knowledge, (i) except as set forth in Schedule 3.1.15, Sellers and their Subsidiaries in a timely manner have filed all material Tax Returns with respect to the Business and the Purchased Assets required to be filed, and all such Tax Returns are correct and complete in all material respects, and (ii) there are no Encumbrances for Taxes upon any of the Purchased Assets, nor is any Governmental Authority in the process of imposing any Encumbrances for Taxes on any of the Purchased Assets.

3.2 Representations and Warranties of Buyer. Buyer represents and warrants to Seller as follows.

3.2.1 Entity Status. Buyer is duly formed and validly existing under the Laws of its jurisdiction of formation and has the requisite corporate power to enter into and perform its obligations under this Agreement and the Ancillary Agreements to which it is or will be a party.

3.2.2 Authority. Subject to entry of the Bidding Procedures Order and the Sale Order, and, as applicable, expiration or waiver of the Bankruptcy Court of the applicable 14-day period set forth in Rule 6004(h) of the Bankruptcy Rules, the execution and delivery of and performance by Buyer of this Agreement and the Ancillary Agreements to which it is or will be a party have been, or will be at or prior to Closing, authorized by all necessary corporate action on the part of Buyer.

3.2.3 No Conflict. The execution and delivery of and performance by Buyer of this Agreement and the Ancillary Agreements to which it is or will be a party (a) do not and will not constitute or result in a violation or breach of, or conflict with, or allow any Person to exercise any rights under, any of the terms or provisions of Buyer's certificate of organization, bylaws or equivalent organizational documents, (b) do not and will not constitute or result in a material breach or violation of, or conflict with or allow any Person to exercise any rights under, any Contract, license, lease or instrument to which it is a party, and (c) do not result in the violation of any Law applicable to Buyer, except in the cases of clauses (b) and (c), as would not materially adversely affect the ability of Buyer to consummate the Transactions.

3.2.4 Required Authorizations. Other than entry of the Bidding Procedures Order and the Sale Order, and, as applicable, expiration or waiver of the Bankruptcy Court of the applicable 14-day period set forth in Rule 6004(h) of the Bankruptcy Rules, no filing with, notice to or Order, Permit, approval, consent, waiver, license or similar authorization of, any Governmental Authority is required on the part of Buyer as a condition to the lawful consummation of the Transactions to which it is or will be a party.

3.2.5 Execution and Binding Obligation. This Agreement and the Ancillary Agreements to which Buyer is or will be a party have been, or will be, duly executed and delivered by Buyer and subject to entry of the Bidding Procedures Order and the Sale Order, constitute, or will constitute, legal, valid and binding agreements of Buyer, enforceable against it in accordance with its terms, subject only to the Enforceability Exceptions.

3.2.6 Financial Capacity. Buyer has, and at Closing will have, sufficient cash to pay the Purchase Price, to make any other necessary payment contemplated by this Agreement or

any of the Ancillary Agreements to be made at Closing, including the Cure Costs. Buyer's obligations under this Agreement are not and will not be subject to the receipt by Buyer of any acquisition financing.

3.2.7 No Broker. No broker, agent or other intermediary is entitled to any fee, commission or other remuneration in connection with the Transactions based upon arrangements made by or on behalf of Buyer.

3.3 Exclusivity of Representations.

3.3.1 Except for the representations and warranties made by Sellers in Section 3.1 or in any Ancillary Agreement to be delivered by Sellers pursuant to this Agreement, neither Sellers nor any other Person make any express or implied representation or warranty with respect to Sellers, their Subsidiaries or their Business, assets, operations, liabilities, condition (financial or otherwise) or prospects, and Sellers hereby disclaim any such other representations or warranties. In particular, without limiting the foregoing disclaimer, except for the representations and warranties made by Sellers in Section 3.1 or in any Ancillary Agreement to be delivered by Sellers pursuant to this Agreement, neither Sellers nor any other Person makes or has made any representation or warranty to Buyer or any of its respective Representatives, with respect to, nor has Buyer or any of its respective Representatives relied on, (i) any financial projection, forecast, estimate, budget or prospective information relating to Sellers, their Subsidiaries or the Business or (ii) any oral or written information furnished or made available to Buyer or any of its Representatives in the course of its due diligence investigation of Sellers and their Subsidiaries, the Business, the negotiation of this Agreement and the Ancillary Agreements or the consummation of the Transactions, including the accuracy, completeness or currency thereof, and neither Sellers nor any other Person will have any liability to Buyer or any other Person in respect of such information, including any subsequent use of such information. Nothing in this Section 3.3.1 shall limit any rights or remedies of Buyer with respect to a claim arising out of or related to Fraud.

3.3.2 Except for the representations and warranties made by Buyer in Section 3.2 or in any Ancillary Agreement to be delivered by Buyer pursuant to this Agreement, neither Buyer nor any other Person makes any express or implied representation or warranty with respect to Buyer, its Subsidiaries or their businesses, assets, operations, liabilities, condition (financial or otherwise) or prospects, and Buyer hereby disclaims any such other representations or warranties. In particular, without limiting the foregoing disclaimer, except for the representations and warranties made by Buyer in Section 3.2 or in any Ancillary Agreement to be delivered by Buyer pursuant to this Agreement, neither Buyer nor any of its Subsidiaries or Affiliates or any other Person makes or has made any representation or warranty to Seller or any of its respective Representatives, with respect to, nor has Seller or any of its respective Representatives relied on, (i) any financial projection, forecast, estimate, budget or prospective information relating to the Buyer, its Subsidiaries or its business or (ii) any oral or written information furnished or made available to Seller or any of its Representatives in the course of the negotiation of this Agreement and the Ancillary Agreements or the consummation of the Transactions, including the accuracy, completeness or currency thereof, and neither Buyer nor any of its Subsidiaries or Affiliates or any other Person will have any liability to Seller or any other Person in respect of such information,

including any subsequent use of such information. Nothing in this Section 3.3.2 shall limit any rights or remedies of Seller with respect to a claim arising out of or related to Fraud.

3.4 “As Is” Transaction. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN SECTION 3.1 ABOVE, SELLERS MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATING TO THE PURCHASED ASSETS INCLUDING EXPENSES TO BE INCURRED IN CONNECTION WITH THE PURCHASED ASSETS, THE PHYSICAL CONDITION OF ANY REAL OR PERSONAL PROPERTY COMPRISING A PART OF THE PURCHASED ASSETS OR WHICH IS THE SUBJECT OF ANY OTHER LEASE OR OTHER CONTRACT TO BE ASSUMED BY BUYER AT THE CLOSING, THE ENVIRONMENTAL CONDITION OR OTHER MATTER RELATING TO THE PHYSICAL CONDITION OF ANY REAL PROPERTY OR IMPROVEMENTS, THE ZONING OF ANY SUCH REAL PROPERTY OR IMPROVEMENTS, THE VALUE OF THE PURCHASED ASSETS (OR ANY PORTION THEREOF), THE TRANSFERABILITY OF PROPERTY CONSTITUTING THE PURCHASED ASSETS, THE TERMS, AMOUNT, VALIDITY OR ENFORCEABILITY OF ANY ASSUMED LIABILITIES, THE MERCHANTABILITY OR FITNESS OF THE PERSONAL PROPERTY OR ANY OTHER PORTION OF THE PURCHASED ASSETS FOR ANY PARTICULAR PURPOSE, OR ANY OTHER MATTER OR THING RELATING TO THE PURCHASED ASSETS OR ANY PORTION THEREOF. WITHOUT IN ANY WAY LIMITING THE FOREGOING, SELLERS HEREBY DISCLAIM ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE PURCHASED ASSETS. BUYER FURTHER ACKNOWLEDGES THAT BUYER HAS CONDUCTED AN INDEPENDENT INSPECTION AND INVESTIGATION OF SUCH OTHER MATTERS RELATING TO OR AFFECTING THE PURCHASED ASSETS AS BUYER DEEMED NECESSARY OR APPROPRIATE AND BUYER IN PROCEEDING WITH ITS ACQUISITION OF THE PURCHASED ASSETS, EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN SECTION 3.1, IS DOING SO BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS. ACCORDINGLY, BUYER WILL ACCEPT, AT ITS OPTION AND IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN SECTION 2.1.2(q), THE PURCHASED ASSETS AT THE CLOSING “AS IS,” “WHERE IS,” AND “WITH ALL FAULTS.”

ARTICLE 4 PRE-CLOSING COVENANTS

4.1 Access and Information. During the Interim Period, Sellers shall, and shall cause their Subsidiaries to (a) afford Buyer and its Representatives reasonable access to the Business and the Purchased Assets, and (b) use commercially reasonable efforts to cause its employees and Representatives to cooperate with and aid Buyer and its Representatives in its investigation of the Business. Any request or investigation under this Section 4.1 shall be made or conducted on a reasonable basis by Buyer providing reasonable Notice to Seller and shall be conducted during

normal business hours in such a manner as not to interfere unreasonably with the conduct of the Business.

4.2 Ordinary Course of Business.

4.2.1 During the Interim Period, Sellers will, and will cause their Subsidiaries to, conduct the Business in the Ordinary Course in all material respects and shall use their reasonable best efforts to preserve intact its present business relations and contracts. Without limiting the foregoing, without the prior written consent of Buyer, during the Interim Period, Seller shall not, and shall cause its Subsidiaries not to, in each case directly or indirectly:

(a) (i) increase or agree to increase the base salary or incentive compensation of any Business Employee, (ii) terminate any Business Employee, or (iii) enter into any severance, retention, change in control, transaction bonus or similar arrangement with any Business Employee (unless all Liabilities in respect of such arrangement are Excluded Liabilities);

(b) issue, incur, assume or otherwise become liable for (i) any indebtedness for borrowed money, (ii) any notes, mortgages, bonds, debentures or other debt securities or warrants or other rights to acquire any notes, mortgages, bonds, debentures or other debt securities of Seller, (iii) any letters of credit, security or performance bonds or similar credit support instruments or overdraft facilities or cash management programs of any Person, (iv) any amounts owing as deferred purchase price for property or services, including any capital leases, seller notes and “earn out” payments, or other contingent payment obligations, or (v) any guarantee of any of the foregoing obligations of another Person (unless all Liabilities in respect of such arrangement are Excluded Liabilities);

(c) sell, lease, license, sublicense, or dispose of any Purchased Assets;

(d) grant, impose or suffer to be imposed any Encumbrance upon any of the Purchased Assets other than Permitted Encumbrances or Encumbrances that will be cured prior to the Closing;

(e) modify, breach, repudiate, reject or terminate any Purchased Contract, or waive, release or assign any material rights or claims under any Purchased Contract;

(f) enter into any commitment for, make or authorize capital expenditures, including for property, plant and equipment;

(g) encumber, transfer, abandon, allow to lapse, fail to prosecute or maintain, exclusively license, or otherwise dispose of any Purchased Intellectual Property, except, in each case, in the Ordinary Course and/or upon the expiration of the statutory term of any Purchased Intellectual Property;

(h) amend, cancel or permit to terminate any property insurance policy naming Sellers as an insured, a beneficiary or a loss payable payee without first obtaining comparable substitute insurance coverage with no lapse in coverage;

(i) grant any waiver under or amend or modify, or surrender, revoke, permit to lapse or otherwise terminate any Purchased Permit;

(j) compromise or settle any Litigation relating to the Business or any Purchased Asset or cancel or compromise any Claim or waive or release any right, in each case, that is related to the Business or any Purchased Asset;

(k) amend the organizational documents of any Seller or any of their Subsidiaries or issue any Equity Securities of any Seller or any of their Subsidiaries;

(l) take any action that could reasonably be expected to cause the failure of a condition contained in Section 6.2; or

(m) authorize, agree or otherwise commit, whether or not in writing, to do any of the foregoing.

4.3 Notification of Certain Matters.

4.3.1 From the Execution Date through seven (7) Business Days prior to the Sale Hearing, Sellers shall use best efforts to provide Buyer written Notice of any Contract to which a Seller or any of their Subsidiaries is a party as of the Execution Date that was not set forth on Schedule 2.1.1(a), any Contracts that a Seller or any of their Subsidiaries entered into after the Execution Date, and any Purchased Contracts that were materially amended or under which material rights were waived after the Execution Date. Buyer shall be entitled, in its sole discretion and upon written Notice to Seller, to add or remove any such Contract from Schedule 2.1.1(a) prior to the Closing in accordance with Section 2.1.2(q).

4.3.2 Notwithstanding anything to the contrary in this Agreement, and without any increase or decrease in the Purchase Price (other than any resulting increase or decrease in Cure Costs), Buyer may, in its sole discretion, revise, amend or modify any schedule setting forth the Purchased Assets and the Excluded Assets up to three (3) Business Days prior to the anticipated Closing Date (or on such other timeline as agreed by Buyer and Seller), including but not limited to Schedule 2.1.1(a), to (i) include in the definition of Purchased Assets (and in any applicable Schedule) and to exclude from the definition of Excluded Assets (and from any applicable Schedule), any Contract or any other asset of Sellers not previously included in the Purchased Assets or (ii) to exclude from the definition of Purchased Assets (and from any applicable Schedule) and to include in the definition of Excluded Assets (and in any applicable Schedule), any asset of any Seller or their Subsidiaries previously included in the Purchased Assets.

4.3.3 For the avoidance of doubt, if any Contract or asset is removed from the definition of Purchased Assets or Purchased Contracts (and any applicable Schedule) as permitted by this Section 4.3, all Liabilities arising under such Contract or with respect to such asset shall be Excluded Liabilities.

4.4 Obligation to Consummate the Transaction. Each of the Parties agrees that it shall use commercially reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable to the extent permissible under

applicable Law, to consummate and make effective the Transactions and to ensure that the conditions set forth in Article 6 are satisfied.

4.5 Regulatory Filings; Other Actions; Notification and Cooperation.

4.5.1 Sellers and Buyer shall cooperate with each other and use, and shall cause their respective Affiliates and Subsidiaries to use, their respective reasonable best efforts to satisfy the conditions set forth in Section 6.1.3 of this Agreement as promptly as practicable. Nothing herein shall require Sellers to pay any fee or other consideration to obtain any such consent or approval of any Third Party or any Governmental Authority; *provided, however*, that Sellers shall be responsible for paying their respective legal, vendor, and expert fees incurred in connection with the obligations set forth herein.

4.5.2 None of the Parties, shall take, cause or permit to be taken, or omit to take, any action, either directly itself or indirectly on the part of its Subsidiaries, which may materially delay or prevent consummation of the Transactions.

4.5.3 Sellers and Buyer each shall, upon request by the other, promptly furnish the other with all information concerning itself, its Affiliates, directors, officers and stockholders and such other matters as may be reasonably necessary or advisable in connection with any statement, filing, notice or application made by or on behalf of Buyer, Sellers or any of their respective Affiliates to any Third Party or any Governmental Authority in connection with the Transactions, all of which information shall be true and correct when provided; *provided* that each Party shall be entitled to redact discussions of the transaction value and competitively sensitive information, and may reasonably designate applicable materials to be reviewed solely by the other Party's outside counsel.

4.5.4 Sellers and Buyer each shall keep the other reasonably apprised of the status of matters relating to completion of the Transactions, including promptly furnishing the other with copies of notices or other communications received by Sellers or Buyer, as the case may be, or any of their respective Affiliates from any Third Party or any Governmental Authority with respect to the Transactions, other than immaterial communications.

4.6 Delivery of Schedules. No later than fifteen (15) days following the Execution Date, the Sellers shall deliver, or cause to be delivered, full, correct, and complete Schedules with respect to Section 3.1; *provided*, that the delivery of such Schedules and any disclosure included therein shall not be deemed to have cured any inaccuracy in or breach of any representation or warranty contained in this Agreement for purposes of determining whether the conditions set forth in Section 6.2 have been satisfied or whether the Buyer has any right to terminate this Agreement pursuant to Section 8.1.

ARTICLE 5 ADDITIONAL COVENANTS

5.1 Further Assurances.

5.1.1 Each of Sellers and Buyer shall, at any time or from time to time after the Closing, at the request and expense of the other Party, take, or cause to be taken, all actions, and

to do, or cause to be done, and to assist and cooperate with the other Party in doing, all things necessary, proper, or advisable to consummate and make effective, in the most expeditious manner practicable, the Transactions, including executing and delivering to the other Party all such instruments and documents or further assurances as the other Party may reasonably request, in each case that are consistent with the terms of this Agreement and the Ancillary Agreements.

5.1.2 If any approval, consent or waiver required for Sellers to assign to Buyer, and for Buyer to assume, the Purchased Contracts and other Purchased Assets shall not have been obtained prior to the Closing, Sellers shall use reasonable best efforts to obtain such approval, consent or waiver to assign to Buyer the Purchased Contracts and other Purchased Assets, including using reasonable best efforts to facilitate any negotiations with the counterparties to such Purchased Contracts and to obtain an order (which may be the Sale Order) containing a finding that the proposed assignment to and assumption of the Purchased Contracts by Buyer satisfies all applicable requirements of the Bankruptcy Code. At the Closing Seller shall, pursuant to the Sale Order, assign to Buyer each of the Purchased Contracts. At or promptly after the Closing, Buyer shall pay all Cure Costs (if any) with respect to such Purchase Contracts; and thereafter, Buyer shall assume and discharge when due the Assumed Liabilities (if any) under the Purchased Contracts. Except as to Purchased Contracts assigned pursuant to section 365 of the Bankruptcy Code or the Sale Order, anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any Purchased Contract or Purchased Asset or any right thereunder if an attempted assignment, without the consent of a Third Party, would constitute a breach or in any way adversely affect the rights of Buyer or Seller thereunder, and Seller shall use commercially reasonable efforts to obtain any such required consent(s) as promptly as possible. If such consent is not obtained or such assignment is not attainable pursuant to section 365 of the Bankruptcy Code or the Sale Order, or if any attempted assignment would be ineffective or would impair Buyer's rights under the Purchased Contract or Purchased Assets in question so that Buyer would not in effect acquire the benefit of all such rights, then Seller, to the maximum extent permitted by applicable Law, shall act after the Closing, at Buyer's request and expense, as Buyer's agent in order to obtain for it the benefits thereunder and shall cooperate, to the maximum extent permitted by applicable Law, with Buyer in any other reasonable arrangement designed to provide such benefits to Buyer. All obligations of Sellers under this Section 5.1.2 shall expire on the earlier of (i) the date upon which Sellers initiate liquidation proceedings, and (ii) the date that the Chapter 11 Cases are dismissed or converted to cases under chapter 7 of the Bankruptcy Code.

5.2 Insurance Policies. From and after the Closing, Buyer shall have the right to make claims and the right to any proceeds with respect to any matter related to the Assumed Liabilities under any insurance policies for occurrence-based claims pertaining to, arising out of, and inuring to the benefit of Sellers or any of their Subsidiaries for all periods prior to the Closing, and Sellers shall use commercially reasonable efforts to seek recovery or allow Buyer to seek recovery (including by executing or delivering any document, agreement, instrument or other information as Buyer may request to seek such recovery) under such insurance policies, and Sellers shall cooperate with all of Buyer's reasonable requests if it seeks recovery, with respect to such matters and shall remit (or, at Buyer's request, direct any such insurer to pay directly to Buyer) any insurance proceeds actually obtained therefrom (net of such Sellers' reasonable and documented out-of-pocket costs and expenses of seeking such recovery, to the extent not otherwise paid or reimbursed by Buyer) to Buyer or its designee. All obligations of Sellers under this Section 5.2

shall expire on the earlier of (i) the date upon which Sellers initiate liquidation proceedings, and (ii) the date that the Chapter 11 Cases are dismissed or converted to cases under chapter 7 of the Bankruptcy Code.

5.3 Publicity. No press release, public statement or announcement or other public disclosure (a “**Public Statement**”) with respect to this Agreement, the Ancillary Agreements or the Transactions may be made except (a) with the prior written consent and joint approval of Buyer and Seller, not to be unreasonably withheld, or (b) if required by applicable Law, the Chapter 11 Cases, or a Governmental Authority. Where the Public Statement is required by applicable Law, the Chapter 11 Cases, or a Governmental Authority, the Party required to make the Public Statement will promptly notify the other Party and will use its commercially reasonable efforts to consult with the other Party, and consider in good faith any revisions proposed by the other Party, prior to making such disclosure, and shall limit such disclosure to only that information that is legally or otherwise required to be disclosed.

5.4 Certain Tax Matters.

5.4.1 Withholding Taxes.

(a) The amounts payable by one Party (the “**Payer**”) to another Party (the “**Payee**”) pursuant to this Agreement (“**Payments**”) shall not be reduced on account of any Taxes unless required by applicable Law. The Payee alone shall be responsible for paying any and all Taxes (other than withholding Taxes required to be paid by the Payer under applicable Law) levied on account of, or measured in whole or in part by reference to, any Payments it receives. The Payer shall deduct or withhold from the Payments any Taxes that it is required by applicable Law to deduct or withhold, and all such amounts deducted and withheld shall be treated for all purposes of this Agreement as having been paid to Payee. Notwithstanding the foregoing, if the Payee is entitled under any applicable Law or Tax treaty to a reduction of rate of, or the elimination of, or recovery of, applicable withholding Tax, it shall timely deliver to the Payer or the appropriate Governmental Authority (with the assistance of the Payer to the extent that this is reasonably required) the prescribed forms necessary to reduce the applicable rate of withholding or to relieve the Payer of its obligation to withhold Tax, and the Payer shall apply the reduced rate of withholding, or dispense with the withholding, as the case may be, to the extent it complies with the applicable Tax treaty. If, in accordance with the foregoing, the Payer withholds any amount, it shall make timely payment to the proper Taxing Authority of the withheld amount, and send to the Payee proof of such payment as soon as reasonably practicable.

(b) Sellers shall deliver to Buyer a non-foreign affidavit dated as of the Closing Date, sworn under penalty of perjury and in form and substance required under Treasury Regulations issued pursuant to Section 1445 of the Code stating that Sellers are not a “foreign person” as defined in Section 1445 of the Code or a properly completed IRS Form W-9.

5.4.2 Transfer Taxes and Apportioned Obligations.

(a) All amounts payable hereunder or under any Ancillary Agreement are exclusive of all recordation, transfer, documentary, stamp, conveyance or other similar Taxes (excluding any Indirect Taxes) imposed or levied by reason of, in connection with or attributable

to this Agreement and the Ancillary Agreements or the Transactions (collectively, “**Transfer Taxes**”). Buyer shall be responsible for the payment of all Transfer Taxes, and shall pay all amounts due and owing in respect of any Transfer Taxes, these amounts in addition to the sums otherwise payable, at the rate in force at the due time for payment or such other time as is stipulated under applicable Law.

(b) All personal property and similar ad valorem obligations levied with respect to the Purchased Assets for a taxable period which includes (but does not end on) the Closing Date (collectively, the “**Apportioned Obligations**”) shall be apportioned between Seller and Buyer based on the number of days of such taxable period ending on the Closing Date (such portion of such taxable period, the “**Pre-Closing Tax Period**”) and the number of days of such taxable period beginning on the day after the Closing Date (such portion of such taxable period, the “**Post-Closing Tax Period**”). Seller shall be liable for the proportionate amount of such Apportioned Obligations that is attributable to the Pre-Closing Tax Period, and Buyer shall be liable for the proportionate amount of such Apportioned Obligations that is attributable to the Post-Closing Tax Period.

5.4.3 Indirect Taxes. The Parties intend to and shall use their reasonable best efforts to ensure the transfer of the Purchased Assets shall occur without any obligation of Sellers to account for Transfer Taxes or Indirect Taxes. However, if notwithstanding that intention, it is determined that the transfer of the Purchased Assets does give rise to an obligation on Sellers to account for Transfer Taxes or Indirect Taxes, notwithstanding anything to the contrary contained in this Section 5.4 or elsewhere in this Agreement, the following provision shall apply. All Payments are stated exclusive of Indirect Taxes. If any Indirect Taxes are chargeable in respect of any Payments, for which Sellers are accountable, Buyer shall pay such Indirect Taxes at the applicable rate in respect of any such Payments following the receipt, where applicable, of an Indirect Taxes invoice issued in the appropriate form by Sellers in respect of those Payments, such Indirect Taxes to be payable no later than five (5) Business Days prior to the date on which Indirect Taxes are required to be accounted for by Sellers. The Parties shall issue invoices for all goods and services supplied under this Agreement consistent with Indirect Tax requirements, and to the extent any invoice is not initially issued in an appropriate form, Buyer shall promptly inform Sellers and shall cooperate with Sellers to provide such information or assistance as may be necessary to enable the issuance of such invoice consistent with Indirect Tax requirements. For the avoidance of doubt, all Indirect Taxes shall be borne by Buyer.

5.4.4 Cooperation and Exchange of Information. Each of Sellers and Buyer shall (a) provide the other with such assistance as may reasonably be requested by the other Party (subject to reimbursement of reasonable out-of-pocket expenses) in connection with the preparation of any Tax Return, audit or other examination by any Taxing Authority or judicial or administrative proceeding relating to Liability for Taxes in connection with the Business or the Purchased Assets, (b) retain and provide the other Party with any records or other information that may be relevant to such Tax Return, audit or examination, proceeding or determination and (c) inform the other Party of any final determination of any such audit or examination, proceeding or determination that affects any amount required to be shown on any Tax Return of the other for any period.

5.5 Accounts Receivable and Payable.

5.5.1 Accounts Receivable. The Parties acknowledge and agree that all Accounts Receivable shall become the property of Buyer subsequent to the Closing. In the event that, subsequent to the Closing, Seller or any of its Subsidiaries receives any payments from any obligor with respect to an Account Receivable outstanding on the Closing Date, then Seller shall, or shall cause such Subsidiary to, within fifteen (15) days after receipt of such payment, remit the full amount of such payment to Buyer.

5.5.2 Accounts Payable. In the event that, subsequent to the Closing, Sellers or any of their Subsidiaries receive any invoices from any Third Party with respect to any account payable of Buyer or any of its Affiliates for any period after the Closing, then Seller shall, or shall cause such Subsidiary to, within fifteen (15) days after receipt of such invoice, provide such invoice to Buyer.

5.6 Wrong Pockets.

5.6.1 Assets. Without limiting Section 5.1, if either Buyer or Sellers become aware that any of the Purchased Assets has not been transferred to Buyer or that any of the Excluded Assets has been transferred to Buyer, it shall promptly notify the other Party and the Parties shall, as soon as reasonably practicable, take all necessary actions (including executing any further instruments or documents) to ensure that such property is transferred, with any necessary prior Third Party consent or approval, to (a) Buyer, in the case of any Purchased Asset that was not transferred to Buyer at the Closing; or (b) Sellers, in the case of any Excluded Asset that was transferred to Buyer at the Closing.

5.6.2 Payments. If, on or after the Closing, either Party shall receive any payments or other funds due to or belonging to the other Party pursuant to the terms of this Agreement or any Ancillary Agreement, then the Party receiving such funds shall, within thirty (30) days after receipt of such funds, forward such funds to the proper Party. The Parties acknowledge and agree there is no right of offset regarding such payments and a Party may not withhold funds received from Third Parties for the account of the other Party in the event there is a dispute regarding any other issue under this Agreement or any of the Ancillary Agreements.

5.7 Purchased Intellectual Property and Purchased Regulatory Approvals. Promptly following the Closing, at Buyer's sole cost and expense, Sellers shall, or shall cause their Subsidiaries to, take such further actions and execute such further documents as may be necessary or reasonably requested by Buyer to effectuate, evidence and perfect the assignment and transfer of the Purchased Intellectual Property and Purchased Regulatory Approvals to Buyer, including making such filings with any Governmental Authorities as may be required to transfer the Purchased Intellectual Property and Purchased Regulatory Approvals to Buyer or to further the prosecution, issuance or maintenance of the Purchased Intellectual Property and Purchased Regulatory Approvals.

5.8 Bankruptcy Court Filings and Approval.

5.8.1 Promptly after commencement of the Chapter 11 Cases, Sellers shall file with the Bankruptcy Court a motion reasonably acceptable to Sellers and Buyer (the “**Bidding Procedures Motion**”) seeking:

(a) entry of an order in form and substance satisfactory to Sellers and Buyer (the “**Bidding Procedures Order**,” and together with the Sale Order (defined below), the “**Bankruptcy Court Orders**”), (a) approving and establishing the Bidding Procedures (as set forth on Exhibit B), (b) approving procedures for the assumption and assignment of executory contracts and unexpired leases, (c) approving bidding protections agreed to by the Buyer and Sellers, including a break-up fee and expense reimbursement for Buyer in connection with any sale of the Purchased Assets to a Party other than the Buyer, and (d) setting sale milestones and scheduling related hearings; and

(b) entry of the Sale Order.

5.8.2 Within two (2) Business Days of entry of the Bidding Procedures Order, Sellers shall serve on all non-Debtor counterparties to all of Sellers’ Contracts a notice specifically stating that Sellers are or may be seeking the assumption and assignment of such Contracts, setting for the estimated Cure Costs (if any) with respect to such Contracts, and stating the deadline for objecting to the proposed Cure Costs. Sellers shall provide a copy of all such notices to Buyer.

5.8.3 From and after the date hereof and until the Closing Date, Seller shall deliver to Buyer, at least two (2) Business Days in advance (where reasonably practicable), drafts of any and all material pleadings, motions, notices, statements, schedules, applications, reports and other papers to be filed or submitted in connection with this Agreement and Buyer’s sale process generally for Buyer’s prior review and comment, and such filings shall be acceptable to Buyer in its sole discretion to the extent they relate to the Agreement, Purchased Assets, any Assumed Liabilities, the Bankruptcy Court Orders or any of Buyer’s obligations hereunder thereunder and otherwise reasonably acceptable to Buyer. Seller agrees to diligently prosecute entry of the Bidding Procedures Order and the Sale Order. Seller shall also promptly provide Buyer with copies of all pleadings received by or served by or upon Seller in connection with the Chapter 11 Cases that relate to or, in Seller’s judgment, are reasonably expected to affect the Debtors’ sale process, the Auction or the Transactions provided for in this Agreement.

5.8.4 Sellers shall give appropriate notice, and provide appropriate opportunity for hearing, to all Persons entitled thereto, of all motions (including the Bidding Procedures Motion), orders, hearings, and other proceedings relating to this Agreement or any Ancillary Agreement and the Transactions and such additional notice as ordered by the Bankruptcy Court or as Buyer may reasonably request.

5.8.5 Sellers shall take all commercially reasonable actions to cause the Bidding Procedures Order and the Sale Order to become Final Orders, including, to the extent reasonably practicable, furnishing affidavits, declarations or other documents or information for filing with the Bankruptcy Court. Buyer agrees to provide customary financial information if requested by a counterparty to a Purchased Contract for the purpose of establishing adequate assurance of future

performance within the meaning of section 365 of the Bankruptcy Code (but subject to reasonable confidentiality restrictions or agreements) and to furnish any affidavits or other documents for filing with the Bankruptcy Court required for the purpose of demonstrating that Buyer is a “good faith” purchaser under section 363(m) of the Bankruptcy Code.

5.8.6 Buyer acknowledges that under the Bankruptcy Code, the sale is subject to approval of the Bankruptcy Court. Buyer acknowledges that to obtain such approval Sellers must demonstrate that they have taken reasonable steps to obtain the highest or otherwise best bid possible for the assets, including giving notice of the Transactions to creditors and other interested parties as ordered by the Bankruptcy Court, providing information about the assets to Potential Bidders (as defined in the Bidding Procedures), and entertaining higher or otherwise better offers from Qualified Bidders (as defined in the Bidding Procedures) in accordance with the Bidding Procedures.

5.8.7 If the Bidding Procedures Order, Sale Order or any other orders of the Bankruptcy Court relating to this Agreement or the Transactions shall be appealed by any Person (or if any petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or reargument shall be filed with respect to the Sale Order, Bidding Procedures Order or other such order), and this Agreement has not otherwise been terminated pursuant to Section 8.1, Sellers shall immediately notify Buyer of such appeal, petition, or motion and shall use commercially reasonable efforts to defend such appeal, petition, or motion and shall use commercially reasonable efforts to obtain an expedited resolution of any such appeal, petition, or motion.

5.8.8 Subject to entry of the Sale Order, (a) on or promptly after the Closing, Buyer shall pay the Cure Costs for the Purchased Contracts (excluding any Purchased Contract for which the non-debtor counterparty to the Contract has objected to the Cure Costs estimated by Sellers with regard to such Contract and for which Cure Costs have not been consensually agreed with the Buyer and the non-debtor counterparty or fixed by an order of the Bankruptcy Court as of the Closing (each such Contract, a “**Disputed Contract**”)) so that such Purchased Contracts may be assigned to the Buyer as of the Closing and (b) with respect to each Purchased Contract that is a Disputed Contract as of the Closing, on the date that is ten (10) Business Days after the date on which (i) the Cure Costs with respect to such Disputed Contract have been consensually agreed, or (ii) the Bankruptcy Court has entered an order fixing such Cure Costs, Buyer shall either pay such Cure Costs so that such Disputed Contract may be assigned to the Buyer as a Purchased Contract, or else designate such Contract as an Excluded Contract, and all obligations under such Contract as Excluded Liabilities, hereunder. Any Disputed Contract that Buyer does not designate as a Purchased Contract or an Excluded Contract within ten (10) Business Days after the Cure Cost has been fixed by the Bankruptcy Court, shall be deemed an Excluded Contract as of the Closing Date and for all purposes hereunder. If Buyer designates a Disputed Contract as a Purchased Contract, Sellers agree that they will promptly take such commercially reasonable actions as are necessary to assume and assign such Contract to Buyer.

5.9 Books and Records. For a period of six (6) years after the Closing, Buyer shall: (a) retain, in a manner consistent with Buyer’s retention policies, all books and records related to the Purchased Assets, the Assumed Liabilities and the Business prior to the Closing; and (b) upon reasonable notice and during normal business hours, cooperate with and provide Sellers, any of

Sellers' Affiliates, and the officers, employees, agents and Representatives of Sellers and Sellers' Affiliates reasonable access (including the right to make copies at Sellers' expense or the expense of any Affiliate of Sellers) to such books and records and to Buyer's Representatives, to the extent necessary for a reasonable business purpose, including as may be necessary for the preparation of financial statements, Regulatory Filings related to the Products, Tax Returns, in connection with any Litigation, or in connection with the administration of the Chapter 11 Cases, together with any other information related thereto which Sellers may reasonably request; *provided, however*, that such access shall (A) be conducted at Sellers' expense, during normal business hours and under the supervision of personnel of the Buyer or an Affiliate of Buyer, (B) not disrupt the normal operations of the Buyer or any of its Affiliates, and (C) comply with, and not violate, all applicable Laws, including those regarding the exchange of competitively sensitive information.

5.10 Assumption of Regulatory Commitments; Transfer of Purchased Regulatory Approvals. The Parties shall reasonably cooperate with each other in any necessary or desirable communications with Regulatory Authorities regarding the transfer of the rights to the Purchased Regulatory Approvals. Notwithstanding any delay in transferring the rights to the Purchased Regulatory Approvals to Buyer, as between the Parties, Buyer shall be exclusively responsible for (and shall bear the cost of), and shall discharge all Liabilities related to, the Manufacture, packaging, labeling, promotion, marketing, handling, offering for sale or sale of the Products by or on behalf of Buyer after the Closing. From and after the Closing, Buyer will assume control of, and responsibility for, all costs and Liabilities arising from or related to any commitments or obligations to any Governmental Authority involving the Purchased Assets and the Business. Sellers shall use all commercially reasonable efforts to complete the transfer of each Purchased Regulatory Approval as promptly as practicable after the Closing. Buyer shall use all commercially reasonable efforts to assist Sellers in the transfer of the Purchased Regulatory Approvals to Buyer, accept the transfer of the Purchased Regulatory Approvals and formalize with Sellers and any applicable Regulatory Authority, as promptly as practicable after the Closing, all necessary documents. Following such transfer, Sellers shall not retain any rights in any Purchased Regulatory Approvals.

5.11 Trade Notification. Sellers and Buyer shall consult with each other on the timing, method, form and content of notifications to customers and suppliers regarding the Transactions, and shall consider in good faith any comments or proposed changes received from the other Party.

5.12 Employee Matters.

5.12.1 Offers of Employment. No later than ten (10) Business Days prior to the Closing Date, Buyer shall offer employment on an at-will basis to be effective as of the Closing to each of the Business Employees set forth on Schedule 5.12.1 that it designates in its discretion, subject to such Business Employees satisfying the Buyer's standard screening procedures (individuals who accept such offer of employment and satisfy such screening procedures referred to herein as the "**Continuing Employees**"). Sellers will cooperate with any reasonable requests by Buyer in order to facilitate the offers of employment and delivery of such offers.

5.12.2 Employee Communications. Prior to the Closing, the Parties shall mutually consider and reasonably agree to the contents, scope, form and timing of any communications by Buyer with the Business Employees on all employment-related matters in connection with this

Agreement (the “**Employment Matters**”). The Parties agree that at all times prior to the Closing they will consult with each other prior to carrying out any communication sessions relating to Employment Matters (the “**Employee Sessions**”) or otherwise effecting any communications to the Business Employees relating to Employment Matters.

5.12.3 Third-Party Beneficiaries. This Section 5.12 shall be binding upon and inure solely to the benefit of each of the Parties to this Agreement; nothing in this Section 5.12, expressed or implied, is intended to confer upon any other person any rights or remedies of any nature whatever; and no provision of this Section 5.12 will create any third-party beneficiary rights in any current or former employee, officer, director or individual independent contractor of Sellers or any of their Affiliates in respect of continued employment (or resumed employment) or service or any other matter. This Section 5.12 shall not be considered, or deemed to be, an amendment to any Plan or any compensation or benefit plan, program, agreement or arrangement of Buyer or any of its Affiliates. Nothing in this Section 5.12 shall obligate Buyer or any of its Affiliates (i) to continue to employ any Continuing Employee for any specific period of time following the Closing Date, or (ii) limit the right of Buyer, Sellers or any of their respective Affiliates to, at any time, change or modify any incentive compensation or Plan or arrangement at any time and in any manner.

ARTICLE 6 CONDITIONS PRECEDENT

6.1 Conditions to Obligations of Buyer and Seller. The obligations of Buyer and Sellers to complete the Transactions are subject to the satisfaction or waiver (if permitted by applicable Law) at or prior to the Closing of the following conditions:

6.1.1 No Illegality or Action. There shall not be in effect any applicable Law, temporary restraining order, preliminary or permanent injunction or other Order that enjoins or prohibits the Transactions.

6.1.2 Bankruptcy Orders. The Bankruptcy Court shall have entered the Sale Order, and the Sale Order shall be in full force and effect and shall not have been reversed, modified, amended or stayed.

6.1.3 Regulatory Approvals. All filing and waiting periods applicable (including any extensions thereof) to the consummation of the Transactions contemplated by this Agreement under applicable Laws shall have expired or been terminated.

6.2 Conditions to Obligations of Buyer. The obligation of Buyer to complete the Transactions is subject to the satisfaction, or waiver (if permitted by applicable Law) by Buyer, at or prior to the Closing of the following additional conditions:

6.2.1 Truth of Representations and Warranties. The representations and warranties of Sellers contained in Section 3.1.1 (*Organization; Good Standing; Qualification*), Section 3.1.2 (*Authority and Enforceability*), and Section 3.1.3 (*Authorizations and Consents*), must be true and correct in all respects as of the Execution Date and as of the Closing with the same force and effect as if such representations and warranties were made on and as of such date (*provided* that if a representation and warranty speaks only as of a specific date it only needs to be

true and correct as of that date) and all other representations and warranties of Sellers contained in Section 3.1 must be true and correct (disregarding any “materiality”, “Material Adverse Effect” or similar qualifications contained therein) as of the Execution Date and as of the Closing with the same force and effect as if such representations and warranties were made on and as of such date (*provided* that if a representation and warranty speaks only as of a specific date it only needs to be true and correct as of that date), except where the failure of such representations and warranties to be so true and correct would not individually or in the aggregate have, or be reasonably expected to have, a Material Adverse Effect. Sellers shall also have executed and delivered to Buyer a certificate, signed by an officer of Sellers, certifying that the condition set forth in this Section 6.2.1 is satisfied in all respects as of the Closing.

6.2.2 Performance of Covenants. Sellers must have fulfilled or complied, in all material respects, with all covenants contained in this Agreement required to be fulfilled or complied with by it at or prior to the Closing. Sellers shall also have executed and delivered to Buyer a certificate, signed by an officer of Sellers, certifying that the condition set forth in this Section 6.2.2 is satisfied in all respects as of the Closing.

6.2.3 Material Adverse Effect. Since the date of this Agreement, there shall not have occurred a Material Adverse Effect.

6.2.4 No Litigation. There shall not be pending or threatened in writing before any court of competent jurisdiction or other Governmental Authority any Action that would or would reasonably be expected to (a) materially delay or prevent the consummation of the Transactions, or (b) prohibit or limit, in any respect, the ownership or operation by Buyer or its Affiliates of the Purchased Assets or the Assumed Liabilities.

6.2.5 Employment. The (i) Chief Executive Officer of RCI, (ii) Chief Scientific Officer and Senior Vice President of Research and Development of RCI, and (iii) Chief Officer and Chief Scientific Officer of Acceligen shall not have resigned or been terminated from such positions.

6.2.6 Closing Deliveries. Buyer must have received the following:

- (a) a true and complete copy of the Sale Order, as entered by the Bankruptcy Court;
- (b) the certificates referred to in Section 6.2.1 and Section 6.2.2;
- (c) a receipt acknowledging receipt of the Closing Payment, in satisfaction of Buyer’s obligations pursuant to Section 2.3, validly executed by a duly authorized representative of Seller;
- (d) original certificates representing all outstanding Equity Securities of Acceligen Brazil to the extent they are certificated, and stock powers or assignments evidencing the conveyance of the Equity Securities duly executed in blank; and

(e) each of the Ancillary Agreements to which Seller or any of its Subsidiaries is a party, validly executed by a duly authorized representative of Seller or its applicable Subsidiary.

6.3 Conditions to Obligations of Sellers. The obligation of Sellers to complete the Transactions is subject to the satisfaction, or waiver (if permitted by applicable Law) by Sellers, at or prior to the Closing of the following additional conditions:

6.3.1 Truth of Representations and Warranties. The representations and warranties of Buyer contained in Section 3.2 must be true and correct in all respects (disregarding any “materiality” or similar qualifications contained therein) as of the Closing with the same force and effect as if such representations and warranties were made on and as of such date (*provided* that if a representation and warranty speaks only as of a specific date it only needs to be true and correct as of that date), except where the failure of such representations and warranties to be so true and correct would not, or be reasonably expected, to, materially adversely affect the ability of Buyer to consummate the Transactions. Buyer shall also have executed and delivered to Sellers a certificate, signed by an officer of Buyer, certifying that the condition set forth in this Section 6.3.1 is satisfied in all respects as of the Closing.

6.3.2 Performance of Covenants. Buyer must have fulfilled or complied, in all material respects, with all covenants contained in this Agreement required to be fulfilled or complied with by it at or prior to the Closing. Buyer shall also have executed and delivered to Sellers a certificate, signed by an officer of Buyer, certifying that the condition set forth in this Section 6.3.2 is satisfied in all respects as of the Closing.

6.3.3 Closing Deliveries. Sellers must have received the following:

- (a) a true and complete copy of the Sale Order, as entered by the Bankruptcy Court;
- (b) the certificates referred to in Section 6.3.1 and Section 6.3.2;
- (c) each of the Ancillary Agreements to which Buyer or any of its Affiliates is a party, validly executed by a duly authorized representative of Buyer or its applicable Affiliate; and
- (d) the Closing Payment.

6.4 Frustration of Closing Conditions. No Party may rely on the failure of any condition set forth in Sections 6.1, 6.2, or 6.3, as the case may be, if such failure was caused by such Party’s failure to comply with any provision of this Agreement.

ARTICLE 7 NO SURVIVAL OF REPRESENTATIONS, WARRANTIES AND PRE-CLOSING COVENANTS

7.1 No Survival. None of the representations and warranties of the Parties, or the covenants and agreements (solely to the extent such covenants and agreements are to be performed

and satisfied in full prior to the Closing), of the Parties, whether contained in this Agreement, the Ancillary Agreements, or in any other agreement or document delivered pursuant to this Agreement, shall survive beyond the Closing, and there shall be no liability following the Closing in respect thereof, whether such liability has accrued prior to or after the Closing, on the part of any Party or any of its officers, directors, equityholders, managers, agents or Affiliates; *provided, however*, that this Section 7.1 shall not limit any covenant or agreement of the parties that by its terms contemplates performance after the Closing, and such covenants or agreements shall survive until fully performed or until performance is waived.

7.2 No Recourse. Except to the extent otherwise expressly provided in this Section 7.2 or Section 9.9, Buyer's sole and exclusive remedy (a) for a breach of any representation or warranty made by Sellers herein or in any document delivered pursuant hereto or (b) for a breach of any covenant made by Sellers herein or in any document delivered pursuant hereto and required to be performed by Sellers on or prior to the Closing, shall, in either case, be limited to Buyer's right to terminate this Agreement to the extent permitted pursuant to Section 8.1, in which case Sellers shall have not any liability except to the extent expressly provided in Section 8.3 (whether in equity or at Law, in Contract, in tort or otherwise). Except to the extent otherwise expressly provided in Section 9.9, Sellers' sole and exclusive remedy (a) for a breach of any representation or warranty made by Buyer herein or in any document delivered pursuant hereto or (b) for a breach of any covenant made by Buyer herein or in any document delivered pursuant hereto and required to be performed by Buyer on or prior to the Closing, shall, in either case, be limited to Sellers' right to terminate this Agreement to the extent permitted pursuant to Section 8.1.2, in which case Buyer shall have not any further liability of any kind (whether in equity or at Law, in Contract, in tort or otherwise). Notwithstanding the foregoing, nothing contained in this Agreement shall operate to limit the common law liability of a Party to any other Party in the event such Party is finally determined by a court of competent jurisdiction to have made a representation and warranty set forth in Section 3.1 or Section 3.2, as applicable, with actual knowledge that such representation and warranty was actually untrue when made, with the intent that the other Party rely thereon to its detriment, and justifiable reliance by the Party to whom such representation and warranty was made.

ARTICLE 8 TERMINATION

8.1 Termination. This Agreement may, by Notice in writing given prior to the Closing, be terminated:

8.1.1 by mutual written agreement of Buyer and Sellers;

8.1.2 by Buyer or Sellers if there has been a material breach of this Agreement by the other Party such that the conditions of Closing (a) set forth in Section 6.2.1 or 6.2.2, in the case of a termination by Buyer, or (b) set forth in Section 6.3.1 or 6.3.2, in the case of a termination by Sellers, would not be satisfied (*provided* that the non-breaching Party is not also in breach of this Agreement so as to cause the conditions of Closing for the benefit of the other Party to not be satisfied), and such breach has not been cured within twenty (20) days following Notice of such breach by the non-breaching Party (but in no event later than the Outside Date); *provided* that, for greater certainty, a failure by Buyer to provide, or cause to be provided, Sellers with sufficient

funds to complete the transactions contemplated by this Agreement at the time which the Closing should have occurred shall not be subject to this Section 8.1.2 and shall only be subject to Section 8.1.8.

8.1.3 by Buyer or Sellers (a) if an Alternative Transaction is entered into other than in connection with an Auction pursuant to the Bidding Procedures, (b) if there is an Auction, Buyer is not declared the winning bidder at the Auction and Buyer has not elected to serve as the back-up bidder; *provided* that any termination by Sellers under this Section 8.1.3 shall not be effective unless and until Sellers have paid the Bidding Protections to Buyer;

8.1.4 by Buyer, upon the taking of any enforcement Action, or the Bankruptcy Court's approval of any modification of the automatic stay or otherwise which would permit an enforcement Action, by any creditor with respect to any Purchased Assets;

8.1.5 by Buyer, if (a) the Bankruptcy Court has not approved and entered the Sale Order on or before the day that is forty-four (44) days after the date on which the Chapter 11 Cases are commenced, or (b) following entry of the Sale Order or the Bidding Procedures Order, such Order is stayed, reversed, modified, vacated or amended in any material respect without the prior written consent of Buyer, and such stay, reversal, modification, vacation or amendment is not eliminated within fourteen (14) days;

8.1.6 by Buyer, if (a) the Bankruptcy Court enters an Order (i) dismissing the Chapter 11 Cases or converting the Chapter 11 Cases into cases under chapter 7 of the Bankruptcy Code, or (ii) appointing a trustee, receiver or other Person responsible for operation or administration of Sellers or their Business or assets, or a responsible officer for any of Sellers, or an examiner with enlarged powers relating to the operation or administration of Sellers or their Business or assets (each, an "**Appointee**"), *provided* that, the definition of "Appointee" shall not include any chief restructuring officer that may be appointed by Sellers and authorized by the Bankruptcy Court in the Chapter 11 Cases, or (b) if Sellers are not diligently pursuing entry of the Bidding Procedures Order or the Sale Order or file any stand-alone plan of reorganization or liquidation, in each case, that does not contemplate consummation of the Transactions memorialized in this Agreement (or announces support of any such plan filed by any other party);

8.1.7 by Buyer or Sellers if Closing has not occurred by the Outside Date, *provided* that the terminating Party is not in material breach of this Agreement at the time of such termination; *provided, further*, that (a) Buyer shall not have the right to terminate this Agreement pursuant to this Section 8.1.7 during the pendency of any Litigation brought prior to the Outside Date by Sellers for specific performance of this Agreement (to the extent available pursuant to Section 9.9) and (b) Sellers shall not have the right to terminate this Agreement pursuant to this Section 8.1.7 during the pendency of any Litigation brought before the Outside Date by Buyer for specific performance of this Agreement (to the extent available pursuant to Section 9.9);

8.1.8 by Buyer upon the occurrence of a Material Adverse Effect;

8.1.9 by Sellers, if (i) all of the conditions set forth in Sections 6.1 and 6.2 are satisfied or waived by Buyer as of the Closing Date (other than those conditions that, by their nature, can only be satisfied as of the Closing Date, but which would be satisfied as of the Closing

Date), (ii) Sellers have irrevocably notified Buyer in writing that (x) they are ready, willing and able to consummate the Transactions and (y) all conditions set forth in Section 6.3 have been satisfied (other than those conditions that, by their nature, can only be satisfied as of the Closing Date, but which would be satisfied as of the Closing Date) or that they are willing to irrevocably waive any unsatisfied conditions set forth in Section 6.3, (iii) Sellers have given Buyer written Notice at least two (2) Business Days prior to such termination stating Sellers' intention to terminate this Agreement pursuant to this Section 8.1.10, and (iv) Buyer does not complete the Transactions at the time which the Closing should have occurred by the expiration of the two (2) Business Day period contemplated by clause (iii) hereof;

8.1.10 by Buyer, if (i) all of the conditions set forth in Section 6.1 and 6.3 are satisfied or waived by Seller as of the Closing Date (other than those conditions that, by their nature, can only be satisfied as of the Closing Date, but which would be satisfied as of the Closing Date), (ii) Buyer has irrevocably notified Seller in writing that (x) it is ready, willing and able to consummate the Transactions and (y) all conditions set forth in Section 6.2 have been satisfied (other than those conditions that, by their nature, can only be satisfied as of the Closing Date, but which would be satisfied as of the Closing Date) or that it is willing to irrevocably waive any unsatisfied conditions set forth in Section 6.2, (iii) Buyer has given Seller written Notice at least two (2) Business Days prior to such termination stating Buyer's intention to terminate this Agreement pursuant to this Section 8.1.10, and (iv) Seller does not complete the Transactions at the time which the Closing should have occurred by the expiration of the two (2) Business Day period contemplated by clause (iii) hereof; and

8.1.11 by Buyer or Sellers (provided such terminating Party is not in material breach of this Agreement) if a Governmental Authority of competent jurisdiction shall have issued a final and non-appealable Order or taken any other non-appealable final action, in each case, having the effect of permanently making the consummation of the Transactions illegal or otherwise permanently restraining or prohibiting consummation of the Agreement.

8.2 Procedure and Effect of Termination.

8.2.1 Termination of this Agreement by either Buyer or Sellers shall be by delivery of a Notice to the other Party. Such Notice shall state the termination provision in this Agreement that such terminating Party is claiming provides a basis for termination of this Agreement. Termination of this Agreement pursuant to the provisions of Section 8.1 shall, unless otherwise provided by Section 8.1, be effective upon and as of the date of delivery of such Notice as determined pursuant to Section 9.2.

8.2.2 If a Party waives compliance with any of the conditions, obligations or covenants contained in this Agreement, the waiver will be without prejudice to any of its rights of termination in the event of non-fulfilment, non-observance or non-performance of any other condition, obligation or covenant in whole or in part.

8.2.3 If this Agreement is terminated, the Parties are released from all of their obligations under this Agreement, except that each Party's obligations under Sections 5.2, 5.3, 8.2.4, 8.3, 9.1.2, 9.2, 9.5, 9.9.2, and 9.11 will survive.

8.2.4 As soon as practicable following a termination of this Agreement for any reason, but in no event more than thirty (30) days after such termination, Buyer and Sellers shall, to the extent practicable, withdraw all filings, applications and other submissions relating to the Transactions filed or submitted by or on behalf of such Party to any Governmental Authority or other Person.

8.2.5 In the event of termination of this Agreement pursuant to Section 8.1 the Confidentiality Agreement shall remain in full force and effect in accordance with its terms with respect to confidential information received by the Buyer from Sellers and their Subsidiaries notwithstanding the termination of this Agreement.

8.3 Termination Fee; Expense Reimbursement.

8.3.1 In the event that this Agreement is terminated by Buyer or Sellers, as applicable, in accordance with Section 8.1.3 and the Alternative Transaction or sale to the winning bidder at the Auction, as applicable, is consummated, then Sellers shall pay Buyer by wire transfer of immediately available funds, to the account specified by Buyer to Sellers in writing, the Termination Fee and Expense Reimbursement on the date the Alternative Transaction or sale to the winning bidder at the Auction, as applicable, is consummated.

8.3.2 The Parties acknowledge and agree that the terms and conditions set forth in this Section 8.3 with respect to the payment of the Termination Fee and Expense Reimbursement are subject to the Bankruptcy Court entering the Bidding Procedures Order, it being understood that Buyer may terminate this Agreement if the Bankruptcy Court does not approve the Termination Fee and Expense Reimbursement contemplated hereby. For the avoidance of doubt, but subject to Section 7.2, the covenants set forth in this Section 8.3 are continuing obligations, separate and independent from the other obligations of the Parties expressly set forth in this Agreement (and shall not limit the Parties' other rights expressly set forth in this Agreement), and survive termination of this Agreement.

ARTICLE 9 MISCELLANEOUS

9.1 Governing Law, Jurisdiction, Venue and Service.

9.1.1 Governing Law. Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware, including all matters of construction, validity and performance, in each case without reference to any conflicts or choice of Law rule or principle (whether of the State of Delaware or any other jurisdiction) that might otherwise refer construction or interpretation of this Agreement to the substantive Law of another jurisdiction.

9.1.2 Consent to Jurisdiction and Venue.

(a) Subject to Section 9.9, the Parties hereby irrevocably and unconditionally consent to the exclusive jurisdiction of the Bankruptcy Court for any action, suit or proceeding (other than appeals therefrom) arising out of or relating to this Agreement or any Ancillary Agreement, and agree not to commence any action, suit or proceeding (other than

appeals therefrom) related thereto except in such court. The Parties further hereby irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding (other than appeals therefrom) arising out of or relating to this Agreement in the Bankruptcy Court, and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in the Bankruptcy Court has been brought in an inconvenient forum. The Parties further hereby irrevocably and unconditionally consent to the entry of a final order by the Bankruptcy Court in any such action, suit or proceeding. If Sellers' Chapter 11 Cases are closed, any Litigation arising out of or relating to this Agreement or any Ancillary Agreement shall be heard and determined exclusively in the federal and state courts in the State of Delaware, and the Parties hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Litigation and irrevocably waive the defense of any inconvenient forum to the maintenance of any such Litigation.

(b) THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ALL THEIR RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY LITIGATION (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR THE TRANSACTIONS.

9.1.3 Service. Each Party further agrees that service of any process, summons, notice or document by registered mail to its address set forth in Section 9.2.2 shall be effective service of process for any action, suit or proceeding brought against it under this Agreement in any such court.

9.2 Notices.

9.2.1 Notice Requirements. Any notice, request, demand, waiver, consent, approval or other communication permitted or required under this Agreement (each, a "Notice") shall be in writing, shall refer specifically to this Agreement and shall be deemed given only if (a) delivered by hand, (b) sent by email of a PDF attachment (with transmission promptly confirmed), (c) by internationally recognized overnight delivery service that maintains records of delivery, or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the addresses set forth in Section 9.2.2 (or at such other address for a Party as shall be specified in a Notice given in accordance with this Section 9.2.1). Such Notice shall be deemed to have been given as of the date delivered by hand or internationally recognized overnight delivery service or confirmed that it was received by email (with receipt confirmed by telephone). If a Notice deemed given upon receipt is given after 5:00 p.m. in the place of receipt (the Parties understand and agree that the foregoing applies only to Notice and not to copies), such Notice will be deemed given on the next succeeding Business Day.

9.2.2 Address for Notice.

If to Seller, to:

Recombinetics, Inc.
3388 Mike Collins Drive
Eagan, MN 55121
Attention: Rocco Morelli
Email: rocco.morelli@recombinetics.com

with a copy (which shall not constitute effective notice) to:

Faegre Drinker Biddle & Reath LLP
222 Delaware Avenue, Suite 1410
Wilmington, DE 19801
Attention: Ian J. Bambrick and Patrick A. Jackson
Email: ian.bambrick@faegredrinker.com; and
patrick.jackson@faegredrinker.com

If to Buyer, to:

TOG Technologies, LLC
2939 380th Street
Sioux Center, IA 51250
Attention: Paul Hunt, Gregg Topoleski and Magnus Rayos
Email: paul.hunt@urus.org;
gregg.topoleski@urus.org; and
magnus.rayos@pon.com

with a copy (which shall not constitute effective notice) to:

Morgan Lewis & Bockius LLP
1000 Louisiana Street, Suite 4000
Houston, TX 77002-5005
Attention: Sameer V. Mohan and Jennifer Feldsher
Email: sameer.mohan@morganlewis.com; and
jennifer.feldsher@morganlewis.com

9.3 No Benefit to Third Parties. Sellers and Buyer intend that this Agreement will not benefit or create any right or cause of action in favor of any Person, other than the Parties. No Person, other than the Parties, is entitled to rely on the provisions of this Agreement in any action, suit, proceeding, hearing or other forum. The Parties reserve their right to vary or rescind the rights at any time and in any way whatsoever, if any, granted by or under this Agreement to any Person who is not a Party, without notice to or consent of that Person.

9.4 Waiver. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the Party to be bound by the waiver. A Party's failure or delay in exercising any right

under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a Party from any other or further exercise of that right or the exercise of any other right.

9.5 Expenses. Except as otherwise expressly provided in this Agreement, each Party will pay for its own costs and expenses incurred in connection with this Agreement and the Ancillary Agreements and the Transactions. The costs and expenses referred to in this Section 9.5 are those that are incurred in connection with the negotiation, preparation, execution and performance of this Agreement and the Ancillary Agreements, and the Transactions, including the fees and expenses of legal counsel, investment advisers, accountants and other professionals.

9.6 Assignment.

9.6.1 This Agreement becomes effective only when executed by Sellers and Buyer. After that time, it will be binding upon and inure to the benefit of Sellers, Buyer and their respective heirs, administrators, executors, legal representatives successors and permitted assigns.

9.6.2 Neither this Agreement nor any of the rights or obligations under this Agreement may be assigned or transferred, in whole or in part, by any Party without the prior written consent of the other Party; *provided, however*, that (a) Buyer may, without such consent, assign any or all its rights and obligations hereunder to one or more Affiliates, as designated in writing to Sellers; *provided* that Buyer remains liable for any such obligations, and (b) after the Closing, Sellers may transfer or assign such rights and obligations under this Agreement to a liquidation trust or similar vehicle under a confirmed chapter 11 plan of liquidation in the Chapter 11 Cases.

9.7 Amendment. This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by Buyer and Sellers.

9.8 Severability. If any provision of this Agreement is determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction, that provision will be severed from this Agreement and the remaining provisions shall remain in full force and effect. Upon such determination that any term or other provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the Transactions contemplated hereby may be consummated as originally contemplated to the greatest extent possible.

9.9 Equitable Relief.

9.9.1 The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that a Party shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement. Each Party hereby waives (a) any requirement that the other Party post a bond or other security as a condition for obtaining any such relief and (b) any defenses in any action for specific performance, including the defense that a remedy at law would be adequate.

9.9.2 Each Party hereby agrees not to raise any objections to the availability of equitable remedies to the extent provided for herein, and the Parties further agree that nothing set forth in this Section 9.9 shall require any Party hereto to institute any proceeding for (or limit any Party's right to institute any proceeding for) specific performance under this Section 9.9 prior or as a condition to exercising any termination right under this Agreement, nor shall the commencement of any legal action or legal proceeding pursuant to this Section 9.9 or anything set forth in this Section 9.9 restrict or limit any Party's right to terminate this Agreement in accordance with the terms hereof. The election of a Party to pursue an injunction, specific performance or other equitable relief shall not restrict, impair or otherwise limit such Party from simultaneously seeking to terminate this Agreement and/or damages for liability for Fraud, and, in the case of Buyer, payment of the Bidding Protections.

9.10 No Liability. No past, present or future director, officer, employee, incorporator, manager, member, partner, stockholder, Affiliate, agent, attorney or other Representative of any Party hereto or of any Affiliate of any Party hereto, or any of their successors or permitted assigns (collectively, the "**Non-Party Affiliates**"), shall have any liability for any obligations or liabilities of any Party hereto under this Agreement or for any claim, action, suit or other legal proceeding based on, in respect of or by reason of the transactions contemplated hereby. This Section 9.10 is intended for the benefit of, and shall be enforceable by, each of the Non-Party Affiliates.

9.11 English Language. This Agreement shall be written and executed in, and all other communications under or in connection with this Agreement shall be in, the English language. Any translation into any other language shall not be an official version thereof, and in the event of any conflict in interpretation between the English version and such translation, the English version shall control.

9.12 Bulk Sales Statutes. Buyer hereby waives compliance by Sellers with the requirements and provisions of any applicable bulk sales or bulk transfer Laws in any jurisdiction that may otherwise be applicable in connection with the Transactions. Pursuant to section 363(f) of the Bankruptcy Code, the transfer of the Purchased Assets shall be free and clear of any Liens on the Purchased Assets (other than Permitted Encumbrances), including any Liens arising out of the bulk transfer Laws, and the Parties shall take such steps as may be necessary or appropriate to so provide in the Sale Order.

9.13 Representation by Counsel. Each Party represents and agrees with the other that (a) it has been represented by, or had the opportunity to be represented by, independent counsel of its own choosing, and that it has had the full right and opportunity to consult with its respective attorney(s) to the extent, that it desired, (b) it availed itself of this right and opportunity, (c) that it or its authorized officers (as the case may be) have carefully read and fully understand this Agreement and the Ancillary Agreements in their entirety and have had them fully explained to them by such Party's respective counsel, (d) that each is fully aware of the contents hereof and thereof and their meaning, intent and legal effect, and (e) that it or its authorized officer (as the case may be) is competent to execute this Agreement and has executed this Agreement free from coercion, duress or undue influence.

9.14 Counterparts; Signatures. This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute

one and the same instrument. Transmission of an executed signature page by email or other electronic means is as effective as a manually executed counterpart of this Agreement.

9.15 Entire Agreement. This Agreement, together with the Schedules and Exhibits expressly contemplated hereby and attached hereto, the Ancillary Agreements, the Confidentiality Agreement and the other agreements, certificates and documents delivered in connection herewith or therewith or otherwise in connection with the Transactions, contain the entire agreement between the Parties with respect to the Transactions and supersede all prior agreements, understandings, promises and representations, whether written or oral, between the Parties with respect to the subject matter hereof and thereof, including the Confidentiality Agreement. In the event of any inconsistency between any such Schedules and Exhibits and this Agreement, the terms of this Agreement shall govern.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Execution Date.

SELLERS:

RECOMBINETICS, INC.

ACCELIGEN, INC.

REGENEVIDA, INC.

SURROGEN, INC.

THERILLUME, INC.



By: **box** SIGN 4L26XR5J-4YP25KVL

Name: Rocco Morelli

Title: Chief Executive Officer

BUYER:

TOG TECHNOLOGIES, LLC

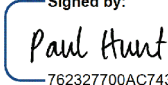
Signed by:

By: 762327700AC743F...
Name: Paul Hunt
Title: Chief Executive Officer

EXHIBIT A

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

[To be provided.]

EXHIBIT B

FORM OF BIDDING PROCEDURES

[See attached.]

BIDDING PROCEDURES

On November [●], 2024, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”). The Debtors are maintaining their business and managing their property as debtors in possession pursuant to section 1184 of the Bankruptcy Code. The above-captioned chapter 11 cases (the “Chapter 11 Cases”) have been consolidated for procedural purposes under the lead case *In re Recombinetics, Inc.*, Case No. 24-[●] ([●]).

On [●], 2024, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered an order [D.I. [●]] (the “Bidding Procedures Order”), granting certain relief requested in the related motion [D.I. [●]] (the “Bidding Procedures Motion”),¹ authorizing the Debtors to solicit bids in accordance with the bidding procedures set forth herein (collectively, the “Bidding Procedures”) to be employed by the Debtors in connection with a proposed sale (the “Sale”) by auction (the “Auction”) of substantially all of the Debtors’ assets (the “Assets”), free and clear of all liens (as defined in section 101(37) of the Bankruptcy Code), encumbrances, claims (as defined in section 101(5) of the Bankruptcy Code), charges, mortgages, deeds of trust, options, pledges, security interests or similar interests, title defects, hypothecations, easements, rights of way, rights of use, encroachments, judgments, rights of setoff, conditional sale or other title retention agreements and other similar impositions, imperfections or defects of title or restrictions on transfer or use other than any assumed liabilities or permitted liens referenced in a Winning Bid (as defined below).

As described in the Bidding Procedures Order, the Debtors have entered into that certain asset purchase agreement dated as of November 9, 2024 (the “Stalking Horse APA”) with TOG Technologies, LLC, a Delaware limited liability company (the “Stalking Horse Bidder”). The sale transaction pursuant to the Stalking Horse APA is subject to competitive bidding as set forth herein.

These Bidding Procedures set forth the process by which the Debtors are authorized to conduct the Sale by Auction of the Assets described more specifically below.

ANY PARTY INTERESTED IN BIDDING ON THE ASSETS SHOULD CONTACT:

Faegre Drinker Biddle & Reath LLP
 222 Delaware Ave., Ste. 1410
 Wilmington, DE 19801
 Attn: Ian J. Bambrick (ian.bambrick@faegredrinker.com),
 Patrick A. Jackson (patrick.jackson@faegredrinker.com), and
 Sarah E. Silveira (sarah.silveira@faegredrinker.com)
 +1 302 467 4200

Proposed Counsel for the Debtors and Debtors in Possession

¹ Capitalized terms used but not yet defined herein shall have the meaning ascribed to such terms in the Bidding Procedures Order or the Stalking Horse APA, as applicable.

Summary of Key Dates Established by Bidding Procedures

DATE	DEADLINE/EVENT
Petition Date November 11, 2024	Deadline to file and serve (i) Bidding Procedures Motion and (ii) Motion to Shorten Notice of Hearing on Bidding Procedures Motion
November [●], 2024, at noon (ET)	Deadline to object to Bidding Procedures Motion
November [●], 2024, at noon (ET)	Deadline to reply to objections to Bidding Procedures Motion
November [●], 2024 at [●] (ET)	Hearing on Bidding Procedures Motion
Not later than November 21, 2024	Entry of Bidding Procedures Order
Within two (2) business days of entry of the Bidding Procedures Order (November [●], 2024)	Deadline to file and serve (i) the Notice of Potential Assumption & Assignment and (ii) the Notice of Auction & Sale Hearing
Fourteen (14) days from the filing of the Assumption and Assignment Notice or Notice of Auction & Sale Hearing (December [●], 2024) at 4:00 p.m. (ET)	(I) Cure Cost and Assignment Objection Deadline and (II) Sale Objection Deadline
December 11, 2024, at 5:00 p.m. (ET)	Deadline for the submission of Qualified Bids (i.e., the Bid Deadline)
One (1) business day prior to the Auction (December 12, 2024) at 5:00 p.m. (ET)	Deadline for Debtors to designate Qualified Bid(s) and Baseline Bid(s)
December 13, 2024, at 10:00 a.m. (ET)	Auction (if applicable)
Twelve (12) hours following conclusion of the Auction	Deadline to file and serve notice of: (i) the Winning Bidder, (ii) the Winning Bidder's and Back-Up Bidder's Proposed APAs, (iii) changed-pages redlines of the Proposed APAs, (iv) the Winning Bidder's and Back-Up Bidder's Proposed Sale Orders, and (v) changed-pages redlines of the Proposed Sale Orders

DATE	DEADLINE/EVENT
December 18, 2024, at noon (ET)	Supplemental Sale Objection Deadline
December 19, 2024, at noon (ET)	Supplemental Reply Deadline
December 20, 2024, at [●] (ET)	Sale Hearing
On or before January 2, 2025	Deadline for Winning Bidder(s) to close the transaction contemplated by its Winning Bid

1. Assets to Be Sold

The Debtors seek to sell to the Stalking Horse Bidder—subject to the highest and best Qualified Bids (as defined below) of one or more Qualified Bidders other than the Stalking Horse Bidder, subject to Court approval substantially all of the tangible and intangible Assets of the Debtors, and the assumption of the specific liabilities of the Debtors, each as set forth in the Stalking Horse APA. The Assets include, among other things, the Debtors’ (a) intellectual property, (b) inventory, (c) accounts receivable, (d) equity in certain of the Debtors’ subsidiaries, and (e) other assets set forth in the Stalking Horse APA.

The sale of the Assets is on an “as is, where is” and “with all faults” basis and without representations, warranties or guarantees, express, implied or statutory, written or oral, of any kind, nature or description, by the Debtors, their affiliates or respective representatives, except and solely to the extent set forth in the Stalking Horse APA approved by the Court. Except as otherwise provided in the Stalking Horse APA, all of the Debtors’ right, title and interest in and to each Asset to be acquired shall be sold free and clear of all liens, claims, interests and encumbrances (other than permitted liens), with such liens, claims, interests and encumbrances to attach to any proceeds of the Sale.

Any general objections to the Sale (an “Initial Sale Objection”) shall (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state with specificity the grounds for such objection, and (d) be filed with the Court and served on the Notice Parties (as defined below) no later than December [3], 2024, at 4:00 p.m. (ET). For the avoidance of doubt, Initial Sale Objections do not include objections to the conduct at any Auction, the selection of a Winning Bid and/or Back-Up Bid, or the terms of any Sale to a Winning Bidder or Back-Up Bidder, which need not be filed until after the filing of a Notice of Winning Bid (each term as defined below).

The Stalking Horse APA, which includes, among other things, a description of the Assets, customary representations, warranties, and covenants by and from the Debtors and Stalking Horse Bidder, and Proposed Sale Order are posted in the Data Room (as defined below), and may also be obtained by Interested Parties (as defined below) upon request to the Debtors’ advisors in compliance with the requirements set forth below.

2. Participation Requirements

A person or entity (an “Interested Party”) that wishes to conduct diligence about the Debtors may request access to the Debtors’ confidential electronic data room concerning the Assets (the “Data Room”). To gain access to the Data Room, and thus be able to conduct due diligence on the Debtors and participate in the bidding process, an Interested Party must submit to the Debtors and their advisors:

- (a) a written disclosure of each entity that will be bidding or otherwise participating in connection with such bid (including each equity holder or other financial backer of the Interested Party, including if such Interested Party is an entity formed for the purpose of consummating the proposed transactions to be set forth in a Proposed APA (as defined below) contemplated by such Interested Party), and the complete terms of any such participation. Under no circumstances shall any undisclosed principals, equity holders, or financial backers be associated with any Qualified Bid. Each Interested Party must also include the contact information for the specific person(s) and counsel whom the Debtors or their advisors should contact regarding such Qualified Bid;
- (b) a statement and other factual support demonstrating to the Debtors’ satisfaction, in consultation with the Notice Parties, in the exercise of their reasonable business judgment that the Interested Party has a *bona fide* interest in purchasing the Assets;
- (c) preliminary proof by the Interested Party of its financial capacity to close the Interested Party’s proposed transaction(s) to be set forth in a Proposed APA, which may include financial statements of, or verified financial commitments obtained by, the Interested Party (or, if the Interested Party is an entity formed for the purpose of acquiring the desired Assets, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtors in consultation with their advisors and the Notice Parties; and
- (d) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtors to an Interested Party) in form and substance satisfactory to the Debtors (without limiting the foregoing, each confidentiality agreement executed by an Interested Party shall contain standard non-solicitation provisions) (each, a “Confidentiality Agreement”).

An Interested Party that delivers the documents and information described above or that the Debtors determine, subject to the limitations in these Bidding Procedures, in consultation with the Notice Parties, is able to consummate the Sale is deemed a “Potential Bidder”). As soon as practicable, the Debtors will provide such Potential Bidder access to the Data Room; *provided, however*, that such access may be terminated by the Debtors in their reasonable discretion at any time for any reason whatsoever, including that a Potential Bidder does not become a Qualified Bidder, these Bidding Procedures are terminated, the Potential Bidder breaches any obligations under its confidentiality agreement, or the Debtors become aware that information submitted by the Potential Bidder for requesting access to the Data Room is inaccurate or misleading. The Debtors may restrict or limit access of a Potential Bidder to the Data Room if the Debtors determine, based on their reasonable business judgment and in consultation with their advisor, that

certain information in the Data Room is sensitive, proprietary, or otherwise not appropriate for disclosure to such Potential Bidder.

Neither the Debtors nor any of their representatives shall furnish any information of any kind whatsoever relating to the Assets to any person or entity who (i) is not a Potential Bidder, (ii) does not comply with the participation requirements set forth herein, or (iii) in the case of competitively sensitive information, is a competitor of the Debtors in the reasonable business judgment of the Debtors in consultation with their advisors.

3. Stalking Horse Bidder Bid Protections

The Debtors have solicited a binding “stalking horse bid” for the Assets. As a result, the Debtors entered into the Stalking Horse APA with the Stalking Horse Bidder pursuant to which, among other things, the Stalking Horse Bidder has committed to (a) purchase, free and clear of all liens claims, encumbrances, and other interests, substantially all of the Debtors’ assets as set forth in the Stalking Horse APA, and (b) assume certain liabilities associated with the Debtors’ operations to the extent set forth in the Stalking Horse APA (the “Stalking Horse Bid”), for a purchase price (the “Stalking Horse Purchase Price”) consisting of (i) \$[4,114,782], which is subject to payment by offset, on a dollar-for-dollar basis, against the outstanding Obligations under the DIP Financing Agreement (the “DIP Obligations”), *plus* cash in the amount of any Cure Costs (as defined in the Stalking Horse APA) which will be paid by the Stalking Horse Bidder in connection with assumption of the Purchased Contracts and an amount up to \$200,000, which shall be paid to the Debtors’ investment banker, and (ii) the assumption of certain liabilities as more fully set forth in the Stalking Horse APA. The Stalking Horse Bid shall set the floor for all bids for the Assets at any Auction held pursuant to these Bidding Procedures.

Recognizing the Stalking Horse Bidder’s expenditure of time, energy and resources, and that the Stalking Horse Bid provides a floor bid with respect to the relevant Assets, the Debtors have agreed that the Stalking Horse Bidder will be entitled to a break-up fee of \$150,000, in the event the Debtors accept or approve, or the Court approves or orders, any alternative sale or restructuring involving the Debtors’ assets (“Termination Fee”). The Stalking Horse Bidder will also be entitled to an expense reimbursement for its out-of-pocket costs and expenses up to \$300,000 (including, without limitation, the fees and expenses of counsel) incurred in connection with the Stalking Horse APA and any Auction (the “Expense Reimbursement,” and together with the Termination Fee, the “Bid Protections”).

No other bidder or any other party shall be entitled to any termination or “break-up” fee, expense reimbursement, or any other bid protections in connection with the submission of a bid for the Assets, or for otherwise participating in the Auction or the sale process.

For all purposes under these Bidding Procedures, the Stalking Horse Bidder will be considered a Qualified Bidder (as defined below), and the Stalking Horse Bid shall be considered a Qualified Bid (as defined below) without regard to any of the requirements or conditions set forth herein and without any other or further action by the Stalking Horse Bidder.

4. Notice Parties.

The term “Notice Parties” as used in these Bidding Procedures shall mean: (i) the Debtors; (ii) proposed counsel to the Debtors, Faegre Drinker Biddle & Reath LLP, 222 Delaware Ave., Ste. 1410, Wilmington, DE 19801, Attn: Ian J. Bambrick (ian.bambrick@faegredrinker.com), Patrick A. Jackson (patrick.jackson@faegredrinker.com), and Sarah E. Silveira (sarah.silveira@faegredrinker.com); and (iii) counsel to the DIP Lender and Prepetition Lender, Morgan, Lewis & Bockius LLP, 101 Park Ave., New York, NY 10178-0060, Attn: Sameer Mohan (sameer.mohan@morganlewis.com), Greer Longer (greer.longer@morganlewis.com) and Jennifer Feldsher (jennifer.feldsher@morganlewis.com).

5. Bankruptcy Court Jurisdiction

Each Potential Bidder and any other Interested Party that seeks to become a Qualified Bidder, in accordance with Section 2 above, shall: (a) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating to the Bidding Procedures, the Sale, the Auction, and the construction and enforcement of the contemplated transaction documents of such parties; (b) bring any such action or proceeding, if at all, solely in the Court; and (c) be deemed to have consented to the Court entering a final order or judgment determining any such action or proceeding, and that such final order or judgment in any such action or proceeding (subject to any right of appeal, as may be applicable), shall be conclusive and may be enforced in other jurisdictions (including, without limitation, any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.

6. Due Diligence

The Debtors will provide, in consultation with the Notice Parties, a Potential Bidder with reasonable access to the Data Room and any other additional information that the Debtors believe to be reasonable and appropriate under the circumstances. The due diligence period shall extend through and include the Bid Deadline (as defined below). Additional due diligence will not be provided after the Bid Deadline. The Debtors reserve the right, in consultation with the Notice Parties, to withhold or limit access to any due diligence information that the Debtors determine is business-sensitive or otherwise not appropriate for disclosure to a Potential Bidder. Notwithstanding any prepetition limitations, including, without limitation, any non-disclosure, confidentiality, or similar provisions relating to any due diligence information, the Debtors and their estates shall be authorized, in consultation with the Notice Parties, to provide due diligence information to Potential Bidders, *provided* that such Potential Bidders have delivered an executed Confidentiality Agreement in form and substance acceptable to the Notice Parties. The Debtors and their estates and the Notice Parties are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Potential Bidders in connection with the Bidding Procedures and the Sale.

Each Interested Party other than the Stalking Horse Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding such Interested Party and its contemplated transaction. If the Debtors, after consultation with the Notice Parties, determine at any time in their reasonable discretion that an Interested Party is not reasonably likely to be a Qualified Bidder, then the Debtors’ obligation to provide due

diligence information to such Interested Party will terminate, and all information provided by the Debtors prior to such time shall be returned to the Debtors in accordance with the terms of the applicable Confidentiality Agreement.

7. **Bid Requirements**

Other than in the case of the Stalking Horse Bid, which shall be considered a Qualified Bid, a bid must be received from a Potential Bidder on or before the Bid Deadline and satisfy each of the following requirements:

- (a) be in writing and received by the Notice Parties prior to the Bid Deadline;
- (b) fully disclose the identity of the Potential Bidder (and to the extent that the Potential Bidder is a newly formed acquisition entity or the like, the identity of the Potential Bidder's parent company or sponsor), and provide the contact information of the specific person(s) whom the Debtors or their advisors should contact in the event that the Debtors have any questions or wish to discuss the bid submitted by the Potential Bidder;
- (c) state that the applicable Potential Bidder offers to (i) purchase, in cash, all of the Assets on terms and conditions substantially similar to the Stalking Horse APA, which terms and conditions the Debtors, in consultation with the Notice Parties, reasonably determine are at least as favorable to the estates than those set forth in the Stalking Horse APA; and (ii) take assignment of any or all Purchased Contracts under the Stalking Horse APA, with details of the Potential Bidder's proposal for the treatment of related cure amounts and the provision of adequate assurance of future performance to the counterparties to such Purchased Contracts;
- (d) include a signed writing stating that the Potential Bidder's offer is irrevocable until the selection of the Winning Bidder; *provided, however*, that if such bidder is selected as the Winning Bidder or the Back-Up Bidder, its offer shall remain irrevocable until the closing of the Sale to the Winning Bidder or the Back-Up Bidder;
- (e) not contain any due diligence or contingencies of any kind including, without limitation, contingencies related to financial, due diligence, or internal or shareholder approvals in connection with the submission of a Potential Bid, and there is no condition precedent to the Potential Bidder's ability to enter into a definitive sale agreement;
- (f) provide that the Potential Bidder intends to close the Sale on or before [December 23], 2024;
- (g) include a duly authorized and executed copy of an asset purchase agreement, together with all exhibits and schedules thereto, together with a blackline copy to show any modifications to the Stalking Horse APA ("Proposed APA"), which includes the purchase price for the Assets, expressed in U.S. Dollars that is not less than \$[4,964,782], which amount shall consist of cash as follows: (i) the Stalking

Horse Purchase Price, (ii) the Bid Protections, and (iii) \$200,000 or more as a cash premium over the Stalking Horse Bid (together, the “Minimum Overbid”);

- (h) include a proposed sale order (“Proposed Sale Order”) based on the Stalking Horse proposed sale order, and a Potential Bid must also include a blackline copy of the Proposed Sale Order to show any proposed modifications to the Stalking Horse Sale Order;
- (i) specify the liabilities proposed to be paid or assumed by such Potential Bid;
- (j) state or otherwise estimate the types of transition services, if any, the Potential Bidder would require of and/or provide to the Debtors, including an estimate of the time any such transition services would be required of and/or provided to the Debtors, if the Potential Bidder’s bid were selected as the Winning Bid for the applicable Assets;
- (k) include an acknowledgement and representation that the Potential Bidder: (i) has had an opportunity to conduct any and all required due diligence regarding the Assets prior to making its offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid; (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Assets or the completeness of any information provided in connection therewith or with the Auction, except as expressly stated in the Proposed APA; and (iv) is not entitled to any expense reimbursement, break-up fee, or similar type of bid-protections or payments in connection with its bid;
- (l) include evidence, in form and substance reasonably satisfactory to the Debtors and the Notice Parties, of authorization and approval from the Potential Bidder’s board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Proposed APA;
- (m) be accompanied by a good faith deposit in the form of a wire transfer, certified check, or such other form acceptable to the Debtors, payable to the order of the Debtors in an amount equal to 10% of the cash portion of the purchase price provided for in the bid (“Deposit”);
- (n) acknowledge in writing (i) that it has not engaged in any collusion with respect to any Potential Bid, specifying that it did not agree with any other party, including, but not limited to, any other Interested Parties or interested third parties, to control price or exert undue influence over the process; and (ii) that it agrees not to engage in any such collusion or undue influence with respect to any Potential Bids, the Auction, or the Sale process;
- (o) state that the Potential Bidder consents to the jurisdiction of the Court;

- (p) contain such financial and other information to allow the Debtors to make a reasonable determination as to the Potential Bidder's financial and other capabilities to close the transactions contemplated by the Proposed APA, including, without limitation, such financial and other information supporting the Potential Bidder's ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code, including the Potential Bidder's financial wherewithal and willingness to perform under any Purchased Contracts ("Adequate Assurance Information");
- (q) set forth any regulatory and third-party approvals required for the Potential Bidder to close the transactions contemplated by the Proposed APA, and the time period within which the Potential Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than five (5) days following execution and delivery of such Potential Bidder's Proposed APA, those actions the bidder will take to ensure receipt of such approval(s) as promptly as possible); *provided* that a Potential Bidder agrees that its legal counsel will coordinate in good faith with the Debtors' counsel to discuss and explain Potential Bidder's regulatory analysis, strategy, and timeline for securing all such approvals as soon as reasonably practicable and in no event later than the time period contemplated in the Proposed APA; *provided further* that the offer contains a covenant to cooperate with the Debtors to provide pertinent factual information regarding the bidder's operations reasonably required to analyze issues arising with respect to any applicable antitrust laws and other applicable regulatory requirements;
- (r) provide a statement that the Potential Bidder agrees to serve as the Back-Up Bidder (as defined below) if the Potential Bidder's bid is the Back-Up Bid (as defined below), in accordance with the terms of the Proposed APA as submitted or modified at the Auction;
- (s) provide that in the event of the Potential Bidder's breach of, or failure to perform under, the Proposed APA, the Potential Bidder shall forfeit its Deposit to the Debtors, and the Debtors shall be entitled to pursue all available legal and equitable remedies, including, without limitation, additional damages and/or specific performance; and
- (t) contain such other information as may be reasonably requested by the Debtors, in consultation with the Notice Parties.

A bid from a Potential Bidder satisfying all of the above requirements, as reasonably determined by the Debtors, in consultation with the Notice Parties, shall constitute a "Qualified Bid," and any bidder that submits a Qualified Bid (including the Stalking Horse Bid) will be considered a "Qualified Bidder". The Debtors reserve the right to work with any Potential Bidder in advance of the Auction to cure any deficiencies in a bid that is not initially deemed a Qualified Bid. Each Qualified Bidder submitting a bid shall be deemed to: (a) acknowledge and represent that it is bound by all of the terms and conditions of the Bidding Procedures; and (b) have waived

the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the submission of its bid, the Bidding Procedures, or the Sale.

Without the written consent of the Debtors, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the Purchase Price or otherwise improve the terms of the Qualified Bid for the Debtors during the period that such Qualified Bid remains binding as specified herein; *provided, however*, that any Qualified Bid may be improved at the Auction as set forth in these Bidding Procedures.

8. Stalking Horse Bidding

Notwithstanding anything to the contrary set forth in these Bidding Procedures, the Stalking Horse Bidder shall be deemed to be a Qualified Bidder and shall not be required to provide any due diligence materials (or any other materials) or Deposit, or satisfy any other Qualified Bidder requirements as a condition to its participation at the Auction and may participate in the Auction.

The Stalking Horse Bidder shall have the right to designate any person or entity in its sole and absolute discretion that shall take title to the Assets or a portion of the Assets. Furthermore, the Stalking Horse Bidder or its designee will be entitled to include the maximum amount of the Bid Protections towards its bid in each round of bidding at any Auction. The DIP Lender will be entitled to credit bid the full amount of the DIP Obligations toward its bid in each round of bidding at any Auction. Other than the Stalking Horse Bidder, no party shall be allowed to credit bid or be entitled to any bid protections.

9. Bid Deadline

A Potential Bidder, other than the Stalking Horse Bidder, that desires to make a bid shall deliver an electronic copy of its bid in both PDF and MS-WORD format via email on or before **[December 11], 2024 at 5:00 p.m. (ET)** (the “**Bid Deadline**”) to the Notice Parties. **Any party that does not submit a bid by the Bid Deadline will not be allowed to (x) submit any offer after the Bid Deadline or (y) participate in the Auction.**

10. Evaluation of Qualified Bids

The Debtors, in consultation with the Notice Parties, shall make a determination regarding whether a timely submitted bid from a Potential Bidder is a Qualified Bid.

A Qualified bid, other than the Stalking Horse Bid, will be valued by the Debtors, in consultation with the Notice Parties, based upon several factors including, without limitation, (1) the amount of the purchase price provided by such bid, (2) the nature of the consideration provided by such bid, (3) the risks and timing associated with consummating such bid, (4) any proposed revisions to the Stalking Horse APA and/or the Stalking Horse Sale Order, (5) whether any Qualified Bid contains a sufficient cash component to ensure that the Debtors’ estates are not rendered administratively insolvent, and (6) any other factors deemed relevant by the Debtors, in consultation with the Notice Parties.

Notwithstanding the foregoing, for a Qualified Bid (other than of the Stalking Horse Bid) to be determined to be higher or otherwise better than the value of the Stalking Horse Bid before

the commencement of competitive bidding, it must be equal to or higher than the Minimum Overbid.

No later than one (1) business day prior to the Auction, the Debtors shall: (i) notify all Potential Bidders whether their bids have been determined to be a Qualified Bid, and them, a Qualified Bidder and notify the Stalking Horse Bidder of all such determinations; and (ii) determine, in consultation with the Notice Parties, which of the Qualified Bids is the highest or otherwise best bid for purposes of constituting the opening bid(s) for the Assets at the Auction (such bid, the “Baseline Bid,” and the Qualifying Bidder submitting such Baseline Bid, a “Baseline Bidder”), and promptly notify the Stalking Horse Bidder and all Qualified Bidders of the Baseline Bid.

11. No Qualified Bids

If the Debtors do not receive any Qualified Bids other than the Stalking Horse Bid, the Debtors will not conduct the Auction for the Assets and will file with the Court within twenty-four hours after the Bid Deadline a notice indicating that the Auction for the Assets has been canceled. In such event, the Stalking Horse Bidder will be deemed the Winning Bidder, the Stalking Horse Bid will be the Winning Bid, and the Debtors will as expeditiously as possible seek final Court approval of the sale of the Assets to the Stalking Horse Bidder as contemplated by the Stalking Horse APA.

12. Auction

If the Debtors receive one or more Qualified Bids, the Debtors will conduct an auction in accordance with the bidding procedures (the “Auction”), which shall be recorded or transcribed, shall run in accordance with the following procedures (the “Auction Procedures”):

- (a) the Auction shall commence on **[December 13], 2024, at 10:00 a.m. (ET)**, at the offices of proposed counsel for the Debtors, Faegre Drinker Biddle & Reath LLP, 222 Delaware Ave., Ste. 1410, Wilmington, DE 19801, or virtually via telephone or video conference pursuant to information to be timely provided by the Debtors to the Auction Participants (as defined below), for which the Debtors shall file notice of any change in the date, time, or location of the Auction;
- (b) only Qualified Bidders, including the Stalking Horse Bidder shall be entitled to make any subsequent bids at the Auction;
- (c) the Qualified Bidders shall appear at the Auction, or through a duly authorized representative;
- (d) only (i) the Debtors, (ii) the Qualified Bidders, (iii) the Notice Parties, (iv) any other creditor of the Debtors who desires to attend the Auction and provides no less than one (1) day’s advance written notice to the Debtors via email at Ian J. Bambrick (ian.bambrick@faegredrinker.com) and Patrick A. Jackson (patrick.jackson@faegredrinker.com), together with the advisors to each of the foregoing parties, may attend the Auction (collectively, the “Auction Participants”). In the event a Qualified Bidder elects not to attend the Auction, such Qualified

Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until the selection of the Winning Bidder and Back-Up Bidder at the conclusion of the Auction; *provided* that if such bidder is selected as the Winning Bidder or the Back-Up Bidder, its offer shall remain irrevocable until the closing of the Sale to the Winning Bidder or the Back-Up Bidder. Prior to the time scheduled for the commencement of the Auction (as provided in these Bidding Procedures), the Debtors shall notify all Qualified Bidders (including the Stalking Horse Bidder) which Qualified Bid has been determined to be the Baseline Bid;

- (e) the Debtors and their advisors shall direct and preside over the Auction, which shall be transcribed;
- (f) prior to the start of the Auction, each Qualified Bidder shall confirm that it has not engaged in any collusion, within the meaning of section 363(n) of the Bankruptcy Code, with respect to the Bidding Procedures, the Auction, or the Sale;
- (g) bidding at the Auction will begin with the Baseline Bid and continue in bidding increments (each, a "Subsequent Bid") providing a value to the Debtors' estates of at least \$100,000 in additional cash above the prior bid (each, an "Overbid"). After each round of bidding, the Debtors, after consultation with the Notice Parties, shall announce the bid (and the value of such bid) that they believe to be the highest or otherwise bid (each, the "Leading Bid");
- (h) any Overbid made from time to time by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (i) the Debtors accept a bid submitted by another Qualified Bidder during the Auction as an Overbid and (ii) such prior Overbid is not selected as the Back-Up Bid. To the extent not previously provided (which will be determined by the Debtors in consultation with the Notice Parties), a Qualified Bidder submitting an overbid must submit at the Debtors' request (in consultation with the Notice Parties), as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors in consultation with the Notice Parties) demonstrating such Qualified Bidder's ability to close the transaction at the purchase price contemplated by such Overbid;
- (i) a round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid from the previous round, which must include the Overbid;
- (j) except as specifically set forth herein, for the purpose of evaluating the value of the purchase price provided by each Subsequent Bid (including any Subsequent Bid by the Stalking Horse Bidder), the Debtors may give effect to any additional liabilities to be assumed by a Qualified Bidder, and any additional costs which may be imposed on (or avoided by) the Debtors as a result of such bid;
- (k) the Auction may include individual, off-the-record negotiations with any of the Qualified Bidders, but all bids shall be made on the record;

- (l) all material terms of the bid that is deemed to be the highest or otherwise best bid for each round of bidding shall be fully disclosed to the Qualified Bidders, and the Debtors shall use reasonable efforts to clarify any questions that the Qualified Bidders may have regarding the Debtors' announcement of the then-current highest or otherwise best bid;
- (m) Subject to paragraph 17 herein, the Debtors and their advisors, in consultation with the Notice Parties, may employ and announce at the Auction additional or amended procedural rules that are reasonable under the circumstances for conducting the Auction; *provided* that such potential additional modifications and/or procedural rules (i) are not materially inconsistent with the existing terms and conditions of the Bidding Procedures Order and these Bidding Procedures, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or any order of the Court entered in connection with the Chapter 11 Cases, (ii) do not purport to abrogate or modify the Stalking Horse APA or the Bid Protections, and (iii) are disclosed to the Qualified Bidders;
- (n) a "Winning Bid" shall: (i) if the Auction for the Assets is cancelled because only the Stalking Horse Bid is submitted on or before the Bid Deadline, be the Stalking Horse Bid; or (ii) if the Auction is conducted, be the Qualified Bid(s) that the Debtors determine at the conclusion of the Auction, in consultation with the Notice Parties, and subject to Court approval, is the highest or otherwise best for the Assets from among the Qualified Bids submitted at the Auction. In the case of (ii), in making this decision, the Debtors shall consider, in consultation with the Notice Parties, the amount of the purchase price, the assumption of liabilities, the transaction structure, and execution risk, including, without limitation, the likelihood of the bidder's ability to close a transaction and the timing thereof, the number, type, and nature of any changes to the Stalking Horse APA submitted with the Winning Bid, the total consideration to the Debtors' estates, and any other factors the Debtors may deem relevant. The bidder submitting the Winning Bid shall become the "Winning Bidder," and shall have such rights and responsibilities of the purchaser as set forth in such Winning Bid, with all modifications made at the Auction. The Debtors may, in their business judgment and in consultation with the Notice Parties, designate the Back-Up Bid (and the corresponding Back-Up Bidder) to purchase the Assets in the event that the applicable Winning Bidder does not close the Sale;
- (o) the Qualified Bidder(s) with the next highest or otherwise best Qualified Bid (a "Back-Up Bid"), as determined by the Debtors in consultation with the Notice Parties will be required to serve as a back-up bidder (each, a "Back-Up Bidder") and keep its bid open and irrevocable until the later to occur of (i) twenty (20) days after the Sale Hearing and (ii) closing on the Winning Bid with the Winning Bidder. The Stalking Horse Bidder shall not be required to serve as the Back-Up Bidder unless the Stalking Horse Bidder consents to serve as a Back-Up Bidder at the Auction;

- (p) within one (1) business day of the selection of any Winning Bid(s), the Debtors shall file a notice with the Court (“Notice of Winning Bid”) that sets forth: (i) the identity of the Winning Bidder(s) and any Back-Up Bidder; (ii) the amount of the Winning Bid and any Back-Up Bid; (iii) the Winning Bidder’s and Back-Up Bidder’s Proposed APAs, (iii) redlines of the Proposed APAs marked against the Stalking Horse APAs, (iv) the Winning Bidder’s and Back-Up Bidder’s Proposed Sale Orders and (v) redlines of the Proposed Sale Orders marked against the Stalking Horse Sale Order, and (vi) whether the Winning Bidder or the Back-Up Bidder have any connections to the Debtors other than those arising from their respective bids;
- (q) in the event a Winning Bid or Back-Up Bid requires the assumption and assignment of any Purchased Contracts, the Debtors shall follow the assumption and assignment procedures set forth in the Bidding Procedures Order;
- (r) within one (1) business day of the close of the Auction, any Winning Bidder and any Back-Up Bidder, except if the Winning Bidder or Back-Up Bidder is the Stalking Horse Bidder, shall supplement their respective Deposit, if necessary, such that the Deposit shall be equal to an amount that is ten (10%) percent of the cash portion of the purchase price set forth in the applicable Winning Bid and Back-Up Bid; and
- (s) prior to the Sale Hearing, any Winning Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Winning Bid was made.

EACH QUALIFIED BID THAT IS NOT A WINNING BID OR BACK-UP BID SHALL BE DEEMED WITHDRAWN AND TERMINATED AT THE CONCLUSION OF THE SALE HEARING.

13. Sale Hearing and Winning Bid Objections

The Debtors will seek entry of an order from the Court at a hearing (the “Sale Hearing”) to begin on **[December 20], 2024 at [•] a.m. / p.m. (ET)** to approve and authorize the Sale to the Winning Bidder (the “Sale Order”) and approval of any Back-Up Bid. Subject to the terms of the Stalking Horse APA, the Bidding Procedures Order and these Bidding Procedures, the Debtors reserve the right to change the date and/or time of the Sale Hearing (or any other dates related to the Sale) to achieve the maximum value for the Purchased Assets without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by filing a notice, which may be a hearing agenda stating the adjournment, on the docket of the Chapter 11 Cases.

Any objection relating solely to the conduct of the Auction, the Auction results, the selection of the Winning Bid or any Back-Up Bid, or the terms of the Sale to a Winning Bidder or a Back-Up Bidder (each, a “Supplemental Sale Objection”), must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state with specificity the grounds for such objection, and (d) be filed with the Court and served on the Notice Parties on or before [December 18], 2024 at noon (ET).

Any party who fails to file and serve a timely Initial Sale Objection or Supplemental Sale Objection shall be forever barred from asserting, at the Sale Hearing or thereafter, any Initial Sale Objection or Supplemental Sale Objection, including any such objection to the Bidding Procedures or to the consummation or performance of the sale of the Assets, including the transfer of Assets to the Winning Bidder free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code, and shall be deemed to consent to such sale for purposes of section 363(f) of the Bankruptcy Code.

14. Back-Up Bidder

Notwithstanding any of the foregoing, in the event that a Winning Bidder fails to close a Sale on or before [December 23], 2024, and a Back-Up Bidder has been previously identified, the Debtors may designate the Back-Up Bid as the Winning Bid, and the Debtors shall file a notice so indicating (“Back-Up Bid Notice”). Three (3) business days following the filing of any Back-Up Bid Notice, the Back-Up Bid shall be deemed the Winning Bid, the Back-Up Bidder will be deemed to be the Winning Bidder, and the Debtors shall be authorized, but not directed, to close the Sale to the Back-Up Bidder subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any other parties.

15. Return of Deposits

The Deposits of all Qualified Bidders shall be deemed held in escrow by the Debtors and shall not become property of the Debtors’ estates absent further order of the Court.

All Deposits not used as part of the consummation of a Sale or not retained by the Debtors as part of damages shall be returned to each Qualified Bidder not selected as the Winning Bidder no later than five (5) business days following the closing of the Sale. The Deposit of the Winning Bidder shall be applied to the purchase price for the Sale. If the Winning Bidder (or, if the Sale is to be closed with a Back-Up Bidder, then such Back-Up Bidder) fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the Proposed APA, the Debtors and their estates shall be entitled to retain the Deposit of the Winning Bidder (or Back-Up Bidder, as applicable) as part of the damages resulting to the Debtors and their estates for such breach or failure to perform. For the avoidance of doubt, the Debtors’ retention of a Deposit shall not constitute a waiver of any of the Debtors’ legal or equitable rights relating to a Winning Bidder’s (or Back-Up Bidder’s, as applicable) breach or failure to perform, and all such rights and remedies are preserved.

16. Consultation Rights

Any consultation rights provided to the Notice Parties by these Bidding Procedures shall not limit the Debtors’ discretion in any way and shall not include the right to veto any decision made by the Debtors in the exercise of their business judgment. Any failure to specifically identify consultation rights in any section of these Bidding Procedures shall not limit or otherwise impair the rights of the Notice Parties to consult with the Debtors. In the event that the Notice Parties disagree with matters for which the Debtors are required to consult with the Notice Parties, then the Notice Party shall have the right to seek relief from the Court on an expedited basis to resolve the dispute.

For the avoidance of doubt, so long as a Notice Party (or an affiliate thereof) is the Stalking Horse Bidder, such Notice Party shall not have any consultation rights with respect to satisfaction of the Bid Requirements, evaluation of Qualified Bids, or the Auction, if any.

17. Reservation of Rights

Without prejudice to the rights of the Stalking Horse Bidder under the Stalking Horse APA, and except as otherwise provided in these Bidding Procedures, the Bidding Procedures Order or the Stalking Horse Sale Order, the Debtors further reserve the right in the exercise of their fiduciary duties (in consultation with the Notice Parties), to: (a) determine which bidders are Qualified Bidders; (b) determine which bids are Qualified Bids; (c) determine which Qualified Bid is the highest and best proposal and which is the next highest and best proposal; (d) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of these Bidding Procedures or the requirements of the Bankruptcy Code or (iii) contrary to the best interests of the Debtors and their estates; (e) impose additional terms and conditions with respect to all potential bidders other than the Stalking Horse Bidder; (f) modify these Bidding Procedures and/or implement additional procedural rules that the Debtors determine will better promote the goals of the bidding process; and (g) continue or cancel the Auction and/or Sale Hearing in open court without further notice or by filing a notice on the docket; *provided, however*, that (i) any changes to the dates and deadlines set forth herein shall comply with any milestones contained in the Debtors' DIP Financing Agreement approved by the Bankruptcy Court in these cases, (ii) the Debtors may not modify the terms of the "Stalking Horse Bidder Bid Protections" set forth in Paragraph 3 hereof (and any related provisions of the Bidding Procedures Order) or the "Stalking Horse Bidding" provisions in Paragraph 8 (and any related provisions of the Bidding Procedures Order), without the consent of the Stalking Horse Bidder, and (iii) the potential modifications and/or procedural rules will not impair or be likely to impair the ability of the DIP Lender to be repaid in full in cash on the Maturity Date if not selected as the Winning Bidder.

EXHIBIT C

FORM OF BILL OF SALE

[To be provided.]

EXHIBIT D

FORM OF INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT

[To be provided.]

EXHIBIT E

FORM OF LEASE ASSIGNMENT

[To be provided.]

SCHEDULES TO ASSET PURCHASE AGREEMENT

The following pages include all of the schedules (collectively, the “**Schedules**”) referred to in that certain Asset Purchase Agreement, dated as of November 11, 2024 (the “**Agreement**”), by and between Recombinetics, Inc., a Delaware corporation (“**RCI**”), Acceligen, Inc., a Minnesota corporation (“**Acceligen**”), Regenevida, Inc., a Minnesota corporation (“**Regenevida**”), Surrogen, Inc., a Minnesota corporation (“**Surrogen**”), and Therillume, Inc., a Delaware corporation (“**Therillume**” and together with RCI, Acceligen, Regenevida, and Surrogen, the “**Sellers**”), on the one hand, and TOG Technologies, LLC, a Delaware limited liability company (the “**Buyer**”), on the other hand.

These Schedules (including any supplement hereto) are qualified in their entirety by reference to specific provisions of the Agreement. Nothing in these Schedules expands the scope of any representation, warranty or covenant of the Sellers contained in the Agreement. Disclosures made in these Schedules remain subject to review and revision prior to Closing in accordance with the terms and conditions contained in the Agreement.

Inclusion of a matter in these Schedules in relation to a representation, warranty, or covenant which addresses matters having a material adverse effect, or which is qualified by materiality, is not an indication that such matter does or does not, or may or may not, have a material adverse effect, or that such matter is or is not material. The inclusion of a matter in these Schedules in relation to a representation or warranty shall not be deemed an indication that such matter necessarily would or would not, or may or may not, breach such representation or warranty absent its inclusion in these Schedules. The inclusion of any specific item in these Schedules is not intended to imply that the items so included in these Schedules (or any other items), in each case, are or are not material or within or outside the Ordinary Course.

No disclosure in these Schedules relating to any possible breach or violation of any Contract or Law shall be construed as an admission or indication that such breach or violation exists, has occurred or will occur, an admission of any liability of the Sellers with respect to any third party, or an admission against the interest of the Sellers to any third party.

Certain matters are listed in these Schedules for informational purposes only and may not be required to be listed herein by the terms of the Agreement. Such additional matters do not necessarily include other matters of a similar nature. In disclosing this information, the Sellers expressly do not waive any attorney-client privilege associated with such information or any protection afforded by the work-product doctrine with respect to any of the matters disclosed or discussed herein.

All descriptions of any document included in these Schedules (a) are summary in nature, (b) do not propose to be a complete statement of the material terms of such document, and (c) are qualified in their entirety by reference to (i) such document, (ii) any and all exhibits, schedules, annexes, riders, addendums and other documents attached to such document and (iii) any amendments, supplements and other modifications to such document.

These Schedules are arranged in paragraphs corresponding to the lettered and numbered sections and sub-sections in the Agreement. Any matter, information or item disclosed in these Schedules disclosed under any specific representation, warranty or covenant or Schedule number

qualifies only each representation, warranty or covenant set forth in the Agreement: (i) that is specifically identified (by cross-reference or otherwise) in these Schedules as being qualified by such exception, or (ii) other sections of these Schedules with respect to which the relevance of such exception is readily apparent on the face of the disclosure of such exception. Unless otherwise indicated in these Schedules, any reference to any contract or agreement shall be deemed to include all amendments or modifications thereto. The inclusion of any matter, information, or item in these Schedules is not intended to be and does not constitute an admission of any liability by the Sellers to any third party.

Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement. All numbered and labelled sections refer to sections in the Agreement unless the context otherwise requires. The headings in these Schedules are for reference only and shall not affect the disclosures contained herein.

Schedule 2.1.1(a)

Purchased Contracts

1. *[To be provided.]*

Schedule 2.1.1(d)

Purchased Permits

1. *[To be provided.]*

Schedule 2.1.1(f)

Excluded Contracts

1. *[To be provided.]*

Schedule 2.1.1(l)

Regulatory Approvals

1. *[To be provided.]*

Schedule 2.1.2(m)

Specific Excluded Assets

1. [*To be provided.*]

Schedule 3.1.5

Capitalization

(a)

1. *[To be provided.]*

(b)

1. *[To be provided.]*

Schedule 3.1.6(a)

Actions

1. [*To be provided.*]

Schedule 3.1.9

Intellectual Property

(a)

(i)

Patents:

1. *[To be provided.]*

Trademarks:

1. *[To be provided.]*

Copyrights:

1. *[To be provided.]*

Domain Name Registrations:

1. *[To be provided.]*

Social Media Accounts:

1. *[To be provided.]*

(ii)

1. *[To be provided.]*

(b)

1. *[To be provided.]*

(c)

(i)

1. *[To be provided.]*

(ii)

1. *[To be provided.]*

(e)

1. *[To be provided.]*

Schedule 3.1.10

No Material Disposals

1. [*To be provided.*]

Schedule 3.1.11(a)

Employee Matters

1. [Annex 3.1.11(a) is attached hereto and incorporated herein by reference.]¹

¹ Note to Draft: Annex 3.1.11(a) to contain employee census data.

Schedule 3.1.12

Compliance with Laws

(a)

1. *[To be provided.]*

(c)

(i)

1. *[To be provided.]*

(ii)

1. *[To be provided.]*

(iii)

1. *[To be provided.]*

(iv)

1. *[To be provided.]*

Schedule 3.1.13

Material Contracts

(a)

(i)

1. *[To be provided.]*

(ii)

1. *[To be provided.]*

(iii)

1. *[To be provided.]*

(iv)

(A)

1. *[To be provided.]*

(B)

1. *[To be provided.]*

(v)

1. *[To be provided.]*

(vi)

1. *[To be provided.]*

(vii)

1. *[To be provided.]*

(viii)

1. *[To be provided.]*

(ix)

1. *[To be provided.]*

(x)

1. [*To be provided.*]

(xi)

1. [*To be provided.*]

(xii)

1. [*To be provided.*]

(b)

(i)

1. [*To be provided.*]

(ii)

1. [*To be provided.*]

(iii)

1. [*To be provided.*]

Schedule 3.1.15

Taxes

1. *[To be provided.]*

Schedule 5.12.1

Offers of Employment

1. [*To be provided.*]

EXHIBIT B

Stalking Horse Sale Order

[To be filed]